

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: September 3, 2019

RE: Equipment Lease Purchase Agreement for Volvo Wheel Loaders with Leasing 2, Inc. and Related Maintenance Services with Flagler Construction Equipment

Attached hereto for your consideration is the proposed Lease Purchase Agreement and corresponding documents between the City and Leasing 2, Inc. for three (3) Volvo Wheel Loaders to be used by the Public Works Department to clean up debris, load materials, and for recovery after storm events. In addition, is a proposal for related maintenance/repair services for the Volvo Wheel Loaders with Flagler Construction Equipment.

This equipment is essential in the operation of the City's Construction & Maintenance Division for project construction and maintenance of the streets. The equipment is being purchased from Flagler Construction Equipment, pursuant to the Florida Sheriff's Association Bid (FSA18-VEH16.0), Spec.#33 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 Volvo Wheel Loaders.

The cost of the Volvo Wheel Loaders will be charged to the Storm Water Utility, Transportation, and General Funds. While the equipment will be used to accomplish work for a variety of City departments, the Volvo Wheel Loaders will also serve as a valuable tool for removing debris and sediment after major storm events during emergency operations.

The term of this Lease Agreement with Leasing 2, Inc. is for a period of five (5) years at a rate of 2.80%. The monthly payment for this equipment will be \$5,825.88 with a final installment payment of \$159,000 for a total cost of \$508,552.80 over the five (5) year term. Maintenance/repair services and replacement equipment, if necessary, will be provided by Flagler Construction Equipment as a separate budgeted expense at a cost of \$108,750 during the five (5) year term of the Agreement. The associated maintenance/repair for the Volvo Wheel Loaders requires 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 three (3) Volvo Wheel Loaders with Leasing 2, Inc. and related maintenance/repair services with Flagler Construction Equipment, subject to approval of the FY20 budget by the City Commission.

attachments

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 September 3, 2019

This Lease-Purchase Agreement (the "Agreement") dated as of **September 3, 2019** by and between **Leasing 2, Inc.** ("Lessor"), and **City of Lakeland, Florida** ("Lessee"), a body corporate and politic duly 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 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. The Equipment shall not be used outside of the United States without Lessor's prior written consent.
- (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(a) of the United States Internal Revenue Code of 1986 as amended (the "Code"). Lessee represents and warrants that the Lease is to be treated as an obligation of a political subdivision of a state within the meaning of Section 103(c)(1) of the Code.
- (n) Lessee is and shall remain in compliance with all laws, rules, regulations and orders applicable to Lessee, including U.S. economic and trade sanctions, and anti-corruption, anti-bribery, anti-money laundering and anti-terrorism laws.

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 any and all legally available funds, in lawful money of the United States of America, exclusively 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. 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. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds is within the discretion of Lessee's governing body.

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 and upon approval by Lessor, Lessee may 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 9.01) 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 replacement, 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:

- (a) 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
- (b) 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
- (c) 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:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and
- (b) 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.
- (c) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment, or attachment of such consequence as would impair the ability of Lessee to carry on its governmental function or adjudication of Lessee as a bankrupt or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

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:

- (a) 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
 - (b) 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 give 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 XIV 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 of Florida.

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.

Section 14.14. Time is of the Essence. Lessor and Lessee agree that time is of the essence of all provisions of each Lease entered into under this Agreement.

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: _____
H. William Mutz
Title: _____
Mayor

By: _____
Title: _____

Date: _____

Date: _____

ATTEST:

By: _____
Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: _____
Timothy J. McCausland, City Attorney

Exhibit "A"

RESOLUTION NO. _____

PROPOSED RESOLUTION NO. 19-056

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKELAND, FLORIDA FOR AND AUTHORIZING THE LEASE PURCHASE OF THREE (3) VOLVO L60H WHEEL LOADERS FOR USE IN CONSTRUCTION PROJECTS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$458,389; AWARDING 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 three (3) Volvo L60H Wheel Loaders for the purpose of utilizing them for City construction projects, 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 City, the forms of which are attached hereto as Exhibit "A", the aggregate principal amount of the financing under said Lease not to exceed \$458,389; and

WHEREAS, the City of Lakeland has further determined that the Equipment will be used solely for essential governmental functions to use for City construction projects, 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 LAKELAND, 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 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 is 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 3rd day of September, A.D. 2019.

H. William Mutz, Mayor

ATTEST: _____
Kelly S. Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Timothy J. McCausland, City Attorney



TIMOTHY J. McCAUSLAND
CITY ATTORNEY
228 S. Massachusetts Avenue
Lakeland, Florida 33801
BUS: (863) 834-6010
FAX: (863) 834-8204
e:mail - timothy.mccausland@lakelandgov.net

Exhibit B

September 3, 2019

Opinion of Lessee's Counsel

LESSEE: City of Lakeland, Florida

DATE OF AGREEMENT: September 3, 2019

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 September 3, 2019, 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. 19-056 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,

Timothy J. McCausland
City Attorney

EXHIBIT C

CERTIFICATE AS TO ARBITRAGE

I, **H. William Mutz**, 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 **September 3, 2019** (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 Agreement 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 **\$458,389.00**, which, together with interest earned thereon until disbursed if necessary, will be used to pay the costs of the Equipment in the amount of **\$458,389.00**. 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 _____.
5. In any event, all of the spendable proceeds of the Agreement, including amounts held in escrow, 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.

LESSEE: **City of Lakeland, Florida**

By: _____
H. William Mutz

Title: _____
Mayor

Date: _____

EXHIBIT E
PAYMENT SCHEDULE

LESSEE: City of Lakeland, Florida
 LEASE AMOUNT: \$458,389.00
 COMMENCEMENT DATE: 9/3/2019
 INTEREST RATE: 2.80%

