

RESOLUTION NO. 19-15

WHEREAS, **CITY OF SCAPPOOSE** (the "Lessee") is a validly existing political subdivision of the State of **OR** (the "State"), existing as such under and by virtue of the Constitution, statutes and laws of the State;

WHEREAS, the City Council (the "Governing Body") has the power under the laws of the State to lease or purchase personal property for use by the Lessee; and the Governing Body has determined, and hereby determines, that it is in the best interests of the Lessee to enter into a Municipal Lease Agreement with Feenaughty Machinery CO ("Lessor") which lease will be assigned to Wells Fargo Vendor Financial Services, LLC ("Assignee") pursuant to an assignment by Lessor to Assignee (such Municipal Lease Agreement and Assignment are herein together referred to as the "Lease") for the purpose of financing the acquisition of the equipment (the "Equipment") described in Exhibit A to the Lease, and that the use of such Equipment is essential to the Lessee's proper, efficient and economic operation;

WHEREAS, the Governing Body has taken the necessary and appropriate steps under applicable law, including, without limitation, any public bidding requirements, to arrange for the acquisition and financing of the Equipment under the Lease;

WHEREAS, the Lease terminates, and the Lessee's obligations thereunder are extinguished, if the Governing Body fails to appropriate money for the ensuring fiscal year for the payment of the amounts due in such fiscal year;

WHEREAS, there has been presented to the Governing Body the form of the Lease, including Exhibit A thereto, which the Lessee proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing of the Equipment; and it appears that the Lease and its Exhibit A are in appropriate form and are appropriate instruments for the purposes intended.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY AS FOLLOWS:

Section 1. That all actions of the Lessee in effectuating the Lease are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Lease.

Section 2. That sums be and hereby are allocated from the budget of the Governing Body for the fiscal year ending on 2019, sufficient to meet all obligations of the Lessee under the Lease, including without limitation ~~Monthly~~ Yearly Payment ~~Rent~~ in the amount of \$40,667.25 ~~per month~~. *AB* *AB*

Section 3. The Governing Body hereby approves the acquisition by the Lessee of the Equipment described in Exhibit A to the Lease, such acquisition to be financed by Lessor/Assignee pursuant to and in accordance with the terms of the Lease, which will be a valid, legal and binding obligation of the Lessee enforceable in accordance with its terms. The form and content of the Lease are in all respects authorized, approved and confirmed and the City Manager (Michael J. Sykes) of the Lessee, or his designee is authorized, empowered and directed to execute and deliver the Lease and the other Documents (as defined in the Lease) for and on behalf of the Lessee in substantially the form attached hereto, but with such changes, modifications, additions or deletions therein as shall to him seem necessary, desirable or appropriate.

Section 4. Pursuant to Section 265(b)(3)(B)(i) of the Internal Revenue Code of 1986 (the "Code"), the Lessee hereby specifically designates the Lease as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code and the Lessee represents it will not designate more than ten million dollars (\$10,000,000) of obligations issued by the Lessee in the calendar year in which the Lease and Exhibit A thereto are executed and delivered as such "qualified tax-exempt obligations." The aggregate face amount of all tax-exempt obligations issued or to be issued by the Lessee and all subordinate entities thereof during calendar year 2019 is not reasonably anticipated to exceed ten million dollars (\$10,000,000).

BE IT FURTHER RESOLVED THAT this Resolution take effect from and after its passage.

PASSED AND ADOPTED by the City Council of Scappoose and signed by me, and the City Recorder in authentication of its passage this 15th day of July, 2019.

CITY OF SCAPPOOSE, OREGON



Scott Burge, Mayor

Attest:



Susan M Reeves, MMC, City Recorder

Municipal Lease Agreement (Tax-Exempt) # 9423632-001

This Municipal Lease Agreement ("Lease") is dated and effective as of _____ ("Effective Date"), between FEENAUGHTY MACHINERY CO which, together with any successor or assignee, is referred to as "Lessor", and the Lessee indicated below which, together with any successor or permitted assignee, is referred to as "Lessee".

A. LESSEE: LEGAL NAME: CITY OF SCAPPOOSE
 TRADE NAME:
 ADDRESS: 33568 E COLUMBIA AVE, SCAPPOOSE, OR 97056
 CONTACT AND TELEPHONE:
 LEGAL ENTITY (give type of political entity):
 FISCAL YEAR OF LESSEE ENDS:

B. EQUIPMENT LOCATION: STREET ADDRESS: 33568 E COLUMBIA AVE
 CITY, STATE ZIP: SCAPPOOSE, OR 97056

C. DESCRIPTION OF EQUIPMENT

<u>Manufacturer</u>	<u>Equipment Description</u> <small>(Type/Model/Serial/ID Numbers)</small>	<u>Number of Units</u>	<u>Cost</u>
KOBELCO	SK140SRLC-5; KOBELCO HYDRAULIC EXCAVATOR; YH08-13342	1	Equipment Price: \$162,709.00
Equipment Total Cost:			\$ 162,709.00

D. TRANSACTION TERMS:

Scheduled Rent: See Amortization Table
 (Including any applicable Taxes)

Fiscal Period Begins: _____ and ends _____ (insert day and month)

Term: 48 Payment Periods

Each Payment Period equals: 1 (One) Monthly Payment Semiannual Payment
 Quarterly Payment Annual Payment

Scheduled Rent due the 8th day of Payment Period

Last Funding Date: 8/8/19

Advance Rent: \$ 40,677.25 (Including any applicable taxes)

Purchase Option: \$ 1.00

E. ADDITIONAL DOCUMENTATION:

Additional documents required from Lessee (see Section F (2)):

- Amortization Table
- Resolutions
- Incumbency Certificate
- Counsel Opinion
- Form 8038G or GC
- Other:

LESSEE AGREES TO THE INTEREST RATE SET FORTH IN THE AMORTIZATION TABLE AND THE OTHER TRANSACTION TERMS SET FORTH HEREIN.

