

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** August 1, 2016

**RE: Equipment Lease Purchase Agreement for Gradall Telescopic Excavators with Leasing 2, Inc. and Related Maintenance Services with GS Equipment, Inc.**

Attached hereto for your consideration is the proposed Lease Purchase Agreement and corresponding documents between the City and Leasing 2, Inc. for two (2) Gradall Telescopic Excavators to be used by the Public Works Department to construct and maintain the City's Infrastructure. Also included is a proposal for related maintenance services for the excavators with GS Equipment, Inc.

This equipment is essential in providing versatile methods of excavation for City projects, which will ultimately result in time and cost savings. The equipment is being purchased from GS Equipment, Inc. pursuant to the Florida Sheriff's Association Bid #13-15-0904, Specification #43, and financed through Leasing 2, Inc. Due to the increased cost for heavy equipment over the last few years, the City's equipment replacement fund has not been able to keep up with the increased demand, thereby resulting in insufficient funds to directly purchase the Gradalls.

The cost of the Gradalls will be charged to the Transportation, Storm Water Utility and General Funds. While the equipment will be used to accomplish work for a variety of City departments, the Gradalls will also serve as a valuable tool for removing debris such as fallen trees and other heavy objects during emergency operations.

The term of this Lease Agreement is for a period of seven (7) years at a rate of 2.75%. The monthly payment for these vehicles will be \$9,429.98, with a final installment payment of 92,000 for a total cost of \$784,106.52 over the seven (7) year term. Maintenance/repair services and replacement equipment, if necessary, will be provided by GS Equipment, Inc. as a separate expense at a cost of \$222,096 during the term of the agreement. The associated maintenance/repair for the Gradalls require highly specialized factory-trained mechanics that cannot be serviced by City staff.

It is recommended that the appropriate City officials be authorized to approve this Lease Purchase Agreement for two (2) Gradall Telescopic Excavators with Leasing 2, Inc. and related maintenance services with GS Equipment, Inc.

attachment

# LEASE-PURCHASE AGREEMENT

**LESSEE:**  
City of Lakeland, Florida  
228 S. Massachusetts Avenue  
Lakeland, FL 33801

**LESSOR:**  
Leasing 2, Inc.  
1720 West Cass Street  
Tampa, FL 33606-1230

**Dated as of August 1, 2016**

This Lease-Purchase Agreement (the "Agreement") dated as of August 1, 2016, by and between Leasing 2, Inc. ("Lessor"), and City of Lakeland, Florida ("Lessee"), a municipal corporation organized and existing under the laws of the State of Florida ("State").

**WITNESSETH:**

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 to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

**ARTICLE I DEFINITIONS**

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

"Agreement" means this Lease-Purchase Agreement, including the Exhibits attached hereto, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Commencement Date" is the date when the term of this Agreement begins and Lessee's obligation to pay rent accrues, which shall be the commencement date shown on the Exhibit E Payment Schedule.

"Equipment" means the property described in Exhibit D and which is the subject of this Agreement.

"Lease Term" means the Original Term and all Renewal Terms provided for in this Agreement under Section 4.01.

"Lessee" means the entity which is described in the first paragraph of this Agreement and which is leasing the Equipment from Lessor under the provisions of this Agreement.

"Lessor" means (i) Leasing 2, Inc., acting as Lessor hereunder; (ii) any surviving resulting or transferee corporation; and (iii) except where the context requires otherwise, any assignee(s) of Lessor.

"Original Term" means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.

"Purchase Price" means the amount indicated with respect to any date after payment of all Rental Payments (defined below) due through such date, all as set forth in Exhibit E hereto, or Supplemental Exhibit E hereto, as the case may be.

"Renewal Terms" means the renewal terms of this Agreement as provided for in Article IV of this Agreement, each having a duration of one year and a term co-extensive with the Lessee's fiscal year, except the last of such automatic renewal terms which shall end on the due date of the last Rental Payment set forth in Exhibit E to this Agreement.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to the provisions of this Agreement during the Lease Term, payable in consideration of the right of Lessee to use the Equipment during the then current portion of the Lease Term. Rental Payments shall be payable by Lessee to the Lessor or its assignee in the amounts and at the times during the Lease Term, as set forth in Exhibit E of this Agreement.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessee, as the agent of Lessor, has purchased or is purchasing the Equipment.

**ARTICLE II COVENANTS OF LESSEE**

Section 2.01 Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

(a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State.

(b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body, corporate and politic.

(c) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby, and to perform all of its obligations hereunder.

(d) Lessee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the resolution of its governing body, attached hereto as Exhibit A, or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of this Agreement, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder. Lessee shall cause to be executed and delivered to Lessor an opinion of its counsel substantially in the form attached hereto as Exhibit B.

(e) 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.

(f) During the period this Agreement is in force, Lessee will annually provide Lessor with such current financial statements, budgets, proof of appropriation for ensuing fiscal year or such other financial information relating to the decision of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee.

(g) The Equipment will have a useful life in the hands of the Lessee that is substantially in excess of the Original Term and all Renewal Terms.

(h) The Equipment is, and during the period this Agreement is in force will remain, personal property and when subjected to use by the Lessee under this Agreement, will not be or become fixtures.]

(i) Lessee shall not voluntarily or involuntarily create, incur, assume or suffer to exist any lien, security interest or other encumbrance or attachment of any kind whatsoever on, affecting or with respect to the Equipment.

(j) Lessee shall not give up possession or control of the Equipment.

(k) Lessee shall not change the location of the Equipment without giving prior written notice of the proposed new location to the Lessor and provided that Lessee shall obtain and deliver to Lessor any landlord waivers reasonably requested by Lessor so as to protect Lessor's right, title and interest in and to the Equipment and Lessor's ability to exercise its remedies with regard to the Equipment.

(l) Lessee shall not alter or modify the Equipment in any manner which would reduce the value or the marketability thereof.

(m) Lessee will take no action that will cause the interest portion of any Rental Payment to become includable in gross income of the recipient for purposes of federal income taxation under the Code, and Lessee will take, and will cause its officers, employees and agents to take, all affirmative action legally within its power to prevent such interest from being includable in gross income for purposes of federal income taxation under Section 103(e) of the United States Internal Revenue Code of 1986 as amended (the "Code").

**ARTICLE III LEASE OF EQUIPMENT**

Section 3.01 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 Lease Term.

**ARTICLE IV LEASE TERM**

Section 4.01. Commencement of Lease Term. The Original Term of this Agreement shall commence on the Commencement Date and shall terminate on the last day of Lessee's fiscal year then in effect. Lessee may renew this Agreement beyond the expiration of the Original Term, or beyond the expiration of any Renewal Term then in effect, up to the number of additional fiscal years provided in Exhibit E of this Agreement by appropriating sufficient funds to make scheduled Rental Payments for the ensuing fiscal year (each a "Renewal Term"). Terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in Exhibit E of this Agreement.

Section 4.02. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

(a) The expiration of the Original Term or any Renewal Term of this Agreement and the non-renewal of this Agreement in the event of non-appropriation of funds pursuant to Section 6.07;

(b) The exercise by Lessee of the option to purchase the Equipment before expiration of this Agreement granted under the provisions of Articles IX or XI of this Agreement;

(c) A default by Lessee and Lessor's election to terminate this Agreement under Article XIII; or

(d) Payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder through the full lease term.