PAYMENT			PURCHASE		
<u>NO.</u>	<u>DATE</u>	<u>PAYMENT</u>	<u>INTEREST</u>	<u>PRINCIPAL</u>	<u>PRICE*</u>
1	3/3/2020	\$5,825.88	\$6,454.98	-\$629.10	\$468,848.55
2	4/3/2020	\$5,825.88	\$1,071.04	\$4,754.84	\$463,921.64
3	5/3/2020	\$5,825.88	\$1,059.94	\$4,765.94	\$458,984.68
4	6/3/2020	\$5,825.88	\$1,048.82	\$4,777.06	\$454,037.64
5	7/3/2020	\$5,825.88	\$1,037.68	\$4,788.20	\$449,080.50
6	8/3/2020	\$5,825.88	\$1,026.51	\$4,799.37	\$444,113.23
7	9/3/2020	\$5,825.88	\$1,015.31	\$4,810.57	\$439,135.82
8	10/3/2020	\$5,825.88	\$1,004.08	\$4,821.80	\$434,148.25
9	11/3/2020	\$5,825.88	\$992.83	\$4,833.05	\$429,150.49
10	12/3/2020	\$5,825.88	\$981.55	\$4,844.33	\$424,142.54
11	1/3/2021	\$5,825.88	\$970.25	\$4,855.63	\$419,124.36
12	2/3/2021	\$5,825.88	\$958.92	\$4,866.96	\$414,095.93
13	3/3/2021	\$5,825.88	\$947.56	\$4,878.32	\$409,057.24
14	4/3/2021	\$5,825.88	\$936.18	\$4,889.70	\$404,008.26
15	5/3/2021	\$5,825.88	\$924.77	\$4,901.11	\$398,948.97
16	6/3/2021	\$5,825.88	\$913.34	\$4,912.54	\$393,879.36
17	7/3/2021	\$5,825.88	\$901.87	\$4,924.01	\$388,799.39
18	8/3/2021	\$5,825.88	\$890.39	\$4,935.49	\$383,709.05
19	9/3/2021	\$5,825.88	\$878.87	\$4,947.01	\$378,608.32
20	10/3/2021	\$5,825.88	\$867.33	\$4,958.55	\$373,497.17
21	11/3/2021	\$5,825.88	\$855.76	\$4,970.12	\$368,375.59
22	12/3/2021	\$5,825.88	\$844.16	\$4,981.72	\$363,243.55
23	1/3/2022	\$5,825.88	\$832.54	\$4,993.34	\$358,101.03
24	2/3/2022	\$5,825.88	\$820.88	\$5,005.00	\$352,948.01
25	3/3/2022	\$5,825.88	\$809.21	\$5,016.67	\$347,784.48
26	4/3/2022	\$5,825.88	\$797.50	\$5,028.38	\$342,610.40
27	5/3/2022	\$5,825.88	\$785.77	\$5,040.11	\$337,425.76
28	6/3/2022	\$5,825.88	\$774.01	\$5,051.87	\$332,230.53
29	7/3/2022	\$5,825.88	\$762.22	\$5,063.66	\$327,024.70
30	8/3/2022	\$5,825.88	\$750.40	\$5,075.48	\$321,808.23
31	9/3/2022	\$5,825.88	\$738.56	\$5,087.32	\$316,581.12
32	10/3/2022	\$5,825.88	\$726.69	\$5,099.19	\$311,343.33
33	11/3/2022	\$5,825.88	\$714.79	\$5,111.09	\$306,094.85
34	12/3/2022	\$5,825.88	\$702.87	\$5,123.01	\$300,835.66
35	1/3/2023	\$5,825.88	\$690.91	\$5,134.97	\$295,565.72
36	2/3/2023	\$5,825.88	\$678.93	\$5,146.95	\$290,285.03
37	3/3/2023	\$5,825.88	\$666.92	\$5,158.96	\$284,993.56
38	4/3/2023	\$5,825.88	\$654.89	\$5,170.99	\$279,691.28
39	5/3/2023	\$5,825.88	\$642.82	\$5,183.06	\$274,378.18
40	6/3/2023	\$5,825.88	\$630.73	\$5,195.15	\$269,054.22
41	7/3/2023	\$5,825.88	\$618.60	\$5,207.28	\$263,719.40
42	8/3/2023	\$5,825.88	\$606.45	\$5,219.43	\$258,373.70
43	9/3/2023	\$5,825.88	\$594.27	\$5,231.61	\$253,017.07
44	10/3/2023	\$5,825.88	\$582.07	\$5,243.81	\$247,649.51
45	11/3/2023	\$5,825.88	\$569.83	\$5,256.05	\$242,270.98

46	12/3/2023	\$5,825.88	\$557.57	\$5,268.31	\$236,881.48
47	1/3/2024	\$5,825.88	\$545.28	\$5,280.60	\$231,480.97
48	2/3/2024	\$5,825.88	\$532.95	\$5,292.93	\$226,069.44
49	3/3/2024	\$5,825.88	\$520.60	\$5,305.28	\$220,646.86
50	4/3/2024	\$5,825.88	\$508.22	\$5,317.66	\$215,213.21
51	5/3/2024	\$5,825.88	\$495.82	\$5,330.06	\$209,768.47
52	6/3/2024	\$5,825.88	\$483.38	\$5,342.50	\$204,312.61
53	7/3/2024	\$5,825.88	\$470.91	\$5,354.97	\$198,845.61
54	8/3/2024	\$5,825.88	\$458.42	\$5,367.46	\$193,367.45
55	9/3/2024	\$5,825.88	\$445.90	\$5,379.98	\$187,878.10
56	10/3/2024	\$5,825.88	\$433.34	\$5,392.54	\$182,377.55
57	11/3/2024	\$5,825.88	\$420.76	\$5,405.12	\$176,865.77
58	12/3/2024	\$5,825.88	\$408.15	\$5,417.73	\$171,342.73
59	1/3/2025	\$5,825.88	\$395.51	\$5,430.37	\$165,808.42
60	2/3/2025	\$5,825.88	\$382.84	\$5,443.04	\$160,262.80
61	3/3/2025	\$159,000.00	\$370.15	\$158,629.85	\$0.00
Grand Totals		\$508,552.80	\$50,163.80	\$458,389.00	

LESSEE: **City of Lakeland, Florida**

By: _____
H. William Mutz

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 **September 3, 2019**, 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 Lessee 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: _____
H. William Mutz

Title: _____
Mayor

EXHIBIT G

ESSENTIAL USE/SOURCE OF FUNDS LETTER

TO: **Leasing 2, Inc.**

RE: Lease-Purchase Agreement Dated **September 3, 2019.**

Gentlemen:

Reference is made to certain Lease-Purchase Agreement dated **September 3, 2019**, 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:**

Please describe USE of equipment: _____

Sincerely,

H. William Mutz, Mayor

Date

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 payments under the Lease-Purchase Agreement and Escrow Agreement dated as of **September 3, 2019**, 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.

Santander Leasing, LLC
P.O. Box 14565
Reading, PA 19612

LESSEE: **City of Lakeland, Florida**

By: _____
H. William Mutz

Title: _____
Mayor

Date: _____

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.

By: _____
H. William Mutz

Title: _____
Mayor

Date: _____



Joyce Dias
Director of Risk Mgmt. & Purchasing
1140 EAST PARKER STREET
LAKELAND, FLORIDA 33801-2066
P.863.834.6796 | F.863.834.6777

NOTICE OF SELF-INSURANCE

This letter shall act as the official notice that as per Florida Statute 768.28 the City of Lakeland, Florida is self-insured for the following areas of coverage are \$200,000 per person and \$300,000 per occurrence. 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:


Joyce Dias
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: _____

Company: _____

Street Address or Box #: _____

City, State, Zip: _____

County: _____

Telephone: _____ () _____

Fax: _____ () _____

Email Address: _____

Invoice Reference: _____ (3) Volvo L60H Wheel Loaders

**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.

CUSTOMER NAME: **City of Lakeland, Florida**

CUSTOMER IDENTIFICATION

Taxpayer ID Number: 59-6000354

Business Structure (check one): City Government: _____ 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: _____

Address: _____

City: _____

State: _____

Zip Code: _____

State of Registration/Organization: _____

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: _____
H. William Mutz

Its: _____
Mayor

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Escrow Agreement") is made and entered into as of Septe, 2019 ("Escrow Agreement Date"), by and among Leasing 2, Inc. or its assigns ("Lessor"), City of Lakeland, Florida ("Lessee") and Old National Wealth Management ("Escrow Agent").