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F. LEASE TERMS AND CONDITIONS:

1. LEASING. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the above described equipment ("*Equipment*"), as provided herein.

2. CONDITIONS. Lessor is not obligated to lease the Equipment unless: (i) Lessor has confirmed to its satisfaction that the Equipment has been delivered to and irrevocably accepted by Lessee for lease from Lessor; (ii) if required by Lessor, Lessor has received from Lessee in form acceptable to Lessor (A) a resolution enacted by Lessee's governing body, authorizing this Lease and the appropriation of funds for this Lease during the Lessee's current fiscal year; (B) an opinion of Lessee's counsel; (C) a form 8038G or GC; and (D) any other documents required by Lessor. Lessee irrevocably authorizes Lessor to adjust the Equipment Price and Equipment Total Cost by no more than 15% to account for equipment change orders or returns which are accepted by Lessor, invoicing errors and similar matters, and agrees to any resulting adjustments in the TRANSACTION TERMS and ADDITIONAL DOCUMENTATION stated above. Lessor will send Lessee a written notice stating the final Equipment Price, Equipment Total Cost, TRANSACTION TERMS (including a revised Amortization Table, if necessary) and ADDITIONAL DOCUMENTATION, if different from those stated above. Lessee agrees that delays in delivery of the Equipment shall not affect the validity of this Lease.

3. TERM AND RENT. (a) The Term begins on the acceptance by Lessee of the Equipment ("*Lease Commencement Date*"), and continues until the earlier of: (i) payment in full of all Scheduled Rent and all other amounts due hereunder, (ii) a permitted termination pursuant to Non-Appropriation (Section 7); or (iii) Lessor's termination of this Lease after Default (Section 13). (b) The first Payment Period commences on the Lease Commencement Date, and Scheduled Rent accrues from such Lease Commencement Date. Each Scheduled Rent payment consists of principal plus interest derived in the manner stated in the Amortization Table. The first Scheduled Rent is payable either at the beginning or the end of the first Payment Period as indicated in the Transaction Terms and on same day of each Payment Period thereafter. If Scheduled Rent is not paid when within 10 days of its due date, Lessee agrees to pay a late charge equal to the greater of \$35.00 or five cents (\$0.05) per dollar on, and in addition to, such Scheduled Rent, but not exceeding the lawful maximum, if any. Advance Rent, if any, is applied to the first Scheduled Rent Payment due. Any excess Advance Rent will be applied towards the payment of any overdue obligation of Lessee or to the final Scheduled Rent payment(s). Lessor is not required to: (i) refund any Advance Rent or Scheduled Rent; (ii) pay any interest on Advance Rent; or (iii) keep Advance Rent in a separate account. (c) Upon the expiration or other termination of this Lease, until Lessee has complied with Section 6(b) ("*Return of Equipment*") or has acquired the Equipment pursuant to Section 14 ("*Option*"), Lessee shall pay Lessor as liquidated damages for lost rentals and not as a penalty, such payment to be computed on a daily basis (with one day's Rent being 1/360th of the Scheduled Rent payable in a twelve month period) until the Equipment is returned or purchased. Lessee's obligations and all other provisions of this Lease continue until such time.

4. REPRESENTATIONS AND WARRANTIES OF LESSEE. Lessee represents and warrants to Lessor that as of the date of, and throughout the Term of, this Lease: (a) Lessee is the entity indicated on the first page hereof and is a state or a political subdivision of the state in which it is located. Lessee is organized and existing under the Constitution and laws of said state, and is authorized to enter into and to carry out its obligations under this Lease, any documents relative to the acquisition of the Equipment and any other documents required to be delivered in connection with this Lease (collectively, the "*Documents*"). (b) The Documents have been authorized, executed and delivered by Lessee in accordance with all applicable laws, rules, ordinances, and regulations. The Documents are valid, legal, binding agreements, and are enforceable in accordance with their terms. The person(s) signing the Documents have the authority to do so, are acting with the full authorization of Lessee's governing body, and hold the offices indicated below their signatures, each of which are genuine. (c) The Equipment is essential to the immediate performance of a governmental or proprietary function by Lessee within the scope of its authority and will be used during the Term of this Lease only by Lessee and only to perform such function. Lessee intends to use the Equipment for the entire Term of this Lease and will take all necessary actions to include in its annual budget any funds required to fulfill its obligations for each fiscal year during such Term. (d) Lessee has complied fully with all applicable law governing open meetings, public bidding and appropriations required in connection with this Lease and the acquisition of the Equipment. (e) Unless Lessee has otherwise notified Lessor in writing, Lessee is exempt from all personal property taxes and from all sales and/or use taxes in connection with the Equipment and this Lease. (f) Lessee's obligations to pay Scheduled Rent and Rent under this Lease constitute a current expense and not a debt of Lessee under applicable state law. No provision of this Lease constitutes a pledge of the tax or general revenues of Lessee, and any provision which is so construed by a court of competent jurisdiction is void from the inception of this Lease. (g) All payments due under the Lease for the current Fiscal Year are within the fiscal budget for such year, and are included within an unrestricted and unencumbered appropriation currently available for the lease/purchase of the Equipment. (h) The financial statements, certificates or summaries relating to Lessee's financial condition, fiscal budget or the assessment and collection of taxes delivered by Lessee to Lessor fairly present the activity and position of the Lessee as of the stated date(s) and period(s). Since the date of the most recently delivered certificate or summary, there has been no material change in the budget, and no material adverse change in the financial condition of, or the level of assessment or collection of taxes by, the Lessee.

