

## LEASE WITH OPTION TO PURCHASE AGREEMENT

The Lease with Option to Purchase Agreement, dated as of July 20, 2021, by and between FIRST OPTION BANK, of Osawatomie, Kansas, hereinafter referred to as LESSOR, and COUNTY OF ATCHISON, KANSAS, a municipal Corporation, hereinafter referred to as LESSEE. Lessor desires to lease the Equipment described in Exhibit "A" to Lessee, and Lessee desires to lease the Equipment from Lessor subject to the terms and conditions of this Agreement which are set forth below.

### I. Lessee Warranties

Section 1.1. Lessee represents, warrants and covenants as follows for the benefit of Lessor or its assignees:

- (a) Lessee is a public body corporate and politic and is duly organized and existing under the Constitution and laws of the State. Lessee will do or cause to be done all things necessary to preserve its existence as a body corporate and politic. Lessee is a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended, (the "Code") or a constituted authority authorized to issue obligations on behalf of a state or local government unit within the meaning of Treasury Regulation 1.103-1(b).
- (b) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement. Lessee has duly authorized the execution and delivery of this Agreement by appropriate official action. Lessee has complied with all the proper procedures, regulations, requirements and actions of its governing body. The Officer of Lessee executing this Agreement has the authority to execute and deliver this Agreement. This Agreement constitutes a legal, valid, binding and enforceable obligation of the Lessee in accordance with its terms.
- (c) Lessee has complied with all public bidding laws and requirements and all other similar State or Federal laws which may be applicable to this Agreement.
- (d) Lessee will take no action that would cause the Interest Portion of the Rental Payments it pays to Lessor to become includible as gross income for federal income tax purposes under the Internal Revenue Code of 1986.

- (e) Lessee shall use the Equipment only for traditional government purposes. Lessee shall not make any use the Equipment or any proceeds associated with the Equipment in any manner that would cause the creation of an unqualified “Private Activity Bond” as defined under Section 103(b)(1) of the “Code” or an “Arbitrage Bond” as defined under Section 103(b)(2) of the “Code”.
- (f) Should Lessee fail to use the Equipment for traditional government purposes and IRS disallows the tax-exempt status of the Interest Portion of the Rental Payments as a result of such failure, then Lessee shall be required to pay additional sums to the Lessor or its assignees so as to bring the after tax yield on this Agreement to the same level as the Lessor or its assignees would attain if the transaction continued to be tax-exempt.
- (g) Lessee hereby designates the Agreement as a “qualified tax-exempt obligation” as defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986. The aggregate face amount of all tax-exempt obligations (excluding private activity bonds other than qualified 501 (c)(3) bonds issued or to be issued by the Lessee and all subordinate entities thereof during the Issuance Year is not reasonably expected to exceed ten million (\$10,000,000) dollars.
- (h) Upon request by Lessor, Lessee will annually provide Lessor with current financial statements, budgets, proofs of appropriation for the ensuing budget year and such other financial information relating to the ability of Lessee to continue this Agreement.
- (i) Lessee has never non-appropriated funds under an Agreement similar to this Agreement.
- (j) Lessee warrants that there is no pending litigation in any tribunal which challenges Lessee’s authority to enter into this agreement.

## II. Acquisition of Equipment, Rental Payments, and the Purchase Option Price

Section 2.1. Acquisition. Lessee shall order the Equipment, cause the Equipment to be delivered and installed and pay all costs connected therewith.

Section 2.2. Rental Payments. Lessee shall pay Rental Payments exclusively to Lessor or its assignees in lawful, legally available money of the United States of America.

The payments shall be sent to the location specified by the Lessor or its assignees. The amount and date of each Rental Payment shall be paid as set forth on Exhibit "B".

Section 2.3. Rental Payments Constitute a Current Expense.

Lessor and Lessee understand and intend that the obligations of the Lessee to pay Rental Payments under this Agreement shall constitute a current expense of Lessee for such budget year and shall not constitute an indebtedness under the statutory laws of the State. Nothing herein shall constitute a pledge by Lessee of any taxes or other moneys other than the moneys lawfully appropriated by Lessee in Lessee's annual budget.