RECITALS

WHEREAS, Lessor and Lessee have entered into the Lease-Purchase Agreement dated September 3, 2019 (the "Lease"), pursuant to which the equipment more particularly described therein (the "Equipment") will be leased to the Lessee under the terms stated in the Lease;

WHEREAS, Lessor and Lessee desire to make funding arrangements for the acquisition of the Equipment, and Escrow Agent agrees to serve as escrow agent for such funding and acquisition;

WHEREAS, Escrow Agent is hereby notified that Lessor expects to assign all of its right, title, and interest in and to, but not its obligations under, the Lease and this Escrow Agreement to Santander Leasing, LLC, including, in particular, but without limitation, and Lessor's right to approve all payment requests submitted by Lessee and Lessor's security interest in the Fund (as defined herein).

NOW THEREFORE, in consideration of the mutual agreements and covenant herein contained and for other valuable consideration, the parties hereby agree as follows:

1. Escrow Agent shall undertake the duties and obligations of escrow agent as set forth in this Escrow Agreement. Escrow Agent shall not be deemed to be a party to the Lease.
2. Lessor has delivered to Escrow Agent the sum of \$ 458,389.00 ("Escrow Amount") for deposit by Escrow Agent in an Escrow Account established in connection with the Lease (the "Fund"). The Fund will be administered by Escrow Agent pursuant to the terms of this Escrow Agreement. Lessee acknowledges that Escrow Agent may commingle the Escrow Amount held by Escrow Agent for the benefit of Lessee with other funds held by Escrow Agent for its own account, so long as the Escrow Agent maintains segregation of the Fund on the books and records of Escrow Agent. The Escrow Amount shall not be the property of the Escrow Agent, notwithstanding the fact that it may be commingled with other funds of the Escrow Agent.
3. Deposits in the Fund shall be used to pay for the acquisition of the Equipment. The Equipment may be acquired as individual items or as groups of items. Escrow Agent shall make disbursements from the Fund in payment for the acquisition of each item or group of items of the Equipment promptly upon receipt of a properly executed Escrow Disbursement Request Form, in the form attached hereto as "Exhibit A", for that portion of the acquisition of the Equipment for which payment is requested. Upon full acquisition of an item or group of items of the Equipment, any remaining cost of such item or group of items shall be disbursed promptly by the Escrow Agent upon receipt of a properly executed Acceptance Certificate and a corresponding Escrow Disbursement Request Form in the form attached hereto as "Exhibit A", for that portion of the Equipment for which payment is requested. Payment by Escrow Agent shall be to the payee shown on the Escrow Disbursement Request Form. Escrow Agent may deduct overnight mailing fees from the Fund prior to any disbursement requested by Lessee in writing to be sent via overnight mail.
4. No fees are due to the Escrow Agent under this Escrow Agreement and neither the Lessee nor any assignee of Lessor shall be responsible for payment of any fees to the Escrow Agent.
5. Escrow Agent will invest the Fund, as specified by Lessor, in a Federated Government Obligation Money Market account, ticker GOSXX; provided, however, that notwithstanding anything herein, the yield on the Fund shall not be allowed to exceed the yield on the Lease. If the yield on the Fund at any time exceeds the yield on the Lease, the Lessor shall direct the Escrow Agent to invest the Fund in a lower yielding investment such that no arbitrage is earned on the Fund. Escrow Agent shall maintain the Fund until termination of the Fund pursuant to Section 6 hereof.
6. Upon execution of one or more Acceptance Certificates by Lessee and payment of acquisition costs by Escrow Agent for all the Equipment, this Escrow Agreement shall terminate and the Fund shall be closed. If not terminated earlier, this Escrow Agreement shall terminate and the Fund shall close on the date that is three years after the Escrow Agreement Date ("Termination Date"). Upon termination of this Escrow Agreement and closing of the Fund, Escrow Agent shall transfer all remaining principal in the Fund to Lessor and such amounts shall be applied by Lessor to Lessee's next Rental Payment. Lessee agrees that any interest earned on the Escrow Amount held in the Fund in excess of the costs of the Equipment will be paid to Leasing 2, Inc.
7. Lessor and Lessee may by written agreement between themselves remove the Escrow Agent, at any time and for any reason, and appoint a successor escrow agent. Such removal shall not be effective until thirty (30) days after written notice thereof if provided to Escrow Agent.
8. Escrow Agent may at any time and for any reason resign as Escrow Agent by giving written notice to Lessor and Lessee of its intention to resign and of the proposed date of resignation, which date shall be not less than thirty (30) days after giving Lessee and Lessor written notice of intent to resign, nor less than thirty (30) days after being appointed by Lessor and Lessee.

9. Escrow Agent shall have no obligation under the terms of this Escrow Agreement to make any disbursement except from the Fund. Escrow Agent makes no warranties or representations as to the Equipment or as to performance of the obligations of Lessor or Lessee under this Escrow Agreement or the Lease.

10. Escrow Agent shall be entitled to rely in good faith upon any documents signed by a party hereto and shall have no duty to investigate the veracity of such documents. Escrow Agent (i) may assume that any person giving notice pursuant to the terms hereof is authorized to do so and (ii) shall not be liable for good faith reliance thereon.

11. Except to the extent it would invalidate the Lease or otherwise be prohibited by law, to secure the payment of all Lessee's obligations under the Lease, Lessee, grants to Lessor a security interest constituting a first lien on the Escrow Amount and on all amounts held in the Fund and any proceeds therefrom. Lessee hereby authorizes Lessor to prepare and file such financing statements, any amendments thereto and other such documents to establish and maintain such first lien and perfected security interest. Lessee hereby acknowledges the receipt of copies of the financing statements prepared by Lessor and hereby confirms the accuracy of the information contained therein. Lessee further agrees to execute such additional documents, including affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest, and upon assignment, the security interest of any assignee of Lessor, in the Equipment. To the limited extent required to perfect the security interest granted by Lessee to Lessor in the cash and negotiable instruments from time to time comprising the Fund, Lessor hereby appoints the Escrow Agent as its security agent, and the Escrow Agent hereby accepts the appointment as security agent, and agrees to hold physical possession of such cash negotiable instruments on behalf of Lessor.

12. The Lessor and Lessee, to the extent permitted by law, hereby agree to indemnify, defend, protect and hold the Escrow Agent, its affiliates, its officers, directors, agents and employees, harmless from and against any and all claims, losses, liability, damages, costs or expenses that the Escrow Agent may suffer or incur arising out of or in connection with the acceptance or administration of this Escrow Agreement or the performance of its duties hereunder, including reasonable attorneys' fees, but excluding any losses, liability, damages, costs or expenses due to the Escrow Agent's negligence or willful misconduct or its failure to act in accordance with the terms of this Escrow Agreement. This indemnity shall survive the termination of this Escrow Agreement or the removal or resignation of the Escrow Agent. The Escrow Agent agrees to indemnify, defend, protect and hold the Lessor, its affiliates, its officers, directors, agents and employees, harmless from and against any and all claims, losses, liability, damages, costs or expenses that the Lessor may suffer or incur arising out of or in connection with the acceptance or administration of this Escrow Agreement or the performance of its duties hereunder, including reasonable attorneys' fees, but excluding any losses, liability, damages, costs or expenses due to the Lessor's negligence or willful misconduct.