5. LESSEE'S AGREEMENTS. (a) LESSEE AGREES THAT IT WILL KEEP THE EQUIPMENT FREE AND CLEAR FROM ALL CLAIMS, LIENS AND ENCUMBRANCES AND WILL NOT ASSIGN, SUBLET, OR GRANT A SECURITY INTEREST IN THE EQUIPMENT OR IN THIS LEASE. (b) Lessee agrees to notify Lessor immediately in writing of any change in Lessee's name or in the location of its chief administrative office. Lessor may inspect the Equipment during normal business hours. (c) Upon Lessor's reasonable request, Lessee will deliver to Lessor a summary or certificate (as Lessor shall require) reflecting the amount of taxes assessed and the amount of taxes collected by the Lessee, financial statements (if available), as well as Lessee's current approved budget (and any variances therefrom), and, if known, the budget of the Lessee approved for the upcoming Fiscal Period.

6. USE, OPERATION, RETURN OF EQUIPMENT. (a) Lessee agrees at its own expense to: (i) maintain the Equipment in a condition suitable for certification by the manufacturer (if certification is available) and in any event in good operating condition and in the same configuration as when accepted; (ii) use the Equipment solely for the discharge of its duties and obligations as a governing entity, in the manner for which it was intended and in compliance with manufacturer instructions and (iii) comply with all license and copyright requirements of any software ("*Software*") used in connection with the Equipment. (b) At the end of the Term of this Lease (unless Lessee has acquired the Equipment pursuant to Section 14), or in the event of a Default or Non-Appropriation, Lessee agrees, at its own expense, (i) to pay for any repairs to place the Equipment in the same condition and configuration as when accepted by Lessee, reasonable wear and tear excepted; (ii) without unreasonable delay, to cause the Equipment to be deinstalled, inspected, tested and crated in accordance with manufacturer's requirements, if any; and (iii) to deliver the Equipment, freight prepaid, to a carrier selected by Lessor for shipment to a location selected by Lessor.

7. NON-APPROPRIATION. (a) A "*Non-Appropriation*" is defined as an occurrence in which, notwithstanding Lessee's best efforts and exhaustion of all available administrative appeals, Lessee is not allotted funds for any fiscal year and has no other funds legally available to be allocated to the payment of its obligations under this Lease, as evidenced by the passage of an ordinance or resolution specifically prohibiting Lessee from performing its obligations under this Lease and from using any moneys to pay Scheduled Rent due under this Lease for a designated Fiscal Year and all subsequent Fiscal Years. Lessee may, upon the occurrence of a Non-Appropriation, elect to terminate this Lease. Lessee's election to terminate must be exercised by its delivering prior written notice of its intent to terminate accompanied by a certified statement by an authorized official of Lessee to the effect that conditions permitting a Non-Appropriation have occurred. Termination will be effective upon expiration of the applicable fiscal year and payment of all Scheduled Rent, Rent and other sums then due. Lessee will use its best efforts to give Lessor sixty (60) days prior written notice of such Non-Appropriation and termination. If a Non-Appropriation occurs, Lessor shall have the immediate right to possession of the Equipment and Lessee shall comply immediately with the provisions of Section 6 (b) ("*Return of Equipment*"). At Lessor's request, Lessee shall promptly provide supplemental documentation as to such Non-Appropriation satisfactory to Lessor. (b) If Lessee terminates this Lease pursuant to this Section 7, Lessee agrees that, unless the following would affect the validity of this Lease: (i) for a period of three hundred sixty (360) days after the effective date of such termination, it will not purchase, lease, rent, seek appropriations for, or otherwise obtain equipment serving the same or similar function as the Equipment; and (ii) its obligations under clause (i) will survive termination of this Lease. (c) Lessee's exercise of its rights pursuant to this Section 7 shall not affect the survival of any indemnity and other provisions (other than the obligation to lease the Equipment and pay Scheduled Rent) which survive the termination of the Lease.

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8. TITLE. Unless otherwise required by the law of the state where the Lessee is located, title to the Equipment shall pass to Lessee upon Lessee's acceptance of the Equipment pursuant to this Lease. To secure its obligations and liabilities to Lessor, Lessee grants Lessor a continuing first priority security interest in the Equipment and in its proceeds. Lessee will execute and deliver to Lessor such financing statements or other evidences of said security interest as Lessor may from time to time request to protect its lien and security interest. Upon the occurrence of either a Non-Appropriation or exercise of remedies by the Lessor pursuant to Section 13, title to the Equipment shall pass to Lessor and Lessee shall execute documents necessary to show such transfer.