**Section 4.03. Return of Equipment on Termination.** Upon expiration or earlier termination of the Original Term or any Renewal Term under any provision of this Agreement at a time when Lessee does not exercise its option to purchase the Equipment granted under the provisions of Articles IX or XI of this Agreement, Lessee hereby agrees to deliver the Equipment to Lessor packaged or otherwise prepared in a manner suitable for shipment by truck or rail common carrier to a location specified by Lessor. All expenses resulting from the return of Equipment on termination will be borne by Lessee.

#### **ARTICLE V ENJOYMENT OF EQUIPMENT**

**Section 5.01.** Provided that no default or event of default shall have occurred hereunder, Lessor hereby covenants that during the Lease Term Lessor will not interfere with Lessee's quiet use and enjoyment of the Equipment.

Lessor 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.

#### **ARTICLE VI RENTAL PAYMENTS**

**Section 6.01. Rental Payments to Constitute a Current Expense of Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee.

**Section 6.02. Payment of Rental Payments.** During the Original Term and during each Renewal Term elected by Lessee, Lessee shall pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor or, in the event of assignment by Lessor, to its assignee, in the amounts and on the dates set forth in Exhibit E hereto. Rental Payments shall be in consideration for Lessee's use of the Equipment during the applicable year in which such payments are due. The Rental Payment amounts set forth in Exhibit E are based on the Equipment Cost to be paid by Lessor being the amount set forth in Exhibit E. Lessor shall have no obligation to pay or disburse any amount greater than the amount set forth as the Equipment Cost. Lessee shall not amend any purchase contract, purchase order, or any other agreement that would have the effect of increasing the cost of the Equipment above set forth in Exhibit E as the Equipment Cost without the prior written consent of Lessor. In the event that the actual cost of the Equipment is greater than the amount set forth in Exhibit E, Lessee shall be solely responsible for and hereby agrees to promptly pay such excess to the vendor (s), provided that Lessee may request that Lessor finance such excess, which Lessor may, in its sole discretion elect to do or decline to do. To the extent permitted by law, Lessee shall indemnify and hold Lessor harmless from and against any loss, damages, costs and expenses resulting from or relating to any increase in the Equipment Cost. If Lessor, in its sole discretion, elects to finance such excess the amount of each installment of rent will be increased to provide the same yield to Lessor as would have been obtained if the actual cost had been the same as the stated Equipment Cost. In such event, Lessee shall at the request of Lessor execute and deliver an amendment reflecting the increase in the Equipment Cost and the Rental Payments.

**Section 6.03. Interest and Principal Components.** A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of principal. Exhibit E hereto sets forth the interest component and the principal component of each Rental Payment during the Lease Term.

**Section 6.04. Additional Interest in the Event the Interest is Taxable.** Lessee acknowledges that Lessor's yield with respect to this Agreement is dependent upon the full amount of each Rental Payment being excluded from Lessor's income pursuant to the Code. Accordingly, if at any time, as a result of a determination that Lessee has breached a representation or covenant contained herein, or as a result of any change in the Code, any payment of either the interest component or the principal component of any Rental Payment is, in the opinion of counsel for the Lessor, subject to or affected by any income, preference, excess profits, minimum or other federal tax, Lessee shall pay, as additional interest, an amount which is necessary to provide to Lessor the same net income as Lessor would have received but for such event. Lessor's calculations of such additional interest shall be binding upon Lessee in the absence of manifest error.

**Section 6.05. Rental Payments to be Unconditional.** During the Original Term and during each Renewal Term elected by Lessee, the obligations of Lessee to make payment of the Rental Payments required under this Article VI and other sections hereof 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 and Lessor, any Vendor or any other person, Lessee agrees to pay all 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 when required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or the then current Renewal Term elected by Lessee shall not be abated through accident or unforeseen circumstances.

**Section 6.06. Continuation of Lease Term by Lessee.** Lessee intends, subject to the provisions of Section 6.07, to continue the Lease Term through the Original Term and all the Renewal Terms hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. The officer of Lessee responsible for budget preparation shall do all things lawfully within his/her 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 annual budget submitted and adopted in accordance with applicable provisions of State law, to have such portion of the budget approved, and to exhaust all available reviews and appeals in the event such portion of the budget is not approved.

**Section 6.07. Termination by Nonappropriation.** In the event Lessee does not appropriate sufficient funds for the payment of the Rental Payments scheduled to be paid in the next occurring Renewal Term, then Lessee may terminate this Agreement at the end of the then current Original Term or Renewal Term, and Lessee shall not be obligated to make payment of the Rental Payments provided for in this Agreement beyond the end of the then current Original or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original or Renewal Term.

**Section 6.08. Late Charges.** If any Rental Payment is not paid in full to Lessor within fifteen (15) days after the payment first became due and payable, Lessee shall immediately pay to Lessor an additional one time late charge equal to five (5%) percent or, if less the maximum rate permitted by law, of each such amount past due along with the Rental Payment. If any Rental Payment remains unpaid beyond 45 days after it first became due and payable, or if Lessor has elected to exercise any remedies following an event or default, interest shall accrue on past due amounts at the rate of 1% per month or the highest rate allowed by law, whichever is less. Partial payments by Lessee shall be applied first to the accrued interest component of past due Rental Payments and the balance to the remaining principal component of past due Rental Payments.

**Section 6.09. Prepayment.** Lessee shall have the right to prepay principal components of Rental Payments in whole on any date set forth in Exhibit E by paying the then applicable Purchase Price set forth in Exhibit E on such date.

#### **ARTICLE VII TITLE TO EQUIPMENT**

**Section 7.01. Title to the Equipment.** During the term of this Agreement, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement. In the event of default as set forth in Section 13.01 or nonappropriation as set forth in Section 6.07, Lessee agrees to surrender possession of the Equipment to Lessor. Lessee and Lessor intend for federal income tax purposes under the Internal Revenue Code of 1986, as amended, that this Agreement constitutes a financing lease or an installment sale contract rather than a true lease.

#### **ARTICLE VIII MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES**

**Section 8.01. 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, working order and condition, and that Lessee will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters, or for the making of improvements or additions to the Equipment.

**Section 8.02. Taxes, Other Governmental Charges and Utility Charges.** In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay during the Lease Term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as have accrued during the time this Agreement is in effect.

**Section 8.03. Provisions Regarding Insurance.** At its own expense, Lessee shall cause casualty, public liability and property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Lessor that adequate self-insurance is provided with respect to the Equipment, sufficient to protect the Full Insurable Value (as that term is hereinafter defined) of the Equipment, and to protect Lessor from liability in all events. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. Alternatively, Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment but other properties. If Lessee insures similar properties by self-insurance, Lessee will insure the Equipment by means of an adequate insurance fund.

The term "Full Insurable Value" as used herein shall mean the full replacement value of the Equipment.

Any insurance policy pursuant to this Section 8.03 shall be so written or endorsed as to make losses, if any, payable to Lessee and Lessor as their respective interests may appear. The Net Proceeds (as defined in Section 8.01) of the insurance required in this Section 8.03 shall be applied as provided in Article IX hereof. Each insurance policy provided for in this Section 8.03 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation.

**Section 8.04. Advances.** In the event Lessee shall fail to perform any of its obligations hereunder Lessor may (but shall be under no obligation to) take such action as may be necessary to cure such failure, including, without limitation, the advancement of money; and all amounts so advanced by Lessor shall become additional rent for the then current Original Term or Renewal Term, which amounts, together with interest thereon at the rate of 12% per annum, or if less the maximum rate permitted by law, Lessee agrees to pay.

#### **ARTICLE IX DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS**

**Section 9.01. Damage, Destruction and Condemnation.** If prior to the termination of the Lease Term (a) the Equipment or any portion thereof is 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 or the estate of Lessee or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorney's fees) incurred in the collection of such claims or award.