13. This Escrow Agreement may be amended only by written agreement executed by all the parties.

14. This Escrow Agreement may be executed in several counterparts, each of which shall be an original.

15. This Escrow Agreement will be governed by and construed in accordance with the laws of the state in which the Lessee is organized.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the date first written above.

LESSEE: City of Lakeland, Florida

LESSOR: Leasing 2, Inc.

By: _____

By: _____

Title: H. William Mutz
Mayor

Title: _____

Date: _____

Date: _____

ATTEST:

ESCROW AGENT: Old National Wealth Management

By: _____
Kelly S. Koos, City Clerk

By: _____

Approved as to form and correctness:

Title: _____

By: _____
Timothy J. McCausland, City Attorney

Date: _____

ESCROW AGREEMENT – Exhibit A

ESCROW DISBURSEMENT REQUEST FORM

Old National Wealth Management, acting as escrow agent (the "Escrow Agent") under the Escrow Agreement dated as of September 3, 2019, by and among the Escrow Agent, Leasing 2, Inc. ("Lessor") and City of Lakeland, Florida (" Lessee") (the "Escrow Agreement"), is hereby requested to pay to the person or corporation designated below as payee the sum set forth below in payment of the acquisition and installation costs of the equipment described below, which equipment was financed pursuant to that certain Lease-Purchase Agreement dated September 3, 2019, by and between Lessor and Lessee (the "Lease"). The amount shown below is due and payable under the attached vendor invoice(s) of payee with respect to the described equipment and has not formed the basis of any prior request for payment from the escrow account established under the Escrow Agreement.

PAYEE: _____

AMOUNT: _____

DESCRIPTION OF EQUIPMENT: _____

INVOICE # _____ DATED: _____

Indicate Method for Payment Disbursement:

Overnight Check *** Regular Mail Check Wire Funds

Mailing Address: _____ Wire Instructions: _____

***Please note that there might be a fee charged for overnight delivery.
This fee will be deducted from the escrow balance before disbursement is made.

Lessee: City of Lakeland, Florida

By: _____

Name: _____

Title: _____

Assignee: Santander Leasing, LLC

By: _____

Authorized Signer

ACCEPTANCE CERTIFICATE

Lessee hereby acknowledges receipt in good condition of all the equipment described above and included on the attached vendor invoice(s), hereby accepts such equipment, and hereby certifies that Lessor or its assignee has fully and satisfactorily performed all covenants and conditions to be performed by it under the Lease with regard to such equipment, that such equipment is fully insured in accordance with Section 8.03 of the Lease and that such equipment constitutes all or a portion of the Equipment as that term as defined in the Lease.

Date: _____

By Lessee: City of Lakeland, Florida

Signature

Name: _____

Title: _____



8418 Palm River Road
Tampa, FL 33619
(813)630-0077

Customer Support Agreement

Total Maintenance and Repair (TM&R) Agreement

City of Lakeland
1140 E. Parker St
Lakeland, FL 33801

A. Equipment Covered and Charges:

(1) 2019 Volvo L60H #1 Serial Number: To be determined

1. \$7.25 Per Hour/ 5000 Total Hours
2. Starting Hours 5
3. Ending Hours 5005
4. Start Date 3/4/2020
5. End Date 3/4/2025

B. Terms of Agreement:

1. 60 Months/ 5000 Hour Limit, or whichever occurs first.
2. This agreement commences upon delivery date of the above equipment or the finding date to Flagler Construction Equipment on leased machines.

*****Standard Exclusions: Lights, Glass, Wheels, Radio, Top Off Fluids, Overtime and Transport of Machine to Shop for Repairs.*****

C. Maintenance Payments:

1. Monthly payments:
 - i. Customer agrees to pay Flagler Construction Equipment at the address shown above, the aggregate monthly charge as listed in Section A, on the tenth calendar day of each month during the tenure of this agreements, plus all applicable overtime charges outstanding, as specified on Dealer's invoices.
 - ii. In the event any engine hour meter fails to function properly, thereby making the meter reading unavailable or unreliable, then the hours of use for such month shall be deemed to be the average of the monthly usage of that unit of equipment for the preceding two months.

- iii. In the event the allowed hours expire before the allotted time the customer will be responsible for the remaining months due (if paying flat monthly rate).
2. Late Payment Charges: If the payment required under the agreements, or any portion thereof, remains due and payable for a period of 45 days or longer, such payment or portion thereof shall be subject to a finance fee of 1% per month in accordance with Florida Statute §218.74 et seq., The Local Government Prompt Payment Act.; calculated on such amount from the date on which it became due and payable as provided hereunder until actually paid. This late payment charge is equal to an ANNUAL PERCENTAGE RATE of 12 percent.

D. Operation and Care of Equipment:

Customer hereby agrees to: (1) operate the equipment only at the location designated herein above, (2) exercise reasonable care in the operation, maintenance, and storage of the equipment, (3) operate the equipment only within its rated capacity, and solely in the conduct of customer's business, (4) permit the equipment to be operated only by customer's employees trained in operation, and (5) reimburse dealer for any and all repairs, replacement, or other expenses resulting from customer's failure to comply with the foregoing provisions or from accidents, abuse, overload, negligence, weather damage, vandalism, acts of God, or from customer's failure to perform its obligations with respect to the equipment set forth in Section F hereof.

E. Dealer's Obligations:

1. Perform all routine and emergency repair service as required to maintain the equipment in good operating condition.
2. All repairs, other than tire and wheel replacement, ground engaging tools, radio, lights and glass items are the responsibility of Flagler Construction Equipment except as excluded by Section D, Item 5.
3. Perform major repair and overhauls, as required.
4. Furnish all labor and parts needed for 500-hour intervals and above as per owner's manual except for fuels, make-up oils, and routine greasing.
5. Provide, at no charge to customer, travel time and mileage required to perform repairs at customer's job sites except charges that customer is required to pay or reimburse dealer as provided in Section D hereof.
6. Flagler Construction Equipment will perform all repair and normal maintenance between the hours of 7:30 a.m. and 4:00 p.m. Monday through Friday, holidays excepted. Flagler Construction Equipment will perform maintenance and repairs outside of those hours as requested by the customer at the rate equal to our published overtime rate, less the published standard hourly rate.
7. Dealer will perform routine repair service on a unit when hour meter reading so indicates service interval.
8. Dealer will supply on request, proof of insurance coverage as per customer specifications.
9. Flagler Construction Equipment will give customer a minimum of two (2) weeks advance notice of planned repairs or overhauls which will require a unit to be out of service during normal operating hours.
10. Flagler Construction Equipment will provide, at no cost to the City of Lakeland, a temporary replacement unit if any warranty related repair (or damage caused by Flagler

Construction Equipment during the repair process) will take in excess of 3 working days to repair.