9. TAXES. Unless Lessee first provides proof of exemption therefrom, Lessee will pay promptly as additional Rent all license and registration fees and all taxes (excluding taxes on Lessor's net income) together with penalties and interest (collectively "Taxes") assessed against Lessor (including its assignee), Lessee, this Lease, the Equipment, the purchase (including purchase by Lessee) sale, ownership, delivery, leasing, possession, use, operation or return of the Equipment or its proceeds. Where permitted by applicable law, Lessee will report all Taxes. Lessee will reimburse Lessor on demand for any Taxes paid by Lessor.

10. LOSS OR DAMAGE. Lessee assumes the risk of any disappearance of or damage to any part of the Equipment from any cause whatsoever, and will repair such damage or disappearance unless the Equipment is, in Lessee's reasonable opinion, irreparably damaged or permanently unfit for use ("Casualty"). Within ten (10) days of learning of any condemnation or other circumstance which constitutes a Casualty, Lessee will (i) provide Lessor full details of the Casualty, and (ii) unless Lessor agrees in writing to a replacement of such Equipment, pay to Lessor, within thirty (30) days of the Casualty ("Casualty Value Payment Date"), an amount ("Casualty Value") equal to the sum of (1) all Scheduled Rents, Rents and other sums which are then due under this Lease; plus (2) the present value of (A) all remaining Scheduled Rents for the affected item(s) of Equipment, and (B) the amount of the Purchase Option set forth in the Transaction Terms for the affected item(s) of Equipment, or if no Purchase Option is specified, the Fair Market Value of the affected item(s) of Equipment, each discounted at the rate of 4% per annum (or if such rate is not permitted by applicable law, then at the lowest permitted rate; together with interest on the sum of the foregoing amounts accruing to the date of payment at the Overdue Rate (Section 16)). Fair Market Value" of the Equipment means its installed fair market value at the end of the Term, assuming good order and condition (except for ordinary wear and tear from normal use), as estimated by Lessor. If Lessee disagrees with Lessor's estimate of fair market value, upon Lessee's request, Lessor will appoint an independent appraiser (reasonably acceptable to Lessee) to determine fair market value and that determination shall be final, binding and conclusive. Lessee shall bear all costs associated with any such appraisal. Scheduled Rent will continue to accrue until Lessor receives the Casualty Value and all other amounts then due (unless Lessor has agreed to a replacement of the Equipment) at which time this Lease will terminate. If Lessor has agreed to replacement of the Equipment, Lessee shall obtain replacement equipment satisfactory to Lessor and of comparable value, function, capacity and features, and shall provide satisfactory evidence of such replacement, in which event this Lease shall continue and the replacement equipment shall constitute Equipment for all purposes of this Lease. Proceeds paid for the destroyed or lost Equipment from insurance maintained by Lessee (Section 11) may be applied to the payment of the sums due under this Section 10. If, however, replacement of Equipment has been permitted by Lessor, such insurance proceeds shall be applied to the cost of such replacement equipment, and Lessee shall bear the cost over and above such insurance proceeds.

11. INSURANCE. Lessee agrees, at its own expense and throughout the Term of this Lease, to keep the Equipment insured with companies acceptable to Lessor and to maintain prepaid primary coverage consisting of (i) actual cash value all risk insurance on the Equipment, naming Lessor or its assignee as loss payee, unless Lessor has agreed in writing that Lessee may self-insure for property damage to the Equipment, and (ii) single limit public liability and property damage insurance of not less than \$500,000 per occurrence (or such other amount as Lessor or its assignee may require by notice to Lessee) naming Lessee as insured and Lessor or its assignee as additional insured. The insurance will provide for not less than thirty (30) days, notice to Lessor or its assignee of changes in or cancellation of the policy. Lessee will not make adjustments without Lessor's prior written consent.