**Section 9.02. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01 hereof, Lessee shall either (a) complete the work and pay any cost in excess of the amount of Net Proceeds, and Lessee agrees that if by reason of any such insufficiency of the Net Proceeds, Lessee shall make any payments pursuant to the provisions of this Section 9.02, Lessee shall not be entitled to any reimbursement therefore from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI hereof or (b) if Lessee is not in default hereunder, Lessee shall pay to Lessor the amount of the then applicable Purchase Price, and, upon such payment, the Lease Term shall terminate and Lessor's interest in the Equipment shall terminate as provided in Article XI of this Agreement. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by Lessee.

#### **ARTICLE X DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF EQUIPMENT**

**Section 10.01. Disclaimer of Warranties.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. In no event 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 of Equipment.

**Section 10.02. Vendor's Warranties.** Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, if any which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against the Lessor, nor shall such matter have any effect whatsoever on the rights of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

**Section 10.03. Use of the Equipment.** Lessee will not install, 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 (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdictions in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the estate of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

#### **ARTICLE XI OPTION TO PURCHASE**

**Section 11.01** At the request of Lessee, Lessor's interest in the Equipment and additional Rental Payments will be terminated and this Agreement shall terminate:

- At the end of the final Renewal Term, upon payment by Lessee of all Rental Payments scheduled as set forth in Exhibit E to this Agreement; or
- If the Lease Term is terminated pursuant to Article IX of this Agreement, in the event of total damage, destruction or condemnation of the Equipment; or
- any time when Lessee is not on such date in default under this Agreement, upon payment by Lessee of the then applicable Purchase Price to Lessor.

Upon the occurrence of any of such events, Lessor shall, if requested by Lessee, deliver a Bill of Sale of its remaining interest in the Equipment to Lessee "AS IS - WHERE IS" without additional cost or payment by Lessee.

#### **ARTICLE XII ASSIGNMENT, SUBLEASING, INDEMNIFICATION MORTGAGING AND SELLING**

**Section 12.01. Assignment by Lessor.** This Agreement, and the rights of Lessor hereunder, may be assigned and reassigned in whole or in part to one or more assignees and subassignees by Lessor at any time subsequent to its 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 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 names and addresses of such holders as of any particular time is kept and agrees, upon request of the Lessee, to furnish such information to Lessee. Upon receipt of notice of assignment, Lessee agrees to keep a written record thereof, and to make all payments to the assignee designated in the notice of assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor, or the assignee. Lessee agrees to execute all documents which may be reasonably requested by Lessor or its assignee to protect their interests in this Agreement.

**Section 12.02. No Sale, Assignment or Subleasing by Lessee.** This Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

**Section 12.03. Lessee Negligence.** To the extent permitted by the laws and Constitution of the State, Lessee shall protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death of any person, to the extent that such liability, obligation, loss, claim or damage arises out of or is proximately caused by the negligent conduct of Lessee, its officers, employees or agents. The obligation of Lessee arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Agreement or the termination of the Lease Term for any reason.

#### **ARTICLE XIII EVENTS OF DEFAULT AND REMEDIES**

**Section 13.01. Events of Default Defined.** The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and
- Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.01 (a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to the expiration, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

The foregoing provisions of this Section 13.01 are subject to (i) the provisions of Section 6.07 hereof with respect to nonappropriation; and (ii) if by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other employee relations disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority, insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

**Section 13.02. Remedies on Default.** Whenever any event of default referred to in Section 13.01 hereof shall have happened and be continuing, Lessee agrees to return the equipment to Lessor and Lessor shall have the right at its sole option without any further demand or notice, to take either one or both of the following remedial steps:

- Accept surrender from Lessee of the equipment for sale or release by Lessor in a commercially reasonable manner. All proceeds of such sale or re-letting shall inure to Lessor, provided, however, if such proceeds after deduction of Lessor's reasonable costs and expenses, including attorneys' fees, incurred to recover possession, restore or clean-up and sell or release the equipment, exceed an amount equal to the sum of the past due but unpaid Rental Payments and an amount equal to the then applicable purchase price, Lessor shall remit the amount of such excess to Lessee; or
- Institute an action in a court of competent jurisdiction to recover Lessor's compensatory damages resulting from Lessee's default.

Lessor agrees that it shall not have a right to seek any remedy of specific performance nor shall Lessor have any "self-help" right to take possession of the equipment absent Lessee's voluntary surrender thereof.

**Section 13.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given 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 hereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**ARTICLE XV MISCELLANEOUS**

Section 14.01. 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 14.02. 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 14.03. 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 14.04. Amendments. The terms of the Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

Section 14.05. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.06. Delayed Closing. In the event of a delayed closing, Lessor shall receive as additional compensation any amount that accrues between the Commencement Date and the Closing Date.

Section 14.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 14.08. Captions. The captions or headings in this Agreement are for convenience only and do not define, limit or describe the scope or intent of any provisions of sections of this Agreement.

Section 14.09. Entire Agreement. This Agreement and the executed Exhibits attached hereto constitute the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein, regarding this Agreement or the equipment leased hereunder.

Section 14.10. Execution of Facsimile. In the interest of time, each party agrees that execution of signature pages of this Agreement by such party followed by transmission of such pages by facsimile/Telecopier will be legally binding upon such party. After each party has executed and transmitted such signature pages, each party agrees to execute hard copies of this Agreement and to promptly forward originals to the other party hereto.

Section 14.11. Correction of Documents. Lessee agrees to execute and deliver, or provide, as required by Lessor, any documents and information, from time to time, that may be necessary for the purpose of correcting any errors or omissions in this Lease or to reflect the true intent of Lessor in this transaction. All such documents and information must be satisfactory to Lessor.

Section 14.12 WAIVER OF JURY TRIAL. Lessee and Lessor hereby irrevocably waive any right to a jury trial with respect to any matter arising under or in connection with this Lease and agree that any dispute shall be determined by a court sitting without a jury.

Section 14.13. Performance Bonds. If requested by Lessor to facilitate payments to vendors in advance of delivery and acceptance, Lessee agrees to require the Equipment manufacturer, and all other contractors and/or subcontractors (collectively, "Contractors") with whom Lessee has contracted for the acquisition of the Equipment, to provide performance bond satisfactory to Lessor conditioned upon the construction of the Equipment as expeditiously as reasonably possible from the date of execution of such Lease and also conditioned upon delivery of possession of the Equipment to the Lessee free and clear of all liens and encumbrances, except the security interest granted to Lessor under the Lease-Purchase Agreement. Each such bond shall be in a form and with a surety acceptable to Lessor and shall name Lessor as a dual obligee. The Lessee shall proceed promptly to pursue diligently any remedies available against a Contractor that is in default under any agreement relating to the acquisition and construction of the Equipment and/or against each surety on any bond securing the performance of such Contractor's obligations with respect to the acquisition and construction of the Equipment. The Lessee and Lessor shall cause the net proceeds recovered by way of the foregoing to be applied, at Lessor's option, to (i) the completion of the Equipment, or (ii) the payment of all rent payments then due plus the then applicable Termination Balance. Any balance of net proceeds remaining after completion of Equipment construction or payment of the outstanding balance owed under the applicable Lease shall be paid promptly to Lessee.

Any terms and conditions of any purchase order or other document submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, Lessor has executed this Agreement in its corporate name and by its duly authorized officer, and Lessee has caused this Agreement to be executed in its corporate name and by its duly authorized officer. All of the above occurred as of the date first written below; this Agreement shall be binding on Lessee beginning on the date it is accepted and executed by Lessor.