F. Customers Obligations:

1. Provide, at no charge to Dealer, an adequate area on customer's premises to permit maintenance and service work to be performed in a safe and reasonably protected, ventilated, and lighted environment.
2. Required daily and weekly inspections and maintenance to be performed and recorded on each unit of equipment, to make such reports available to the dealer upon request. To require that customer's supervisor who is responsible for the equipment to be notified promptly of any item requiring action or repair and to notify dealer promptly of such needed repairs, replacements, or adjustments. Daily and weekly inspections will be conducted as specified by checklists provided by Flagler Construction Equipment.
3. Transportation of the equipment to and from Flagler Construction Equipment for necessary repairs that cannot be completed in the field. (This is only in the event that the repairs are a result of damages caused by the City of Lakeland. In the event that the repairs are a result of a warrantable failure or caused by Flagler Construction Equipment during the repair process, all transportation expenses will be incurred by Flagler Construction Equipment.)
4. Make each unit of the equipment available promptly for dealer's employees to perform scheduled "Planned Maintenance Service" or other necessary repairs. In addition to all other payments required hereunder, customer agrees to pay dealer for the waiting time or wasted trip of dealer's employees which results from customer's failure to have a unit of equipment available within 30 minutes after requested by dealer's employees.
5. Instruct and supervise operators of the equipment so as to prevent (a) violation of the instruction and good operating procedures as set forth in the Operator's Manual, (b) continued operation of a unit of equipment which is in obvious need of repair and where such continued use may increase or accelerate the necessary repairs, and (c) use of a unit which develops or has an unsafe condition.
6. Furnish all make-up oils for the equipment.
7. Acquire and install, at customers expense, all replacement tires and wheels.
8. Customer is responsible for lights, glass, radio, and ground engaging tools. Also, any attachments not listed on the coverage page (Section A), excluding base machine.

G. Indemnification:

To the extent permitted by law and subject to the monetary limitations set forth in Florida Statute §768.28, customer agrees to indemnify and hold dealer harmless from any and all losses, liabilities, damages, claims, costs, and expenses (including reasonable attorney's fees) arising out of the negligent operation or maintenance or willful misconduct of the equipment by customer or customer's employees negligent operation or maintenance or willful misconduct of dealer or dealer's employees, including any claims of damages for injury to persons or property.

H. Excuse from Performance:

Customer hereby agrees that dealer shall have no obligations to repair or otherwise maintain any unit of equipment if such repair or maintenance is prevented or substantially hindered by fire, floods, explosions, strikes or other labor disputes, war or civil

insurrections, accidents, acts of God, government regulations, delays in transportation, or due to any causes which is beyond the dealers control.

I. Default:

1. The occurrence of any one or more of the following events shall constitute default by customer under this agreement. (a) Failure of customer to perform any obligation of the customer set forth in this agreement, which failure shall not have been cured in full within 10 days after dealer gives written notice thereof to customer by Certified Mail. (b) Customer knowingly or willfully tampers with an engine hour meter on the equipment without dealer's prior consent in an attempt to mislead dealer as to the actual number of hours run. (c) Customer's making or permitting any unauthorized use, assignment, or transfer of a unit of the equipment. (d) The institution by or against customer of any proceedings under any bankruptcy reorganization, or other insolvency laws. (e) The cessation by Customer of its normal business operations.
2. The occurrence of any one or more of the following events shall constitute default by dealer under this agreement. (a) Failure of dealer to perform any obligations of dealer set forth in this agreement, which failure shall not have been cured in full within 10 days after customer gives written notice thereof to dealer by Certified Mail. (b) The institution by or against dealer of any proceedings under bankruptcy, reorganization, or other insolvency laws. (c) The cessation by dealer of its normal business operations.

J. Termination and Remedies:

1. Upon the occurrence of an event of default by Customer under this agreement, dealer may immediately terminate this agreement (in writing, by Certified Mail) and dealer shall have no further duties or obligations hereunder. Dealer shall, nevertheless, be entitled to retain all prior maintenance payments or any deposits made hereunder. Dealer shall further be entitled to recover from customer any and all amounts and payments which, under the terms of the agreement, may then be due and payable plus a reasonable sum for attorney's fees and costs of collection, if such amounts are collected by or through an attorney-at-law. All rights and remedies granted dealer herein shall be cumulative with all other rights and remedies available to dealer under law.
2. Upon the occurrence of an event of default by dealer under this agreement, customer may immediately terminate this agreement (in writing, by Certified Mail) and customer shall have no further duties or obligation hereunder. All rights and remedies granted customer herein shall be cumulative with all other rights and remedies available to customer under law.
3. Customer may terminate this agreement for any reason upon sixty (60) days prior written notification to Dealer.

K. Repair Warranty:

1. Dealer warrants that all repair work performed by its service personnel will be free of defects in workmanship under normal use and service for a period of 90 days provided. However, the foregoing warranty shall not be applicable (a) where the customer or any other party has mishandled, misused, or failed to properly store, maintain, or operate the

- equipment, or (b) where the equipment has been serviced, repaired, maintained, or modified by any person or party other than the dealer except for the performance by customer of its obligations under Section F of this agreements.
2. Dealer's liability arising from any claims of breach of the above warranty or similar claim shall be limited solely to repair or replacement of any parts of the equipment, which shall, within the 90 days period specified above, be identified to dealer and which an inspection shall disclose to dealer's satisfaction to have been defective in normal use and service. Dealer's liability for all labor costs in connection with the repair or replacement of parts shall be based solely on rates applicable during normal working hours.
 3. This section sets forth customer's sole and exclusive remedy in connection with repair work by dealer and customer hereby agrees that the dealer shall in no event be liable or responsible for any claimed incidental, consequential, or special damages, or any other cost, expense, loss, or claim (including those arising from injuries to person or property, lost profits, or other economic loss). The express warranty set forth above is in lieu of all other warranties of whatsoever kind, whether express or implied by law and all other such warranties are hereby disclaimed.

L. Miscellaneous

1. Any notice given by customer or dealer shall be deemed sufficiently given if delivered in person, or if mailed to the other party and the address herein above set forth, or other by United States Registered or Certified Mail.
2. No waiver of any provision of this agreement by dealer shall constitute a waiver of any other provision (whether or not similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided by dealer in writing. No delay or omission by dealer to exercise any right, power or remedy under this agreement, or otherwise available to it, shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof.
3. This agreement, and the Exhibits attached hereto, contain the entire agreement between dealer and customer with regard to the subject matter hereof; and no representations, inducements, promises, or agreements between dealer and customer not embodied herein shall be of any force or effect. No changes may be made in this agreement which shall be binding upon the parties unless approved in writing by the parties.
4. In case one or more provision in this agreement shall be deemed invalid, illegal, or unforeseeable in any respect, the validity, legality, and enforceability of the remaining provisions contained shall in no way be affected or impaired thereby. Time is of the essence under this agreement. This agreement shall be governed in all respects by the laws of Florida. This agreement shall be binding upon, and shall inure to the benefit of dealer and customer and their respective successors and assigns. Jurisdiction and venue shall be in the courts of Polk County, Florida.
5. Either party upon 30-day notice may terminate this agreement in accordance with Section B-3 (Terms of this agreement).

Executed by the fully authorized representative of the City of Lakeland, Florida.

On this _____ day of _____, 2019.

Name (signed): _____

Name (printed): _____ Title: _____

Accepted by: _____ On behalf of Flagler Construction Equipment.