12. REIMBURSEMENT. (a) To the maximum extent permitted by applicable law, Lessee agrees to compensate, defend and keep harmless Lessor, its assignee, and its agents, successors and assigns of each, for and against any and all losses, damages, penalties, claims and actions, including legal expenses ("Losses"), arising out of or in connection with (i) any breach by Lessee of its representations, warranties or obligations hereunder (ii) the selection, manufacture, purchase, delivery, transportation, installation, acceptance or rejection of Equipment, the ownership of Equipment during the term of this Lease, and the delivery, lease, possession, maintenance, use, condition, return or operation of Equipment, or (iii) the condition of Equipment sold or disposed of after or as a result of use by Lessee; provided, however, that Lessee shall have no liability to Lessor under this Section for Losses directly attributable to a breach of warranty concerning the Equipment by, or the gross negligence or willful misconduct of Lessor. (b) Lessee represents for the benefit of Lessor, its assignee and the assignee's consolidated taxpayer group, if any ("Taxpayer") that throughout the Term of this Lease: (i) Lessee is a state or a political subdivision thereof under Section 103 of the Internal Revenue Code of 1986, as amended and regulations thereunder (the "Code"), and (ii) this Lease is neither a "private activity bond" nor an "arbitrage bond" under the Code. Lessee agrees that: (i) it will not take or fail to take any action which could result in the interest income derived under this Lease being, in Taxpayer's reasonable opinion, includable in the Taxpayer's gross income on the federal income tax return of Taxpayer ("Tax Loss"); and (ii) it will promptly complete and submit to Taxpayer such informational reporting statements as may be required from time to time under the Code. If as a result of a breach of any representation, warranty or agreement contained in this Lease, a Tax Loss shall occur, then Lessee shall on the next succeeding Scheduled Rent payment date, pay Taxpayer as additional Rent such amount as shall fully compensate Taxpayer on an after-tax basis for the additional federal income taxes (including interest and penalties) incurred or expected to be incurred by virtue of the Tax Loss with respect to Scheduled Rents accrued up to such Scheduled Rent payment date. In addition, Scheduled Rent accruing after such Scheduled Rent payment date shall be adjusted on an after-tax basis to fully compensate the Taxpayer for the additional tax liability incurred or expected to be incurred by virtue of the Tax Loss. For purposes of determining a Tax Loss and the amount of Taxpayer's additional liability, it shall be assumed that the Taxpayer is not subject to any alternative minimum tax under the Code.

13. DEFAULT. (a) Lessor may declare this Lease in default (a "Default") if (i) Lessor has not received Scheduled Rent or any other Rent or sums due hereunder within ten (10) days after its due date; or (ii) Lessee fails to fulfill its obligations under Section 11 ("Insurance"); or (iii) Lessee violates any other term of this Lease and fails to correct such violation within thirty (30) days after written notice from Lessor; or (iv) Lessee violates the terms of any license or agreement for Software; or (v) Lessee assigns its rights or property for the benefit of creditors; or (vi) Lessee's assets or property are attached or seized pursuant to an execution of judgment; or (vii) a petition is filed by Lessee under Title 11 of the United States Code or any successor or similar law; or (viii) Lessee is determined by Lessor to have made any material false or misleading statement or representation hereunder. (b) At any time after declaring a Default, Lessor has the right to enter any premises where the Equipment may be located, with or without legal process, and take possession of the Equipment. Immediately after Lessor declares a Default, Lessee will pay to Lessor, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the sum of (i) all Scheduled Rents, Rents and other sums then due under this Lease; plus (ii) all Scheduled Rents due during the remaining Payment Periods in the Fiscal Year in which the Default is declared discounted to present value at the interest rate set forth in the Amortization Table; together with interest on such sum accruing to the date of payment at the Overdue Rate (Section 16). After a Default and at the request of Lessor, Lessee will return the Equipment as required by Section 6(b). Lessor will then dispose of the Equipment either by sale, or lease in a commercially reasonable manner consistent with the Uniform Commercial Code. Lessor may, without paying rent or providing insurance, use the location of the Equipment to store the Equipment or conduct any sale. The proceeds of the sale or lease, if any, will be applied in the following order of priority: (1) to all of Lessor's expenses incurred in taking, removing, holding, repairing and disposing of Equipment; then, (2) to Scheduled Rent and any other sums which are due Lessor under this Section 13(b); then, (3) to the Lessor an amount equal to the option price derived from the Amortization Table for the Scheduled Rent payment date immediately preceding the date of the Default. Any proceeds which remain will be distributed to Lessee. (c) Lessor's remedies for Default may be exercised instead of or in addition to each other or any other legal or equitable remedies. Lessor has the right to set-off any sums received from any source (including insurance proceeds) against Lessee's obligations under this Lease. Lessee waives its right to object to the place of sale or lease and to the place of any advertising. Lessor's waiver of any Default is not a waiver of its rights with respect to a different or later Default. Lessor may exercise any other remedy available at law or equity. 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 Lease.

14. OPTIONS AT END OF LEASE. Provided Lessee is not in default and Lessee has made all payments required to be made hereunder, upon the expiration of the final Payment Period set forth in the Amortization Table, Lessee shall have the option to purchase all (but not less than all) the Equipment for the Purchase Option price stated in the Transaction Terms, plus sales and other applicable taxes. If Lessee elects to purchase the Equipment, upon receipt of the Purchase Option price, Lessor will transfer all of its right, title and interest in the Equipment to Lessee on an AS-IS WHERE-IS BASIS without representation or warranty. Unless the Purchase Option price is \$1.00, Lessee must give Lessor irrevocable written notice of its election to purchase the Equipment at least thirty (30) days before the expiration of the final Payment Period.

15. ASSIGNMENT. Lessor may assign its interest in this Lease, its rights to receive Scheduled Rent and other sums due hereunder, and its rights in the Equipment without the consent of Lessee. Any such assignment shall be effective upon receipt by Lessee of a duplicate of the assignment and notice thereof. Lessee agrees to keep a complete and accurate record of all assignments by Lessor in form necessary to comply with Section 149(a) of the Code and regulations issued thereunder.