Section 2.4 Purchase Option Price. Upon 30 days written notice and provided there is no Event of Default, Lessee shall have the option to pay the Purchase Option Price which corresponds to the current Payment Date set forth on Exhibit "B". If Lessee chooses this option and pays the Purchase Option Price to Lessor, then Lessor will transfer any and all of its rights, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except that Lessor will warrant to Lessee that the Equipment is free and clear of any liens created by Lessor.

III. Non-Appropriation

Section 3.1. Non-Appropriation. If insufficient funds are available in Lessee's budget for the next budget year to make the Rental Payments for the next Renewal Term and the funds to make such Rental Payments are otherwise unavailable by any means whatsoever, then Lessee shall have the option to non-appropriate the funds to pay the Rental Payments for the next Renewal Term. If Lessee chooses this option, then all obligations of the Lessee under this Agreement regarding Rental Payments for all remaining Renewal Terms shall be

terminated at the end of the then current Original Term or Renewal Term without penalty, liability or expense to the Lessee of any kind. Lessee agrees that its Budget Officer or other person(s) in charge of preparing the annual budget shall include in its tentative budget the appropriation request for the funds to make the Rental Payments for the Equipment for the next Renewal Term.

Section 3.2. Notice. Lessee shall notify Lessor or its assignees ninety (90) days before the end of the then current Original Term or Renewal Term if Lessee has chosen not to appropriate the funds for the Rental Payments for the next Renewal Term. If Lessee chooses to non-appropriate the funds within ninety (90) days of the then current Original Term or Renewal Term, then Lessee shall notify Lessor or its assignees immediately after such decision is made.

Section 3.3. Lessee Intent. Lessee fully intends to budget and appropriate the funds necessary to pay all the Rental Payments for the original Term and each successive Renewal Term until all Rental Payments listed on Exhibit "B" have been paid. Lessee will use all reasonable and lawful means available to secure the appropriation of money for each successive Renewal Term.

IV. Insurance, Damage to Equipment, Insufficiency or Proceeds, Lessee Liability, Indemnification

Section 4.1. Insurance. Lessee shall maintain both casualty insurance and liability insurance at its own expense. Lessee shall be solely responsible for selecting the insurer(s) and for making all premium payments and ensuring that all policies are continuously kept in effect during the period when Lessee is required to make Rental Payments.

- (a) Lessee shall insure the Equipment against any loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonable required by Lessor in an amount at least equal to the then applicable Purchase Price of the Equipment. Alternatively, Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment but also other properties.
- (b) The liability insurance shall insure Lessor from liability and property damage in any form and amount satisfactory to Lessor.
- (c) With Lessor's prior written consent, Lessee may self-insure against the casualty risks and liability risks described above.
- (d) All insurance policies issued or affected by this Section shall be so written or endorsed such that the Lessor and its assignees are named insureds and loss payees and that all losses are payable to Lessee and lessor or its assignees as their interests may appear. Each policy issued or affected by this Section shall contain a provision that the insurance company shall not cancel or materially modify the policy without first giving thirty (30) days advance notice to Lessor or its assignees. Lessees shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

Section 4.2. Damage to or Destruction of Equipment. Lessee assumes the risk of loss or damage to the Equipment. If the Equipment or any portion thereof is lost, stolen, damaged or destroyed by fire or other casualty, Lessee will immediately report all such losses to all possible insurers and take the proper procedures to attain all insurance proceeds. Lessee and Lessor will cause the Net Proceeds of any insurance claim to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment. Alternatively, Lessee may apply the Net Proceeds towards the Purchase Option Price. Any balance of the Net Proceeds remaining after such work has been completed or after the Purchase Option Price has been paid shall belong to Lessee. The term "Net Proceeds" shall mean the amount remaining from gross proceeds of any

insurance payment after deducting all expenses, including attorney's fees, incurred in the collection thereof.