8418 Palm River Road
Tampa, FL 33619
(813)630-0077

Customer Support Agreement

Total Maintenance and Repair (TM&R) Agreement

City of Lakeland
1140 E. Parker St
Lakeland, FL 33801

A. Equipment Covered and Charges:

(1) 2019 Volvo L60H #2 Serial Number: To be determined

1. \$7.25 Per Hour/ 5000 Total Hours
2. Starting Hours 5
3. Ending Hours 5005
4. Start Date 3/4/2020
5. End Date 3/4/2025

B. Terms of Agreement:

1. 60 Months/ 5000 Hour Limit, or whichever occurs first.
2. This agreement commences upon delivery date of the above equipment or the finding date to Flagler Construction Equipment on leased machines.

*****Standard Exclusions: Lights, Glass, Wheels, Radio, Top Off Fluids, Overtime and Transport of Machine to Shop for Repairs.*****

C. Maintenance Payments:

1. Monthly payments:
 - i. Customer agrees to pay Flagler Construction Equipment at the address shown above, the aggregate monthly charge as listed in Section A, on the tenth calendar day of each month during the tenure of this agreements, plus all applicable overtime charges outstanding, as specified on Dealer's invoices.
 - ii. In the event any engine hour meter fails to function properly, thereby making the meter reading unavailable or unreliable, then the hours of use for such month shall be deemed to be the average of the monthly usage of that unit of equipment for the preceding two months.

- iii. In the event the allowed hours expire before the allotted time the customer will be responsible for the remaining months due (if paying flat monthly rate).
2. Late Payment Charges: If the payment required under the agreements, or any portion thereof, remains due and payable for a period of 45 days or longer, such payment or portion thereof shall be subject to a finance fee of 1% per month in accordance with Florida Statute §218.74 et seq., The Local Government Prompt Payment Act.; calculated on such amount from the date on which it became due and payable as provided hereunder until actually paid. This late payment charge is equal to an ANNUAL PERCENTAGE RATE of 12 percent.

D. Operation and Care of Equipment:

Customer hereby agrees to: (1) operate the equipment only at the location designated herein above, (2) exercise reasonable care in the operation, maintenance, and storage of the equipment, (3) operate the equipment only within its rated capacity, and solely in the conduct of customer's business, (4) permit the equipment to be operated only by customer's employees trained in operation, and (5) reimburse dealer for any and all repairs, replacement, or other expenses resulting from customer's failure to comply with the foregoing provisions or from accidents, abuse, overload, negligence, weather damage, vandalism, acts of God, or from customer's failure to perform its obligations with respect to the equipment set forth in Section F hereof.

E. Dealer's Obligations:

1. Perform all routine and emergency repair service as required to maintain the equipment in good operating condition.
2. All repairs, other than tire and wheel replacement, ground engaging tools, radio, lights and glass items are the responsibility of Flagler Construction Equipment except as excluded by Section D, Item 5.
3. Perform major repair and overhauls, as required.
4. Furnish all labor and parts needed for 500-hour intervals and above as per owner's manual except for fuels, make-up oils, and routine greasing.
5. Provide, at no charge to customer, travel time and mileage required to perform repairs at customer's job sites except charges that customer is required to pay or reimburse dealer as provided in Section D hereof.
6. Flagler Construction Equipment will perform all repair and normal maintenance between the hours of 7:30 a.m. and 4:00 p.m. Monday through Friday, holidays excepted. Flagler Construction Equipment will perform maintenance and repairs outside of those hours as requested by the customer at the rate equal to our published overtime rate, less the published standard hourly rate.
7. Dealer will perform routine repair service on a unit when hour meter reading so indicates service interval.
8. Dealer will supply on request, proof of insurance coverage as per customer specifications.
9. Flagler Construction Equipment will give customer a minimum of two (2) weeks advance notice of planned repairs or overhauls which will require a unit to be out of service during normal operating hours.
10. Flagler Construction Equipment will provide, at no cost to the City of Lakeland, a temporary replacement unit if any warranty related repair (or damage caused by Flagler

Construction Equipment during the repair process) will take in excess of 3 working days to repair.

F. **Customers Obligations:**

1. Provide, at no charge to Dealer, an adequate area on customer's premises to permit maintenance and service work to be performed in a safe and reasonably protected, ventilated, and lighted environment.
2. Required daily and weekly inspections and maintenance to be performed and recorded on each unit of equipment, to make such reports available to the dealer upon request. To require that customer's supervisor who is responsible for the equipment to be notified promptly of any item requiring action or repair and to notify dealer promptly of such needed repairs, replacements, or adjustments. Daily and weekly inspections will be conducted as specified by checklists provided by Flagler Construction Equipment.
3. Transportation of the equipment to and from Flagler Construction Equipment for necessary repairs that cannot be completed in the field. (This is only in the event that the repairs are a result of damages caused by the City of Lakeland. In the event that the repairs are a result of a warrantable failure or caused by Flagler Construction Equipment during the repair process, all transportation expenses will be incurred by Flagler Construction Equipment.)
4. Make each unit of the equipment available promptly for dealer's employees to perform scheduled "Planned Maintenance Service" or other necessary repairs. In addition to all other payments required hereunder, customer agrees to pay dealer for the waiting time or wasted trip of dealer's employees which results from customer's failure to have a unit of equipment available within 30 minutes after requested by dealer's employees.
5. Instruct and supervise operators of the equipment so as to prevent (a) violation of the instruction and good operating procedures as set forth in the Operator's Manual, (b) continued operation of a unit of equipment which is in obvious need of repair and where such continued use may increase or accelerate the necessary repairs, and (c) use of a unit which develops or has an unsafe condition.
6. Furnish all make-up oils for the equipment.
7. Acquire and install, at customers expense, all replacement tires and wheels.
8. Customer is responsible for lights, glass, radio, and ground engaging tools. Also, any attachments not listed on the coverage page (Section A), excluding base machine.

G. **Indemnification:**

To the extent permitted by law and subject to the monetary limitations set forth in Florida Statute §768.28, customer agrees to indemnify and hold dealer harmless from any and all losses, liabilities, damages, claims, costs, and expenses (including reasonable attorney's fees) arising out of the negligent operation or maintenance or willful misconduct of the equipment by customer or customer's employees negligent operation or maintenance or willful misconduct of dealer or dealer's employees, including any claims of damages for injury to persons or property.

H. **Excuse from Performance:**

Customer hereby agrees that dealer shall have no obligations to repair or otherwise maintain any unit of equipment if such repair or maintenance is prevented or substantially hindered by fire, floods, explosions, strikes or other labor disputes, war or civil

insurrections, accidents, acts of God, government regulations, delays in transportation, or due to any causes which is beyond the dealers control.

I. Default:

1. The occurrence of any one or more of the following events shall constitute default by customer under this agreement. (a) Failure of customer to perform any obligation of the customer set forth in this agreement, which failure shall not have been cured in full within 10 days after dealer gives written notice thereof to customer by Certified Mail. (b) Customer knowingly or willfully tampers with an engine hour meter on the equipment without dealer's prior consent in an attempt to mislead dealer as to the actual number of hours run. (c) Customer's making or permitting any unauthorized use, assignment, or transfer of a unit of the equipment. (d) The institution by or against customer of any proceedings under any bankruptcy reorganization, or other insolvency laws. (e) The cessation by Customer of its normal business operations.
2. The occurrence of any one or more of the following events shall constitute default by dealer under this agreement. (a) Failure of dealer to perform any obligations of dealer set forth in this agreement, which failure shall not have been cured in full within 10 days after customer gives written notice thereof to dealer by Certified Mail. (b) The institution by or against dealer of any proceedings under bankruptcy, reorganization, or other insolvency laws. (c) The cessation by dealer of its normal business operations.