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If requested, Lessee agrees to acknowledge, in writing, any assignment. LESSEE AGREES TO SUCH ASSIGNMENT, AND FURTHER AGREES THAT, BY SUCH ASSIGNMENT: (1) THE ASSIGNEE SHALL NOT BE CHARGEABLE WITH OR ASSUME ANY OF THE OBLIGATIONS OR LIABILITIES OF LESSOR OR THE CONTRACTOR UNDER ANY REQUEST FOR PROPOSAL OR SIMILAR DOCUMENT ISSUED BY LESSEE IN CONNECTION WITH THE EQUIPMENT, AND (2) THE ASSIGNEE SHALL HAVE ALL THE RIGHTS AND DISCRETIONS OF LESSOR UNDER THE LEASE, INCLUDING BUT NOT LIMITED TO THE RIGHT TO ISSUE OR RECEIVE ALL NOTICES OR REPORTS, TO GIVE ALL CONSENTS, TO RECEIVE TITLE TO THE EQUIPMENT AND TO EXERCISE ALL REMEDIES THEREUNDER, AND (3) LESSEE SHALL, IN ACCORDANCE WITH THE TERMS OF THIS LEASE, PAY ASSIGNEE ALL RENTS AND OTHER AMOUNTS DUE UNDER THIS LEASE AS AND WHEN DUE, WITHOUT DEDUCTION OR OFFSET, NOTWITHSTANDING ANY CLAIM LESSEE MAY HAVE AGAINST LESSOR, OR RELATIVE TO THE EQUIPMENT, OR ANY OTHER CLAIM OF LESSEE ARISING PRIOR TO THE ASSIGNMENT, AND (4) LESSEE WILL NOT ASSERT AGAINST THE ASSIGNEE ANY DEFENSE, CLAIM, COUNTERCLAIM, OR SET-OFF ON ACCOUNT OF BREACH OF WARRANTY, BREACH OF SERVICE AGREEMENT OR OTHERWISE IN ANY ACTION FOR RENT OR POSSESSION BROUGHT BY LESSOR'S ASSIGNEE, AND WILL SETTLE ALL WARRANTY, MECHANICAL, SERVICE, OR OTHER CLAIMS WITH RESPECT TO THE EQUIPMENT OR SOFTWARE DIRECTLY WITH THE LESSOR AND THAT ASSIGNEE SHALL NOT BE LIABLE FOR SUCH SERVICE OR OTHER CLAIMS.

16. MISCELLANEOUS. (a) The Interest (which is defined as any imputed interest, finance charge, or time price differential) assessed under this Lease is not intended to exceed the maximum amount of interest permitted to be charged or collected by applicable law. If Interest charged by Lessor exceeds such maximum, then the Interest payable will be reduced to the legally permitted maximum amount of interest, and any excessive Interest will be used to reduce the principal amount of Lessee's obligation or refunded to Lessee. (b) Time is of the essence of this Lease. Lessor's failure at any time to require that Lessee strictly perform its obligations shall not prevent the Lessor from later requiring such performance. Lessee agrees, upon Lessor's request, to sign any document presented by Lessor from time to time to protect Lessor's or its assignee's rights in the Equipment. Lessee also agrees to pay Lessor's attorneys' fees and out-of-pocket expenses in protecting or enforcing its rights under this Lease. (c) All required notices will be considered to have been given if sent by registered or certified mail or overnight courier service to the addressee at its address stated in this Lease, or at such other place as such addressee may have designated in writing. (d) This Lease constitutes the entire agreement of the parties with respect to the lease of the Equipment and supersedes and incorporates all prior oral or written agreements, representations, promises and statements. If a provision of this Lease is declared invalid under law, the affected provision will be considered omitted or modified to conform to applicable law. All other provisions will remain in full force and effect. (e) If Lessee fails to comply with any provision of this Lease, Lessor has the right, but is not obligated, to have the provisions brought into compliance, including but not limited to the acquisition of insurance. This right is in addition to Lessor's right to declare a Default. All expenses incurred by Lessor in bringing about such compliance will be considered additional Rent which is due to Lessor within five (5) days after the date Lessor sends to Lessee a written request for payment. (f) All sums payable under this Lease shall constitute "Rent" for purposes hereof. All overdue payments will bear interest at the Overdue Rate, which is the lower of eighteen percent (18%) per annum or the maximum rate allowed by law. Interest will accrue until payment in full is received. (g) All of Lessor's rights (including indemnity rights) under this Lease survive the Lease's expiration or termination, and are enforceable by Lessor, its successors and assigns. (h) Lessee hereby acknowledges and confirms that Lessee has not received any tax, financial, accounting or legal advice from Lessor or supplier or manufacturer of Equipment.

THIS LEASE IS A NET LEASE. EXCEPT AS PROVIDED IN SECTION 7 HEREOF, LESSEE IS UNCONDITIONALLY OBLIGATED TO PAY SCHEDULED RENT AND OTHER AMOUNTS DUE UNDER THIS LEASE REGARDLESS OF ANY DEFECT OR DAMAGE TO EQUIPMENT, OR LOSS OF POSSESSION, USE OR DESTRUCTION FROM ANY CAUSE WHATSOEVER. LESSEE'S OBLIGATIONS CONTINUE UNTIL SPECIFICALLY TERMINATED AS PROVIDED IN THIS LEASE. LESSEE IS NOT ENTITLED TO ANY ABATEMENT, REDUCTION, RECOURSEMENT, DEFENSE, OR SET-OFF AGAINST SCHEDULED RENT OR OTHER AMOUNTS DUE TO LESSOR WHETHER ARISING OUT OF THIS LEASE, OUT OF LESSOR'S NEGLIGENCE, FROM ANY THIRD PARTY, OR OTHERWISE. NOTWITHSTANDING THE FOREGOING, HOWEVER, LESSEE SHALL HAVE THE RIGHT TO INITIATE LEGAL ACTION TO ENFORCE LESSOR'S OBLIGATIONS UNDER THIS LEASE OR WITH RESPECT TO THE EQUIPMENT OR TO RECOVER DAMAGES FOR LESSOR'S NONPERFORMANCE.