Section 4.3. Insufficiency of Net Proceeds. If there are no Net Proceeds for whatever reason or if the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement of the Equipment, then lessee shall complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds. If Lessee chooses to apply the Net Proceeds to the Purchase Option Price and the Net Proceeds are insufficient to pay the Purchase Option Price, then Lessee shall pay the deficiency.

Section 4.4. Lessee Liability. Lessee assumes all risks and liabilities for injury to or death of any person or damage to any property in any manner arising out of the installation, operation, possession, storage or use of the Equipment whether such injury or death or property damage be with respect to agents or employees of Lessee or with respect to third parties.

Section 4.5. Indemnification. To the extent permitted by law, Lessee shall protect, hold harmless and indemnify Lessor and its assignees from all liability, obligation, losses, claims and damage whatsoever, regardless of the cause thereof arising out or as a result of the entering into this Agreement, the ownership of the Equipment and the ordering, acquisition, installation, operation, possession, storage, or use of any item of the Equipment. This would include all expenses incurred by Lessor in defending any claims or actions filed against them including attorney fees. The indemnification arising under this

paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

V. Maintenance, Permits, Licenses, Liens and Personal Property

Section 5.1. Maintenance. Lessee shall keep the Equipment in good repair and working order. Lessor shall have no obligation to inspect, test, service, maintain, repair or make improvements or additions to the Equipment under any circumstances. Upon the request of Lessor, Lessee will enter into a maintenance contract for the Equipment with Vendor. Lessee will be liable for all damage to the Equipment, other than normal wear and tear, caused by Lessee, its employees or its agents.

Section 5.2. Permits, Licenses, Taxes and Utilities. Lessee shall obtain all permits and licenses necessary for the installation, operation, possession, storage or use of the Equipment. Lessee shall pay all taxes and other charges of any kind which are lawfully assessed against or with respect to the Equipment. Lessee shall pay all gas, water, steam, electricity, heat, power and other charges incurred in the installation operation, possession, storage or use of the Equipment. Lessee shall pay all other charges lawfully made by and governmental body that may be secured by a lien or encumbrance of the Equipment.

Section 5.3 Liens or Encumbrances. Lessee shall not during the term of this Agreement create, incur or assume any levies, liens and encumbrances of any kind except those created by this Agreement. Lessee shall take all proper measures to promptly release any levies, liens or encumbrances against the Equipment. Lessee shall be liable to Lessor for any costs incurred by Lessor in discharging such levies, liens or encumbrances.

Section 5.4. Personal Property. The Equipment is and shall at all times be and remain personal property regardless whether Equipment or any part thereof may become in any manner affixed or attached to real property.

Section 5.5 Inspection of Equipment. Lessee shall allow Lessor to examine and inspect the Equipment at all reasonable times.

#### VI. Title and Security Interest

Section 6.1. Title. Title to the Equipment shall vest in Lessee when Lessee acquires and accepts the Equipment. Title to the Equipment will automatically revert back to the lessor in the event Lessee non-appropriates or in the event Lessee defaults. In either of such events, Lessee shall execute and deliver to lessor such documents as Lessor may request to evidence the passage of legal title to the Equipment to Lessor. Once title reverts back to Lessor, lessee has no further interest in the Equipment.

Section 6.2 Security Interest. To secure the payment of all Lessee's obligations under this Agreement, Lessee hereby grants to Lessor a Security Interest under this Agreement, Lessee hereby grants to Lessor a Security Interest under the Uniform Commercial Code constituting a first lien on the Equipment described more fully on Exhibit "A". The security interest established by this section includes not only all additions, attachments, repairs and replacements to the Equipment, but also all proceeds therefrom. Lessee agrees to execute such additional documents which Lessor deems necessary or appropriate to establish and maintain its security interest and the security interest of any assignee of Lessor in the Equipment.