**LESSEE: City of Lakeland, Florida**

**LESSOR: Leasing 2, Inc.**

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

R. Howard Wiggs

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

Mayor

Date: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**ATTEST:**

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

Kelly S. Koos, City Clerk

**Approved as to form and correctness:**

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

Timothy J. McCausland, City Attorney

**Exhibit "A"**

**RESOLUTION NO. 5303**

**PROPOSED RESOLUTION NO. 16-045**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKELAND, FLORIDA FOR AND AUTHORIZING THE LEASE PURCHASE OF TWO (2) NEW GRADALL EXCAVATORS TO CONSTRUCT AND MAINTAIN THE CITY'S INFRASTRUCTURE IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$784,106.52; AWARDED THE LEASE FINANCING OF SUCH EQUIPMENT TO LEASING 2, INC. IN ACCORDANCE WITH THE TERMS SET FORTH HEREIN; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE ANY DOCUMENTS AND TAKE ANY ACTIONS REQUIRED IN CONNECTION WITH THE LEASE PURCHASE AGREEMENT; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission of the City of Lakeland, Florida ("Lessee" or the "City") has determined it to be necessary and desirable to obtain two (2) new Gradall Excavators for the purpose of constructing and maintaining the City's infrastructure, hereinafter referred to as "Equipment" described in Exhibit "A", hereto through the utilization of lease financing transactions under the terms of a Lease Purchase Agreement by and between Leasing 2, Inc. and the Lessee, the forms of which are attached hereto as Exhibit "A", the aggregate principal amount of the financing under said Lease not to exceed \$784,106.52; and

**WHEREAS**, the City of Lakeland has further determined that the Equipment will be used solely for essential governmental functions and not for private use; and

**WHEREAS**, the City of Lakeland has taken the necessary steps, including, without limitation, to comply with legal bidding requirements under applicable law to acquire such Equipment; and

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF  
THE CITY OF LAKE LAND, FLORIDA:**

**SECTION 1:** The foregoing findings are incorporated herein by reference and made a part hereof.

**SECTION 2:** That Lessee, City of Lakeland, seeks to obtain certain Equipment, and has determined that it is necessary and desirable and in the best interest of the City to enter into a Lease Purchase Agreement with Leasing 2, Inc. for the purpose of obtaining the Equipment described in the Lease Purchase Agreement attached hereto as Exhibit "A"

**SECTION 3:** The execution and delivery of the Lease Purchase Agreement by the City and the financing of the acquisition of such Equipment are hereby approved, ratified and confirmed in all respects.

**SECTION 4:** That the appropriate City officials are authorized to do all things necessary and proper to carry out the provisions of this Resolution.

**SECTION 5:** This Resolution shall take effect immediately upon its adoption.

**PASSED AND CERTIFIED AS TO PASSAGE** this 1st day of August, A.D. 2016.

\_\_\_\_\_  
R. Howard Wiggs, Mayor

ATTEST: \_\_\_\_\_  
Kelly S. Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS: \_\_\_\_\_  
Timothy J. McCausland  
City Attorney

**RAMONA SIRIANNI**  
ASSISTANT CITY ATTORNEY  
228 S. Massachusetts Avenue  
Lakeland, Florida 33801  
BUS: (863) 834-8010  
FAX: (863) 834-8204  
e-mail: [ramona.sirianni@lakelandgov.net](mailto:ramona.sirianni@lakelandgov.net)

August 1, 2016

**Exhibit B**

*Opinion of Lessee's Counsel*

LESSEE: City of Lakeland, Florida

DATE OF AGREEMENT: August 1, 2016

Leasing 2, Inc.  
1720 W. Cass Street  
Tampa, FL 33606

Ladies/Gentlemen:

As counsel for the City of Lakeland, Florida ("Lessee"), I have examined duly executed originals of the Lease-Purchase Agreement and Escrow Agreement (the "Agreement"), between Lessee and Leasing 2, Inc. ("Lessor"), dated as of August 1, 2016, and the proceedings taken by Lessee to authorize and execute the Agreement. Based upon such examination and upon such other examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a public body corporate and politic, legally existing under the laws of the State of Florida.
2. The Agreement has been duly authorized, executed and delivered by Lessee, pursuant to Constitutional, statutory and/or home rule provisions which authorize this transaction and Proposed Resolution No. 16-045 attached as Exhibit A to the Agreement.
3. The Agreement is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms. In the event the Lessor obtains a judgment against Lessee in money damages, as a result of an event of default under the Agreement, Lessee will be obligated to pay such judgment.
4. Applicable public bidding requirements have been complied with.
5. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, which questions or affects the validity of the Agreement.
6. The signature of the officer of Lessee which appears on the Agreement is true and genuine; I know said officer and know him/her to hold the office set forth below his/her names.
7. The Equipment leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.



8. The leasing of the Equipment pursuant to the Agreement is exempt from all sales and use taxes against either the Lessor or the Lessee during the term of the Lease and the Equipment will be exempt from any state and local personal property or other ad valorem taxes during the term of the Lease.

This opinion may be relied upon by the addressee hereof and its successors and assignees of interests in the Lease, but only with regard to matters specifically set forth herein.

Sincerely,



Ramona Sirianni  
Assistant City Attorney  
City of Lakeland

**EXHIBIT C**  
**CERTIFICATE AS TO ARBITRAGE**

I, **R. Howard Wiggs**, hereby certify that I am duly qualified and acting Mayor, of **City of Lakeland, Florida** (the "Lessee"), and that in my official capacity as such officer, I am responsible for executing and delivering, on behalf of the Lessee, the Lease-Purchase Agreement dated **August 1, 2016** (the "Agreement"), by and between Leasing 2, Inc. ("Lessor") and the Lessee. This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder (the "Regulations"). The following facts, estimates and circumstances are in existence on the date of this Certificate or are reasonably expected to occur hereafter.

1. The Lease provides for the acquisition and financing of certain equipment described therein (the "Equipment") Pursuant to the Agreement, the Lessor is required to lease the Equipment to the Lessee and the Lessee is required to make rental payments with respect thereto, comprising principal and interest, on the dates and in the amounts set forth therein (the "Rental Payments").

2. On the date hereof, Lessor will deposit into escrow to be held for the benefit of Lessee the amount of **\$784,106.52**, which, together with interest earned thereon until disbursed if necessary, will be used to pay the costs of the Equipment in the amount of **\$784,106.52**. In the event any interest income remains in escrow after payment of such Equipment cost, such amount shall be retained by Lessor as additional fee income.

3. The Lessee has entered into or will within six (6) months of the date hereof enter into contracts for the acquisition of the Equipment, which contracts will obligate the payment of all amounts held in escrow.

4. The Equipment will be acquired with due diligence and will be fully acquired on or before April 30, 2016.

5. In any event, all of the spendable proceeds of the Agreement will be expended on the Equipment within three (3) years from the date of execution of the Agreement. No proceeds of the Agreement will be used to reimburse the Lessee for expenditures made prior to the date of the issuance of the Agreement, unless Lessee shall have complied with the requirements of Section 1.150-2 of the Regulations. If applicable, a copy of Lessee's official intent with respect to such reimbursement is attached hereto as attachment 1.

6. The original proceeds of the Agreement, and the interest to be earned thereon, do not exceed the amount necessary for the governmental purpose for which the Agreement is issued.

7. The interest of the Lessee in the Equipment has not been, and is not expected during the term of the Agreement, to be sold or otherwise disposed of by the Lessee.