DISCLAIMER: LESSEE AGREES THAT EXCEPT AS PROVIDED IN LESSOR'S PUBLISHED WARRANTIES WITH RESPECT TO THE EQUIPMENT: (1) LESSOR DOES NOT MAKE, AND HAS NOT MADE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE EQUIPMENT OR ANY RELATED SOFTWARE; (2) LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF, THE EQUIPMENT OR SOFTWARE, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR SOFTWARE. LESSOR SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT OR SOFTWARE OR USE THEREOF OR BY ANY EQUIPMENT OR SOFTWARE DEFECT, WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY, LOSS OR DAMAGE. EXCEPT AS PROVIDED IN LESSOR'S PUBLISHED WARRANTIES, LESSOR SHALL NOT HAVE ANY LIABILITY TO LESSEE OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE FOLLOWING: (1) ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS OR CONSEQUENTIAL DAMAGES; OR (2) THE DELIVERY, SERVICING, MAINTENANCE, REPAIR, OR REPLACEMENT OF THE EQUIPMENT OR SOFTWARE.

THIS LEASE IS EFFECTIVE UPON SIGNING BY BOTH PARTIES AND MAY ONLY BE CHANGED BY WRITTEN AGREEMENT. LESSEE IRREVOCABLY AUTHORIZES LESSOR OR ITS ASSIGNEE TO PREPARE AND SIGN ON BEHALF OF LESSEE ANY INSTRUMENT NECESSARY OR EXPEDIENT FOR FILING, RECORDING OR PERFECTING THE INTEREST OF LESSOR OR ITS ASSIGNEE IN THE EQUIPMENT, THIS LEASE OR THE PROCEEDS OF BOTH.

LESSOR AND LESSEE HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS LEASE OR ANY RELATED DOCUMENTS.

Each signatory on behalf of the Lessee warrants that he and/or she has complete authority to sign this Lease on behalf of the Lessee and, by so signing, to bind the Lessee to this Lease.

Lessor: FEENAUGHTY MACHINERY CO

Lessee: CITY OF SCAPPOOSE

By: _____

By: X _____

Name: _____

Name: X _____

Title: _____

Title: X _____

Date: _____

Date: X _____

Federal Tax I.D.: X _____

Amortization
 CITY OF SCAPPOOSE
 9423632-001

Date	Funding	Payment	Interest @ 0.0000	Principal	Balance
7/8/2019	\$162,709.00				
7/8/2019		\$40,677.25	\$0.00	\$40,677.25	\$122,031.75
7/8/2020		\$40,677.25	\$0.00	\$40,677.25	\$81,354.50
7/8/2021		\$40,677.25	\$0.00	\$40,677.25	\$40,677.25
7/8/2022		\$40,677.25	\$0.00	\$40,677.25	\$0.00
	----- \$162,709.00	----- \$162,709.00	----- \$0.00	----- \$162,709.00	

By: X _____
 Name: X _____
 Title: X _____
 Date: X _____

Certificate of Acceptance
9423632-001

MUNICIPAL LEASE AGREEMENT Effective Date: _____, 20__

LESSOR/ASSIGNOR: NAME: **FEENAUGHTY MACHINERY CO**
ADDRESS: **4800 N E COLUMBIA BLVD, PORTLAND, OR 97218**
CONTACT AND TELEPHONE:

ASSIGNEE: NAME: Wells Fargo Vendor Financial Services, LLC
ADDRESS: 5000 Riverside Drive, Suite 300 East, Irving, TX 75039-4314
CONTACT AND TELEPHONE:

LESSEE: LEGAL NAME: **CITY OF SCAPPOOSE**
TRADE NAME:
ADDRESS: **33568 E COLUMBIA AVE, SCAPPOOSE, OR 97056**
CONTACT AND TELEPHONE:
LEGAL ENTITY (give type of political entity):
FISCAL YEAR OF LESSEE ENDS:

EQUIPMENT LOCATION: Street Address: 33568 E COLUMBIA AVE
City, State Zip: SCAPPOOSE, OR 97056

DESCRIPTION OF EQUIPMENT:

<u>Manufacturer</u>	<u>Equipment Description</u> <u>(Type/Model/Serial/ID Numbers)</u>	<u>Number of Units</u>
KOBELCO	SK140SRLC-5; KOBELCO HYDRAULIC EXCAVATOR; YH08-13342	1

LESSEE, THROUGH ITS AUTHORIZED REPRESENTATIVE, CERTIFIES TO LESSOR AND ITS ASSIGNEE THAT:

- (a) All the Equipment has been delivered and inspected by Lessee on the Lease Commencement Date specified below in accordance with the Municipal Lease Agreement having the Effective Date stated above between Lessor and Lessee ("Lease").
- (b) Lessee irrevocable accepts the Equipment for lease under the Lease as of the Lease Commencement Date.
- (c) No Non-Appropriation or event which would allow the Lessor to declare a Default under Section 13 of the Lease has occurred, and all of the representations and warranties made in the Lease are true as of the Lease Commencement Date.
- (d) Lessee agrees to the transfer of the Lease from the Lessor to the Assignee, and has indicated the occurrence of such transfer on its books so that the transfer is effective as to the Lessor, the Assignee, and the Lessee as of the Lease Commencement Date.
- (e) Lessee agrees that it shall continue to look to Lessor for performance of all obligations of the contractor under any request for proposal or similar document issued by Lessee in connection with the Equipment.
- (f) **Lessee hereby expressly authorizes LESSOR or its ASSIGNEE to insert the Date of Acceptance/Lease Commencement Date in the space below upon the verbal instruction of Lessee.**

Each signatory on behalf of the Lessee warrants that he and/or she has complete authority to sign this Certificate of Acceptance on behalf of the Lessee and, by so signing, to bind the Lessee to this Certificate of Acceptance.

Lessee: CITY OF SCAPPOOSE

By: X

Name: X

Title: X

Date of Acceptance/
Lease Commencement Date: _____

Assignment/Notice of Assignment/Acknowledgement 9423632-001

MUNICIPAL LEASE AGREEMENT Effective Date: _____, 20__

LESSOR/ASSIGNOR: NAME: FEENAUGHTY MACHINERY CO
ADDRESS: 4800 N E COLUMBIA BLVD, PORTLAND, OR 97218
CONTACT AND TELEPHONE:

ASSIGNEE: NAME: Wells Fargo Vendor Financial Services, LLC
ADDRESS: 5000 Riverside Drive, Suite 300 East, Irving, TX 75039-4314
CONTACT AND TELEPHONE:

LESSEE: LEGAL NAME: CITY OF SCAPPOOSE
TRADE NAME:
ADDRESS: 33568 E COLUMBIA AVE, SCAPPOOSE, OR 97056
CONTACT AND TELEPHONE:
LEGAL ENTITY (GIVE TYPE OF POLITICAL ENTITY):
FISCAL YEAR OF LESSEE ENDS:

ASSIGNMENT

FOR VALUE RECEIVED, Lessor (hereafter called "**Assignor**") hereby sells, assigns, and transfers to Wells Fargo Vendor Financial Services, LLC, with administrative offices at 5000 Riverside Drive, Suite 300 East, Irving, TX 75039-4314, its successors and assigns ("**Assignee**"), and Assignee accepts such sale, assignment and transfer of all of Assignor's right, title and interest in and to the Municipal Lease Agreement having the Effective Date stated above by and between the Lessor and the Lessee ("**Lease**"), together with the Equipment described therein, excluding, however, Equipment representations or warranties made by Assignor, and any other obligations of Assignor, which representations, warranties, and obligations, whether arising before or after the effective date of this Assignment, are expressly not assigned or delegated. Assignor represents, warrants and agrees: that it has full power, authority and legal right to enter into and perform its obligations under the Lease and this Assignment, and to transfer all right, title and interest in and to the Lease, all sums due thereunder, and the Equipment; that the Lease, the Rents and Equipment are free and clear of all claims, liens, security interests, and encumbrances of any kind and character (except the rights of the Lessee); that the individuals signing this Assignment on Assignor's behalf have been duly authorized to do so; and that Assignor shall assume full responsibility for verifying that this Assignment is properly entered in the books of the Lessee. This Assignment is effective as of the Lease Commencement Date (as defined in the Lease) upon receipt by the Lessee of a duplicate of this Assignment and upon entry by the Lessee upon its books and records of the transfer of the Lease from Assignor to Assignee.

NOTICE OF ASSIGNMENT

TO THE LESSEE:
PURSUANT TO SECTION 15 OF THE LEASE, YOU ARE HEREBY NOTIFIED OF THE ASSIGNMENT OF THE LEASE FROM ASSIGNOR TO ASSIGNEE, AND ARE INSTRUCTED TO: (1) REFLECT THIS TRANSFER THROUGH YOUR BOOK ENTRY SYSTEM, AND (2) MAKE ALL PAYMENTS DUE UNDER THE LEASE TO THE ASSIGNEE AT THE ADDRESS STATED BELOW:

ASSIGNEE: NAME: WELLS FARGO VENDOR FINANCIAL SERVICES, LLC
5000 Riverside Drive, Suite 300 East
Irving, TX 75039-4314

ASSIGNOR:
FEENAUGHTY MACHINERY CO

ASSIGNEE:
Wells Fargo Vendor Financial Services, LLC

By: _____
(Signature & Title)

By: _____
(Signature & Title)

ACKNOWLEDGEMENT

Received by Lessee on _____
Each signatory on behalf of the Lessee warrants that he and/or she has complete authority to sign this Acknowledgement on behalf of the Lessee and, by so signing, to bind the Lessee to this Acknowledgement.

LESSEE: CITY OF SCAPPOOSE

By: _____
(Signature & Title)

Please return a signed copy of this Assignment/Notice of Assignment/Acknowledgement to the Assignee at the above address.