#### VII. Warranties.

Section 7.1. Lessee Assumes Responsibility. The Equipment and the Vendor have been selected by Lessee. Lessor shall have no responsibility for the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Vendor or its sales representative of the order submitted, or any delay or failure by the Vendor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee.

Section 7.2. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE ARISING OUT OF THE INSTALLATION, OPERATION, POSSESSION, STORAGE OR USE OF THE EQUIPMENT BY LESSEE. LESSEE'S SOLE REMEDY FOR THE BREACH OF SUCH WARRANTIES SHALL BE AGAINST THE VENDOR OF THE EQUIPMENT AND NOT THE LESSOR.

## VII. Default

Section 8.1. Events of Default Defined. The following events shall constitute an "Event of Default" under this Agreement:

- (a) Failure by Lessee to pay any Rental Payment listed on Exhibit "B" for ten (10) days after such payment is due according to the Payment Date listed on Exhibit "B".
- (b) Failure to pay any other payment required to be paid under this Agreement at the time specified herein and a continuation of said failure for a period of three

(3) days after telephonic notice by Lessor that such payment must be made. If Lessee continues to fail to pay any payment after the three day telephonic notice by Lessor that such payment must be made. If Lessee continues to fail to pay any payment after the three day telephonic notice expires, then Lessor may, but will not be obligated to, make such payments and charge Lessee for all costs incurred plus interest at the highest lawful rate.

- (c) Failure by Lessee to observe and perform any covenant, condition, promise or duty under this Agreement for a period of thirty (30) days after written notice specifying such failure is given to Lessee by Lessor, unless Lessor agrees in writing to an extension of time. Lessor will not unreasonably withhold its consent to an extension of time if corrective action is instituted by lessee. Subsection (c) does not apply to Rental Payments and other payments discussed above.
- (d) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement which proves to be false, incorrect or misleading on the date when made regardless of Lessee's intent and which materially adversely affects the rights or security of Lessor under this Agreement.
- (e) Any provision of this Agreement which ceases to be valid for whatever reason and the loss of such provision would materially adversely affect the rights or security of Lessor.
- (f) Lessee admits in writing its inability to pay its obligations. Lessee defaults on one or more of its other obligations. Lessee applies or consents to the appointment of a receiver or a custodian to manage its affairs. Lessee makes a general assignment for the benefit of creditors.

Section 8.2. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right to take one or any combination of the following remedial steps:

- (a) With or without terminating this Agreement, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Budget Year to be immediately due and payable.
- (b) With or without terminating this Agreement, Lessor may require Lease to promptly redeliver any or all of the Equipment to Lessor. For such portions of the Equipment freight prepaid on board a carrier as Lessor shall specify to the location specified by Lessor. For equipment which cannot be easily packaged and shipped, Lessee shall deliver the Equipment at Lessee's cost to such place within the State as Lessor shall specify. If Lessee fails to redeliver the Equipment, Lessor may enter the premises where the Equipment is located and

retake possession of the Equipment and charge Lessee for cost incurred. Notwithstanding that Lessor has taken possession of the Equipment, Lessee shall still be obligated to pay the remaining Rental Payments due up until the end of the then current Original Term or Renewal Term. Lessee will be liable for any damage to the Equipment caused by Lessee or its employees or agents.

(c) Lessor will have the right to resell or release the Equipment. If Lessor releases the Equipment for an amount less than the amount they received from Lessee, then Lessor can continue to hold the Lessee liable for the difference in payments up until the end of the then current Original Term or Renewal Term. If Lessor sells the Equipment for an amount less than the then applicable Purchase Option Price, then Lessor can hold Lessee liable for as much of the deficiency as can be paid from the aggregate of the remaining payments in the then current Original Term or Renewal Term.

(d) Lessor may take whatever action at law or in equity that may appear necessary or desirable to enforce its rights as the owner of the Equipment.

Section 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement 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 shall be construed to be a waiver thereof.

Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives.

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Jack Bower, Chairman for Atchison County, Kansas

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Daniel R Delaney, Senior Vice President

FIRST OPTION BANK  
Osawatomie, Kansas