8. No sinking fund will be maintained by the Lessee with respect to the Rental Payments.

9. The Agreement is not a "hedge bond" within the meaning of Section 149 (G) of the Code. The Lessee expects to spend not less than 85% of the spendable proceeds of the Agreement within three years after the date hereof and less than 50% of the proceeds of the Agreement is invested in Nonpurpose investments having a substantially guaranteed yield for four years or more.

10. In the Agreement the Lessee has covenanted to take all actions necessary to ensure that the interest paid under the Agreement remains excludable from gross income under the Code. Such covenant includes, without limitation, the requirement to comply with the requirements of the Code relating to the rebate of arbitrage profit to the United States Government.

11. To the best of the knowledge and belief of the undersigned, the expectations of the Lessee as set forth above, are reasonable; and there are no present facts, estimates and circumstances which would damage the foregoing expectations.

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

LESSEE: **City of Lakeland, Florida**

By: \_\_\_\_\_  
R. Howard Wiggs

Title: \_\_\_\_\_  
Mayor

---

**EXHIBIT D**  
**DESCRIPTION OF EQUIPMENT**

The Equipment which is the subject of the attached Lease-Purchase Agreement is as follows:

- (1) Gradall XL3100 Excavator, VIN: \_\_\_\_\_
- (1) Gradall XL4100 Excavator, VIN: \_\_\_\_\_

together with all additions, accessions and replacements thereto.

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

**EQUIPMENT LOCATION**

407 Fairway Avenue

Lakeland, FL 33801

LESSEE: **City of Lakeland, Florida**

By: \_\_\_\_\_  
R. Howard Wiggs

Title: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

**EXHIBIT E**  
**PAYMENT SCHEDULE**

**LESSEE:** City of Lakeland, Florida  
**LEASE AMOUNT:** \$784,106.52  
**COMMENCEMENT DATE:** September 15, 2016  
**INTEREST RATE:** 2.75%

<b>PAYMENT</b>					<b>PURCHASE</b>
<u>NO.</u>	<u>DATE</u>	<u>PAYMENT</u>	<u>INTEREST</u>	<u>PRINCIPAL</u>	<u>PRICE*</u>
1	12/15/2016	\$9,429.98	\$5,417.01	\$4,012.97	\$810,029.34
2	1/15/2017	\$9,429.98	\$1,792.31	\$7,637.67	\$801,861.87
3	2/15/2017	\$9,429.98	\$1,774.76	\$7,655.22	\$793,680.70
4	3/15/2017	\$9,429.98	\$1,757.17	\$7,672.81	\$785,485.84
5	4/15/2017	\$9,429.98	\$1,739.54	\$7,690.44	\$777,277.24
6	5/15/2017	\$9,429.98	\$1,721.87	\$7,708.11	\$769,054.91
7	6/15/2017	\$9,429.98	\$1,704.16	\$7,725.82	\$760,818.79
8	7/15/2017	\$9,429.98	\$1,886.41	\$7,743.57	\$752,568.88
9	8/15/2017	\$9,429.98	\$1,888.62	\$7,761.38	\$744,305.15
10	9/15/2017	\$9,429.98	\$1,850.79	\$7,779.19	\$736,027.58
11	10/15/2017	\$9,429.98	\$1,832.92	\$7,797.08	\$727,738.15
12	11/15/2017	\$9,429.98	\$1,815.00	\$7,814.98	\$719,430.83
13	12/15/2017	\$9,429.98	\$1,597.05	\$7,832.93	\$711,111.80
14	1/15/2018	\$9,429.98	\$1,579.05	\$7,850.93	\$702,778.43
15	2/15/2018	\$9,429.98	\$1,561.01	\$7,868.97	\$694,431.31
16	3/15/2018	\$9,429.98	\$1,542.93	\$7,887.05	\$686,070.20
17	4/15/2018	\$9,429.98	\$1,524.81	\$7,905.17	\$677,695.09
18	5/15/2018	\$9,429.98	\$1,506.65	\$7,923.33	\$669,305.95
19	6/15/2018	\$9,429.98	\$1,488.45	\$7,941.53	\$660,902.76
20	7/15/2018	\$9,429.98	\$1,470.20	\$7,959.78	\$652,485.49
21	8/15/2018	\$9,429.98	\$1,451.91	\$7,978.07	\$644,054.12
22	9/15/2018	\$9,429.98	\$1,433.58	\$7,996.40	\$635,608.83
23	10/15/2018	\$9,429.98	\$1,415.21	\$8,014.77	\$627,149.00
24	11/15/2018	\$9,429.98	\$1,396.79	\$8,033.19	\$618,675.19
25	12/15/2018	\$9,429.98	\$1,378.34	\$8,051.84	\$610,187.19
26	1/15/2019	\$9,429.98	\$1,359.84	\$8,070.14	\$601,684.97
27	2/15/2019	\$9,429.98	\$1,341.30	\$8,088.88	\$593,188.51
28	3/15/2019	\$9,429.98	\$1,322.71	\$8,107.27	\$584,837.78
29	4/15/2019	\$9,429.98	\$1,304.09	\$8,125.89	\$576,092.77
30	5/15/2019	\$9,429.98	\$1,285.42	\$8,144.56	\$567,533.44
31	6/15/2019	\$9,429.98	\$1,266.70	\$8,183.28	\$558,959.79
32	7/15/2019	\$9,429.98	\$1,247.95	\$8,182.03	\$550,371.77
33	8/15/2019	\$9,429.98	\$1,229.15	\$8,200.63	\$541,769.36
34	9/15/2019	\$9,429.98	\$1,210.31	\$8,219.67	\$533,152.55
35	10/15/2019	\$9,429.98	\$1,191.42	\$8,238.56	\$524,521.30
36	11/15/2019	\$9,429.98	\$1,172.49	\$8,257.49	\$515,875.59
37	12/15/2019	\$9,429.98	\$1,153.52	\$8,278.46	\$507,215.40
38	1/15/2020	\$9,429.98	\$1,134.51	\$8,298.47	\$498,540.71
39	2/15/2020	\$9,429.98	\$1,115.45	\$8,314.53	\$489,851.48
40	3/15/2020	\$9,429.98	\$1,096.34	\$8,333.84	\$481,147.71
41	4/15/2020	\$9,429.98	\$1,077.20	\$8,352.78	\$472,429.35
42	5/15/2020	\$9,429.98	\$1,058.01	\$8,371.97	\$463,898.38
43	6/15/2020	\$9,429.98	\$1,038.77	\$8,391.21	\$454,948.79
44	7/15/2020	\$9,429.98	\$1,019.49	\$8,410.49	\$446,186.55
45	8/15/2020	\$9,429.98	\$1,000.17	\$8,429.81	\$437,409.63