J. Termination and Remedies:

1. Upon the occurrence of an event of default by Customer under this agreement, dealer may immediately terminate this agreement (in writing, by Certified Mail) and dealer shall have no further duties or obligations hereunder. Dealer shall, nevertheless, be entitled to retain all prior maintenance payments or any deposits made hereunder. Dealer shall further be entitled to recover from customer any and all amounts and payments which, under the terms of the agreement, may then be due and payable plus a reasonable sum for attorney's fees and costs of collection, if such amounts are collected by or through an attorney-at-law. All rights and remedies granted dealer herein shall be cumulative with all other rights and remedies available to dealer under law.
2. Upon the occurrence of an event of default by dealer under this agreement, customer may immediately terminate this agreement (in writing, by Certified Mail) and customer shall have no further duties or obligation hereunder. All rights and remedies granted customer herein shall be cumulative with all other rights and remedies available to customer under law.
3. Customer may terminate this agreement for any reason upon sixty (60) days prior written notification to Dealer.

K. Repair Warranty:

1. Dealer warrants that all repair work performed by its service personnel will be free of defects in workmanship under normal use and service for a period of 90 days provided. However, the foregoing warranty shall not be applicable (a) where the customer or any other party has mishandled, misused, or failed to properly store, maintain, or operate the

- equipment, or (b) where the equipment has been serviced, repaired, maintained, or modified by any person or party other than the dealer except for the performance by customer of its obligations under Section F of this agreements.
2. Dealer's liability arising from any claims of breach of the above warranty or similar claim shall be limited solely to repair or replacement of any parts of the equipment, which shall, within the 90 days period specified above, be identified to dealer and which an inspection shall disclose to dealer's satisfaction to have been defective in normal use and service. Dealer's liability for all labor costs in connection with the repair or replacement of parts shall be based solely on rates applicable during normal working hours.
 3. This section sets forth customer's sole and exclusive remedy in connection with repair work by dealer and customer hereby agrees that the dealer shall in no event be liable or responsible for any claimed incidental, consequential, or special damages, or any other cost, expense, loss, or claim (including those arising from injuries to person or property, lost profits, or other economic loss). The express warranty set forth above is in lieu of all other warranties of whatsoever kind, whether express or implied by law and all other such warranties are hereby disclaimed.

L. Miscellaneous

1. Any notice given by customer or dealer shall be deemed sufficiently given if delivered in person, or if mailed to the other party and the address herein above set forth, or other by United States Registered or Certified Mail.
2. No waiver of any provision of this agreement by dealer shall constitute a waiver of any other provision (whether or not similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided by dealer in writing. No delay or omission by dealer to exercise any right, power or remedy under this agreement, or otherwise available to it, shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof.
3. This agreement, and the Exhibits attached hereto, contain the entire agreement between dealer and customer with regard to the subject matter hereof; and no representations, inducements, promises, or agreements between dealer and customer not embodied herein shall be of any force of or effect. No changes may be made in this agreement which shall be binding upon the parties unless approved in writing by the parties.
4. In case one or more provision in this agreement shall be deemed invalid, illegal, or unforeseeable in any respect, the validity, legality, and enforceability of the remaining provisions contained shall in no way be affected or impaired thereby. Time is of the essence under this agreement. This agreement shall be governed in all respects by the laws of Florida. This agreement shall be binding upon, and shall inure to the benefit of dealer and customer and their respective successors and assigns. Jurisdiction and venue shall be in the courts of Polk County, Florida.
5. Either party upon 30-day notice may terminate this agreement in accordance with Section B-3 (Terms of this agreement).

Executed by the fully authorized representative of the City of Lakeland, Florida.

On this _____ day of _____, 2019.

Name (signed): _____

Name (printed): _____ Title: _____

Accepted by: _____ On behalf of Flagler Construction Equipment.



8418 Palm River Road
Tampa, FL 33619
(813)630-0077

Customer Support Agreement

Total Maintenance and Repair (TM&R) Agreement

City of Lakeland
1140 E. Parker St
Lakeland, FL 33801

A. Equipment Covered and Charges:

(1) 2019 Volvo L60H #3 Serial Number: To be determined

1. \$7.25 Per Hour/ 5000 Total Hours
2. Starting Hours 5
3. Ending Hours 5005
4. Start Date 3/4/2020
5. End Date 3/4/2025

B. Terms of Agreement:

1. 60 Months/ 5000 Hour Limit, or whichever occurs first.
2. This agreement commences upon delivery date of the above equipment or the finding date to Flagler Construction Equipment on leased machines.

*****Standard Exclusions: Lights, Glass, Wheels, Radio, Top Off Fluids, Overtime and Transport of Machine to Shop for Repairs.*****

C. Maintenance Payments:

1. Monthly payments:
 - i. Customer agrees to pay Flagler Construction Equipment at the address shown above, the aggregate monthly charge as listed in Section A, on the tenth calendar day of each month during the tenure of this agreements, plus all applicable overtime charges outstanding, as specified on Dealer's invoices.
 - ii. In the event any engine hour meter fails to function properly, thereby making the meter reading unavailable or unreliable, then the hours of use for such month shall be deemed to be the average of the monthly usage of that unit of equipment for the preceding two months.

- iii. In the event the allowed hours expire before the allotted time the customer will be responsible for the remaining months due (if paying flat monthly rate).
2. Late Payment Charges: If the payment required under the agreements, or any portion thereof, remains due and payable for a period of 45 days or longer, such payment or portion thereof shall be subject to a finance fee of 1% per month in accordance with Florida Statute §218.74 et seq., The Local Government Prompt Payment Act.; calculated on such amount from the date on which it became due and payable as provided hereunder until actually paid. This late payment charge is equal to an ANNUAL PERCENTAGE RATE of 12 percent.

D. Operation and Care of Equipment:

Customer hereby agrees to: (1) operate the equipment only at the location designated herein above, (2) exercise reasonable care in the operation, maintenance, and storage of the equipment, (3) operate the equipment only within its rated capacity, and solely in the conduct of customer's business, (4) permit the equipment to be operated only by customer's employees trained in operation, and (5) reimburse dealer for any and all repairs, replacement, or other expenses resulting from customer's failure to comply with the foregoing provisions or from accidents, abuse, overload, negligence, weather damage, vandalism, acts of God, or from customer's failure to perform its obligations with respect to the equipment set forth in Section F hereof.