46	9/15/2020	\$9,429.98	\$980.80	\$8,449.18	\$428,618.01
47	10/15/2020	\$9,429.98	\$961.39	\$8,468.59	\$419,811.67
48	11/15/2020	\$9,429.98	\$941.93	\$8,488.05	\$410,990.57
49	12/15/2020	\$9,429.98	\$922.43	\$8,507.55	\$402,154.70
50	1/15/2021	\$9,429.98	\$902.88	\$8,527.10	\$393,304.03
51	2/15/2021	\$9,429.98	\$883.29	\$8,546.69	\$384,438.53
52	3/15/2021	\$9,429.98	\$863.65	\$8,566.33	\$375,558.19
53	4/15/2021	\$9,429.98	\$843.97	\$8,586.01	\$366,882.97
54	5/15/2021	\$9,429.98	\$824.25	\$8,605.73	\$357,752.85
55	6/15/2021	\$9,429.98	\$804.47	\$8,625.51	\$348,827.80
56	7/15/2021	\$9,429.98	\$784.66	\$8,645.32	\$339,887.81
57	8/15/2021	\$9,429.98	\$764.79	\$8,665.19	\$330,932.84
58	9/15/2021	\$9,429.98	\$744.88	\$8,685.10	\$321,962.87
59	10/15/2021	\$9,429.98	\$724.93	\$8,705.05	\$312,977.88
60	11/15/2021	\$9,429.98	\$704.93	\$8,725.05	\$303,977.84
61	12/15/2021	\$9,429.98	\$684.88	\$8,745.10	\$294,962.72
62	1/15/2022	\$9,429.98	\$664.79	\$8,765.19	\$285,932.50
63	2/15/2022	\$9,429.98	\$644.65	\$8,785.33	\$278,887.16
64	3/15/2022	\$9,429.98	\$624.47	\$8,805.51	\$267,826.66
65	4/15/2022	\$9,429.98	\$604.24	\$8,825.74	\$258,750.99
66	5/15/2022	\$9,429.98	\$583.96	\$8,846.02	\$249,880.12
67	6/15/2022	\$9,429.98	\$563.63	\$8,866.35	\$240,554.02
68	7/15/2022	\$9,429.98	\$543.28	\$8,886.72	\$231,432.67
69	8/15/2022	\$9,429.98	\$522.85	\$8,907.13	\$222,298.04
70	9/15/2022	\$9,429.98	\$502.38	\$8,927.60	\$213,144.11
71	10/15/2022	\$9,429.98	\$481.87	\$8,948.11	\$203,976.84
72	11/15/2022	\$9,429.98	\$461.31	\$8,968.67	\$194,794.23
73	12/15/2022	\$9,429.98	\$440.71	\$8,989.27	\$185,598.23
74	1/15/2023	\$9,429.98	\$420.05	\$9,009.93	\$178,382.82
75	2/15/2023	\$9,429.98	\$399.35	\$9,030.63	\$167,153.99
76	3/15/2023	\$9,429.98	\$378.60	\$9,051.38	\$157,909.69
77	4/15/2023	\$9,429.98	\$357.81	\$9,072.17	\$148,649.91
78	5/15/2023	\$9,429.98	\$338.96	\$9,093.02	\$139,374.62
79	6/15/2023	\$9,429.98	\$316.07	\$9,113.91	\$130,083.79
80	7/15/2023	\$9,429.98	\$295.13	\$9,134.85	\$120,777.40
81	8/15/2023	\$9,429.98	\$274.14	\$9,155.84	\$111,455.42
82	9/15/2023	\$9,429.98	\$253.11	\$9,176.87	\$102,117.83
83	10/15/2023	\$9,429.98	\$232.02	\$9,197.96	\$92,784.59
84	11/15/2023	\$92,000.00	\$210.95	\$91,789.05	\$0.00
<b>Grand Totals</b>		<b>\$874,688.34</b>	<b>\$90,581.82</b>	<b>\$784,106.52</b>	

LESSEE: City of Lakeland, Florida

By: \_\_\_\_\_  
R. Howard Wiggs

Title: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

\* After payment of Rental Payment due on such date.

**EXHIBIT F**  
**ACCEPTANCE CERTIFICATE**

The undersigned, as Lessee under the Lease-Purchase Agreement (the "Agreement") dated **August 1, 2016**, with **Leasing 2, Inc.** ("Lessor"), hereby acknowledges:

1. \_\_\_\_\_ **Equipment delivered and accepted:** Lessee has received in good condition all of the Equipment described in the Agreement and in Exhibit D thereto and accepts the Equipment for all purposes this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.
2.  **Equipment delivery has not yet taken place:** The Equipment described in the Agreement and in Exhibit D thereto, has not been delivered, but is scheduled to be delivered within 18 months. Lessor has agreed to deposit into an escrow account an amount sufficient to pay the total cost of the Equipment Identified in Exhibit D of the Agreement. Exhibit E accurately reflects the Lease Amount. Lessee agrees to execute an Acceptance Certificate and Payment Request Form authorizing payment of the cost of the Equipment, or a portion thereof, for each withdrawal of funds from the Escrow Account. Lessee's obligation to commence Rental Payments as set forth in Exhibit E-Payment Schedule is absolute and unconditional as of the Commencement Date, subject to the terms and conditions of the Agreement. Lessee further acknowledges that the Agreement is not subject to the successful delivery of the Equipment, and that in the event of non-performance by the Vendor, Lessee will retain all responsibility for performance under the Agreement.
3. \_\_\_\_\_ **Vendor will be paid in full prior to delivery of equipment:** A 100% pre-funding will be made by Lessor to Vendor of the lease amount identified as "Equipment Cost" on the Exhibit E – Payment Schedule of the Agreement. Lessee agrees to indemnify and hold Lessor harmless from and against any and all claims, costs and expenses incurred (including Lessor's attorneys' fees). Lessee further acknowledges that the Agreement is not subject to the successful delivery of the Equipment, and that in the event of non-performance by the Vendor, Lessee will retain all responsibility for performance under the Agreement.

Lessee certifies that Lessor has fully and satisfactorily performed all of its covenants and obligations required under the Agreement, and confirms that the Agreement will commence as defined by "Commencement Date" in the attached Agreement, and it will commence payments in accordance with Article VI of the Agreement.

The undersigned officer of the Lessee hereby reaffirms on behalf of the Lessee in all respects the covenants of the Lessee set forth in Article II of the Agreement and represents that, to the best of his or her knowledge, information and belief, the expectations therein expressed were reasonable as of the Commencement Date, and that there were, and are as of the date on which they were made, and are reasonable as of the Commencement Date, no facts, estimates or circumstances other than those expressed therein that would materially affect the expectations expressed therein.

LESSEE: **City of Lakeland, Florida**

By: \_\_\_\_\_  
R. Howard Wiggs

Title: Mayor

Date: \_\_\_\_\_

---

EXHIBIT G

ESSENTIAL USE/SOURCE OF FUNDS LETTER

TO: **Leasing 2, Inc.**

RE: Lease-Purchase Agreement Dated **August 1, 2016.**

Gentlemen:

Reference is made to certain Lease-Purchase Agreement dated **August 1, 2016**, between **Leasing 2, Inc.** and **City of Lakeland, Florida**, leasing the personal property described in Exhibit D to such Agreement. This confirms and affirms that such Equipment is essential to the functions of the undersigned or to the service we provide to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment will be used by us only for the purpose of performing one or more of our governmental or proprietary functions consistent with the permissible scope of our authority. Specifically, the Equipment was selected by us to be used as follows:

\_\_\_\_\_

To construct and maintain the City's infrastructure.

\_\_\_\_\_

\_\_\_\_\_

Sincerely,

\_\_\_\_\_  
R. Howard Wiggs, Mayor

\_\_\_\_\_  
Date

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EXHIBIT H

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**EXHIBIT I**

**NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT**

**Leasing 2, Inc. ("Lessor") hereby gives notice to the City of Lakeland, Florida ("Lessee") that Lessor has assigned all rights to under the Lease-Purchase Agreement and Escrow Agreement dated as of August 1, 2016, between Leasing 2, Inc. ("Lessor") and City of Lakeland, Florida ("Lessee"). Leasing 2, Inc. ("Lessor") hereby requests, gives notice and instructs City of Lakeland, Florida ("Lessee") that payments that hereafter come due pursuant to the Lease-Purchase Agreement be paid to Santander Leasing LLC or its Assignee.**

**LESSEE: City of Lakeland, Florida**

**By:** \_\_\_\_\_  
R. Howard Wiggs

**Title:** \_\_\_\_\_  
Mayor

**Date:** \_\_\_\_\_

**EXHIBIT J**  
**VENDOR TERMS**

**LESSEE: City of Lakeland, Florida**

Lessor shall have funds not immediately paid to [Vendor(s)] at closing deposited in an "Escrow Account" in order to facilitate payment to [Vendors] for equipment deliveries that are scheduled to occur according to the following schedule:

<b>EQUIPMENT DESCRIPTION</b>	<b>AMOUNT</b>	<b>PAYMENT NO EARLIER THAN</b>
(1) Gradall XL3100 Excavator and (1) Gradall XL4100 Excavator	\$784,106.52	Delivery & Acceptance

Lessee acknowledges and is in agreement with this schedule and the "Payment No Earlier Than" dates as indicated.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**LESSEE: City of Lakeland, Florida**

By: \_\_\_\_\_  
R. Howard Wiggs

Title: \_\_\_\_\_  
Mayor

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**INSURANCE COVERAGE REQUIREMENT**

**TO: Leasing 2, Inc. and/or its Assigns  
1720 West Cass Street  
Tampa, FL 33606-1230**

**FROM: City of Lakeland, Florida  
228 S. Massachusetts Avenue  
Lakeland, FL 33801**

**RE: INSURANCE COVERAGE REQUIREMENTS (Check one):**

\_\_\_\_\_ 1. In accordance with Section 8.03 of the Agreement, we have instructed the insurance agent named below (please fill in name, address and telephone number)

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY/ ST/ ZIP: \_\_\_\_\_  
TELEPHONE: \_\_\_\_\_

to issue:

a. All Risk Physical Damage Insurance on the leased equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming **Leasing 2, Inc. and/or its Assigns** as Loss Payee.

Coverage Required: Full Replacement Value

b. Public Liability Insurance evidenced by a Certificate of Insurance naming **Leasing 2, Inc. and/or its Assigns** as an Additional Insured.

Minimum Coverage Required:  
\$500,000.00 per person  
\$1,000,000.00 aggregate bodily injury liability  
\$1,000,000.00 property damage liability

 \_\_\_\_\_ 2. Pursuant to Section 8.03 of the Agreement, we are self insured for all risk, physical damage, and public liability and will provide proof of such self insurance in letterform together with a copy of the statute authorizing this form of insurance.

3. Proof of insurance coverage will be provided to **Leasing 2, Inc. and/or its Assigns** prior to the time that the equipment is delivered to us.

By: \_\_\_\_\_  
R. Howard Wiggs

Title: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_



Karen Lukhaub  
*Director of Risk Management  
& Purchasing*  
1140 East Parker Street  
Lakeland, Florida 33801-2066  
Phone: (863) 834-6799  
FAX: (863) 834-6777

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### NOTICE OF SELF-INSURANCE

This letter shall act as the official notice that the City of Lakeland, Florida is self-insured for the following areas of coverage. Wherein the City is self-insured, this letter is provided in lieu of a certificate of insurance.

- A. Fire, theft and comprehensive coverage for vehicle and equipment damage. This pertains to both City owned as well as that which is owned by others but are under the control and custody of this City through contract or other such formal agreement.
- B. Comprehensive General Liability for both bodily injury and property damage exposures for which the City may be deemed responsible.
- C. Business Automobile Liability for both bodily injury and property damage exposures for which the City may be deemed responsible. This includes any vehicle being operated under the direction of the City of Lakeland.
- D. Workers' Compensation coverage including Employers Liability as required by the State of Florida.

The City of Lakeland, Florida became self-insured effective October 1, 1985, at 12:01 A.M. This self-insuring program has been established in accordance with Florida Statutes - Section 440 and was put into effect under City Ordinance 2734.

Authorized Representative:

  
\_\_\_\_\_  
Karen L. Lukhaub  
Director of Risk Management  
& Purchasing

**BILLING INFORMATION**

Please indicate below how you would like us to bill you for the lease payments due under this Agreement, including a contact name, if applicable:

Contact Name: Michael Whigham

Company: City of Lakeland

Street Address or Box #: 407 Fairway Avenue

City, State, Zip: Lakeland, FL 33801

County: Polk

Telephone: 863-834-3301

Fax: 863-834-3308

**CUSTOMER IDENTIFICATION PROGRAM  
ORGANIZED ENTITY**

Notice: To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify and record information that identifies each person (Individuals or businesses) who opens an account.

**What this means for you: When you open an account or add any additional service, we will ask you for your name, address, federal employer identification number and other information that will allow us to identify you. We may also ask to see other identifying documents.**

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CUSTOMER NAME: City of Lakeland, Florida

**CUSTOMER IDENTIFICATION**

Taxpayer ID Number: 59-6000354

Business Structure (check one): City Government: XX County Government: \_\_\_\_\_ Tax District: \_\_\_\_\_ Corporation: \_\_\_\_\_

Other, description: \_\_\_\_\_

We may request certified copies of your organizational documents as part of the identification procedure.

**PRIMARY ADDRESS AND REGISTRATION**

Address: 228 S. Massachusetts Ave

Address: \_\_\_\_\_

City: Lakeland

State: Florida

Zip Code: 33801

State of Registration/Organization: FL

**MAILING ADDRESS (if different from above)**

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Acknowledgment: The information contained herein is true and correct.

City of Lakeland, Florida

By: \_\_\_\_\_  
R. Howard Wiggs, Mayor

## Internal Escrow Letter

**August 1, 2016**

Santander Leasing, LLC  
3 Huntington Quadrangle, Suite 101N  
Melville, NY 11747

Re: Lease Purchase Agreement dated **August 1, 2016** (the "Lease") by and between: **City of Lakeland, Florida** ("Lessee") and Leasing 2, Inc. ("Lessor"), concurrently assigned to Santander Leasing, LLC ("Assignee").

Ladies and Gentlemen:

We have entered into the above referenced Lease for the purpose of financing (1) **Gradall XL3100 Excavator and (1) Gradall XL4100 Excavator** (the "Equipment") in the amount of **\$784,106.52** (the "Financed Amount"). Lessee hereby requests that Assignee retain **\$784,106.52** (the "Retained Amount"). Lessee further requests that Assignee hold the Retained Amount in an internal escrow pending Assignee's receipt of confirmation from Lessee that the Equipment has been delivered, inspected and accepted for all purposes by the Lessee and that payment can be remitted to the vendor of such Equipment. There will be no separate escrow fee charged Lessee for internally escrowing the Retained Amount.

Lessee understands and agrees that interest shall accrue on the entire Financed Amount as of the date hereof, and further understands and agrees that any interest earned on the Retained Amount shall be paid to Assignee in consideration of managing the internal escrow account.

Lessee acknowledges that Assignee may commingle the Retained Amount held by Assignee for the benefit of Lessee with other funds held by Assignee for its own account, so long as Assignee maintains segregation of such amounts on the books and records of Assignee.

Sincerely,

LESSEE: **City of Lakeland, Florida**

By: \_\_\_\_\_  
R. Howard Wiggs

Title: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_



GS Equipment Co. Inc.  
1023 South 50<sup>th</sup> Street  
Tampa, FL. 33619  
(813)248-4971

**CITY OF LAKELAND**  
Gradall Excavator Total Maintenance and Repair Agreement

GS Equipment, Inc. (GSE) will perform all maintenance and repairs to the Gradall Excavator purchased by City of Lakeland. The agreement will be for 84 months/7,500 hours and will be administered by the following terms.