E. Dealer's Obligations:

1. Perform all routine and emergency repair service as required to maintain the equipment in good operating condition.
2. All repairs, other than tire and wheel replacement, ground engaging tools, radio, lights and glass items are the responsibility of Flagler Construction Equipment except as excluded by Section D, Item 5.
3. Perform major repair and overhauls, as required.
4. Furnish all labor and parts needed for 500-hour intervals and above as per owner's manual except for fuels, make-up oils, and routine greasing.
5. Provide, at no charge to customer, travel time and mileage required to perform repairs at customer's job sites except charges that customer is required to pay or reimburse dealer as provided in Section D hereof.
6. Flagler Construction Equipment will perform all repair and normal maintenance between the hours of 7:30 a.m. and 4:00 p.m. Monday through Friday, holidays excepted. Flagler Construction Equipment will perform maintenance and repairs outside of those hours as requested by the customer at the rate equal to our published overtime rate, less the published standard hourly rate.
7. Dealer will perform routine repair service on a unit when hour meter reading so indicates service interval.
8. Dealer will supply on request, proof of insurance coverage as per customer specifications.
9. Flagler Construction Equipment will give customer a minimum of two (2) weeks advance notice of planned repairs or overhauls which will require a unit to be out of service during normal operating hours.
10. Flagler Construction Equipment will provide, at no cost to the City of Lakeland, a temporary replacement unit if any warranty related repair (or damage caused by Flagler

Construction Equipment during the repair process) will take in excess of 3 working days to repair.

F. **Customers Obligations:**

1. Provide, at no charge to Dealer, an adequate area on customer's premises to permit maintenance and service work to be performed in a safe and reasonably protected, ventilated, and lighted environment.
2. Required daily and weekly inspections and maintenance to be performed and recorded on each unit of equipment, to make such reports available to the dealer upon request. To require that customer's supervisor who is responsible for the equipment to be notified promptly of any item requiring action or repair and to notify dealer promptly of such needed repairs, replacements, or adjustments. Daily and weekly inspections will be conducted as specified by checklists provided by Flagler Construction Equipment.
3. Transportation of the equipment to and from Flagler Construction Equipment for necessary repairs that cannot be completed in the field. (This is only in the event that the repairs are a result of damages caused by the City of Lakeland. In the event that the repairs are a result of a warrantable failure or caused by Flagler Construction Equipment during the repair process, all transportation expenses will be incurred by Flagler Construction Equipment.)
4. Make each unit of the equipment available promptly for dealer's employees to perform scheduled "Planned Maintenance Service" or other necessary repairs. In addition to all other payments required hereunder, customer agrees to pay dealer for the waiting time or wasted trip of dealer's employees which results from customer's failure to have a unit of equipment available within 30 minutes after requested by dealer's employees.
5. Instruct and supervise operators of the equipment so as to prevent (a) violation of the instruction and good operating procedures as set forth in the Operator's Manual, (b) continued operation of a unit of equipment which is in obvious need of repair and where such continued use may increase or accelerate the necessary repairs, and (c) use of a unit which develops or has an unsafe condition.
6. Furnish all make-up oils for the equipment.
7. Acquire and install, at customers expense, all replacement tires and wheels.
8. Customer is responsible for lights, glass, radio, and ground engaging tools. Also, any attachments not listed on the coverage page (Section A), excluding base machine.

G. **Indemnification:**

To the extent permitted by law and subject to the monetary limitations set forth in Florida Statute §768.28, customer agrees to indemnify and hold dealer harmless from any and all losses, liabilities, damages, claims, costs, and expenses (including reasonable attorney's fees) arising out of the negligent operation or maintenance or willful misconduct of the equipment by customer or customer's employees negligent operation or maintenance or willful misconduct of dealer or dealer's employees, including any claims of damages for injury to persons or property.

H. **Excuse from Performance:**

Customer hereby agrees that dealer shall have no obligations to repair or otherwise maintain any unit of equipment if such repair or maintenance is prevented or substantially hindered by fire, floods, explosions, strikes or other labor disputes, war or civil

insurrections, accidents, acts of God, government regulations, delays in transportation, or due to any causes which is beyond the dealers control.

I. Default:

1. The occurrence of any one or more of the following events shall constitute default by customer under this agreement. (a) Failure of customer to perform any obligation of the customer set forth in this agreement, which failure shall not have been cured in full within 10 days after dealer gives written notice thereof to customer by Certified Mail. (b) Customer knowingly or willfully tampers with an engine hour meter on the equipment without dealer's prior consent in an attempt to mislead dealer as to the actual number of hours run. (c) Customer's making or permitting any unauthorized use, assignment, or transfer of a unit of the equipment. (d) The institution by or against customer of any proceedings under any bankruptcy reorganization, or other insolvency laws. (e) The cessation by Customer of its normal business operations.
2. The occurrence of any one or more of the following events shall constitute default by dealer under this agreement. (a) Failure of dealer to perform any obligations of dealer set forth in this agreement, which failure shall not have been cured in full within 10 days after customer gives written notice thereof to dealer by Certified Mail. (b) The institution by or against dealer of any proceedings under bankruptcy, reorganization, or other insolvency laws. (c) The cessation by dealer of its normal business operations.

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- equipment, or (b) where the equipment has been serviced, repaired, maintained, or modified by any person or party other than the dealer except for the performance by customer of its obligations under Section F of this agreements.
2. Dealer's liability arising from any claims of breach of the above warranty or similar claim shall be limited solely to repair or replacement of any parts of the equipment, which shall, within the 90 days period specified above, be identified to dealer and which an inspection shall disclose to dealer's satisfaction to have been defective in normal use and service. Dealer's liability for all labor costs in connection with the repair or replacement of parts shall be based solely on rates applicable during normal working hours.
 3. This section sets forth customer's sole and exclusive remedy in connection with repair work by dealer and customer hereby agrees that the dealer shall in no event be liable or responsible for any claimed incidental, consequential, or special damages, or any other cost, expense, loss, or claim (including those arising from injuries to person or property, lost profits, or other economic loss). The express warranty set forth above is in lieu of all other warranties of whatsoever kind, whether express or implied by law and all other such warranties are hereby disclaimed.

L. Miscellaneous

1. Any notice given by customer or dealer shall be deemed sufficiently given if delivered in person, or if mailed to the other party and the address herein above set forth, or other by United States Registered or Certified Mail.
2. No waiver of any provision of this agreement by dealer shall constitute a waiver of any other provision (whether or not similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided by dealer in writing. No delay or omission by dealer to exercise any right, power or remedy under this agreement, or otherwise available to it, shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof.
3. This agreement, and the Exhibits attached hereto, contain the entire agreement between dealer and customer with regard to the subject matter hereof; and no representations, inducements, promises, or agreements between dealer and customer not embodied herein shall be of any force or effect. No changes may be made in this agreement which shall be binding upon the parties unless approved in writing by the parties.
4. In case one or more provision in this agreement shall be deemed invalid, illegal, or unforeseeable in any respect, the validity, legality, and enforceability of the remaining provisions contained shall in no way be affected or impaired thereby. Time is of the essence under this agreement. This agreement shall be governed in all respects by the laws of Florida. This agreement shall be binding upon, and shall inure to the benefit of dealer and customer and their respective successors and assigns. Jurisdiction and venue shall be in the courts of Polk County, Florida.
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On this _____ day of _____, 2019.

Name (signed): _____

Name (printed): _____ Title: _____

Accepted by: _____ On behalf of Flagler Construction Equipment.