**GRADALL XL3100 6X6 Series V**

Agreement Terms and Responsibilities:

1. **Operational Condition:** Units shall be well maintained in top operating condition with 100% of all parts, components, and systems operational. All pin, hitches and moving parts shall be tight and within manufacturer's standards or tolerances. Engines, transmissions, drive axles, and hydraulic systems shall be in peak operational condition at all times absent of leaks, blow-by, reduced hydraulic pressures or driveline noise.
2. **City of Lakeland Responsibility:** City of Lakeland will be responsible for the daily and weekly fueling, checking of fluid levels (adding if necessary), greasing of fittings (if required). Reporting to GSE's designated representative any maintenance and repair required. City of Lakeland will be responsible for all repair costs resulting from damage due to fire (not caused by machinery malfunction), windstorm, flood, vandalism, accidents, and operator's negligence. The City of Lakeland is responsible for tires and glass replacement or repair.
3. **Downtime:** Should GS Equipment (GSE) fail to complete the required service, maintenance or repairs and return the equipment to duty, or should GSE fail to supply the necessary parts or labor to effect the repair within twenty-four (24) continuous hours (excluding holidays, Saturdays, Sundays) from telephone notification by City of Lakeland. to GSE, a similar machine will be provided to City of Lakeland. at no charge.
4. GSE will be responsible for keeping the City of Lakeland work site safe, clean, and orderly. Any contamination of the work site by GSE shall be their responsibility.
5. **Service and Use of Equipment.** GSE shall provide, at no cost to the City of Lakeland, operator training sufficient to ensure efficient operation of the Equipment and shall provide an operator's manual to City of Lakeland. City of Lakeland shall only be responsible for daily and weekly fueling, checking of fluid levels and adding fluid if necessary, and/or greasing of fittings if required. Otherwise, all service, maintenance and repairs shall be the responsibility of GSE.



6. GSE shall be entitled to inspect the Equipment during regular business hours at City of Lakeland place of business. City of Lakeland shall not install any accessory or device on the Equipment, except for such as may be removed without affecting the originally intended function or use of the Equipment. The City of Lakeland shall be entitled to unlimited usage of the Equipment during the contract term.

#### 7. Scope of Service, Maintenance and Repair.

A. General. GSE shall be responsible for all service, maintenance and repair, both scheduled and unscheduled during the contract term in accordance with the following:

1) This agreement includes all parts, filters, oils, and other fluids (excluding top-off lubricants and fuel), delivery freight charges, labor travel time and/or mileage charges to complete recommended preventive maintenance, oil sampling at 500 hours, and to complete any repairs not covered by warranty during the contract term.

2) Special arrangements may be made to complete repair work on Saturdays, Sundays, or holidays if the City of Lakeland grants permission to access the machine during those days.

3) GSE shall furnish all tools and equipment necessary for normal field adjustment of the equipment.

#### B. Repair Requests.

1) All requests for scheduled service or repairs will be the City of Lakeland responsibility and be directed to GSE personnel per a formal contact sheet that will be provided once agreement is finalized.

2) Requests for PM Service must be requested a minimum of one week prior to the next scheduled interval and will be completed during normal business hours.

3) If repairs are required, the GSE will arrange on-site service response and will notify City of Lakeland immediately if the equipment is inoperable.

#### 8. City of Lakeland's Responsibilities.

A. City of Lakeland will be responsible for the daily and weekly fueling, checking of fluid levels (adding if necessary), and/or greasing of fittings (if required).

B. City of Lakeland will be responsible for completing mandatory daily and weekly maintenance and inspection requirements as outlined in GSE's service manual and the engine manufacturer's maintenance schedule.

C. City of Lakeland is required to report any failure of the Excavator's hour meter or fleet tracking device.

9. Fleet Tracking Device.

A GPS unit will be installed on each machine and be maintained by GSE as part of this agreement. The information from this device will help us schedule preventive maintenance service calls by providing hours and location of machine. It can be set up to notify City of Lakeland personnel as well as GSE personnel. This device is an aid but does not replace the City of Lakeland's responsibility to notify GSE when a scheduled service is due by the hour meter reading or if emergency service call is needed. We expect to be able to provide additional benefits using this system as the program progress.

Thank you for considering this Total Maintenance and Repair Agreement designed to make the preventive maintenance and guaranteed uptime of the Gradall Excavator easy. The pricing of this program is for 84 months / 7,500 hours of operation.

Price for the Gradall XL3100 Total Maintenance and Repair Agreement is \$107,842.00.

Our proposal includes a Fleet Tracking Device to primarily help both parties monitor the hours and location of the machine in order to schedule the preventive maintenance services on a timely basis. Please see paragraph 9 for more details.

GS Equipment Representative

CITY OF LAKELAND Representative

Sign Here

Sign Here

\_\_\_\_\_

\_\_\_\_\_

Print Name

Print Name

\_\_\_\_\_

\_\_\_\_\_

Date

Date

\_\_\_\_\_

\_\_\_\_\_



GS Equipment Co. Inc.  
1023 South 50<sup>th</sup> Street  
Tampa, FL. 33619  
(813)248-4971

## **CITY OF LAKELAND**

### **Gradall Excavator Total Maintenance and Repair Agreement**

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### **GRADALL XL4100 6X6 Series V**

#### **Agreement Terms and Responsibilities:**

- 1. Operational Condition:** Units shall be well maintained in top operating condition with 100% of all parts, components, and systems operational. All pin, hitches and moving parts shall be tight and within manufacturer's standards or tolerances. Engines, transmissions, drive axles, and hydraulic systems shall be in peak operational condition at all times absent of leaks, blow-by, reduced hydraulic pressures or driveline noise.
- 2. City of Lakeland Responsibility:** City of Lakeland will be responsible for the daily and weekly fueling, checking of fluid levels (adding if necessary), greasing of fittings (if required). Reporting to GSE's designated representative any maintenance and repair required. City of Lakeland will be responsible for all repair costs resulting from damage due to fire (not caused by machinery malfunction), windstorm, flood, vandalism, accidents, and operator's negligence. The City of Lakeland is responsible for tires and glass replacement or repair.
- 3. Downtime:** Should GS Equipment (GSE) fail to complete the required service, maintenance or repairs and return the equipment to duty, or should GSE fail to supply the necessary parts or labor to effect the repair within Twenty four (24) continuous hours (excluding holidays, Saturdays, Sundays) from telephone notification by City of Lakeland. to GSE, a similar machine will be provided to City of Lakeland. at no charge.
- 4. GSE will be responsible for keeping the City of Lakeland work site safe, clean, and orderly.** Any contamination of the work site by GSE shall be their responsibility.
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Thank you for considering this Total Maintenance and Repair Agreement designed to make the preventive maintenance and guaranteed uptime of the Gradall Excavator easy. The pricing of this program is for 84 months / 7,500 hours of operation.

Price for the Gradall XL4100 Total Maintenance and Repair Agreement is \$114,254.00.

Our proposal includes a Fleet Tracking Device to primarily help both parties monitor the hours and location of the machine in order to schedule the preventive maintenance services on a timely basis. Please see paragraph 9 for more details.

GS Equipment Representative

CITY OF LAKELAND Representative

Sign Here

Sign Here

\_\_\_\_\_

\_\_\_\_\_

Print Name

Print Name

\_\_\_\_\_

\_\_\_\_\_

Date

Date

\_\_\_\_\_

\_\_\_\_\_