

Date of Lease: May 21, 2019

Lease No. 001-0000057-003

[FLORIDA]

**EQUIPMENT LEASE-PURCHASE AGREEMENT**

**Lessor: REGIONS EQUIPMENT FINANCE CORPORATION**

**Address: P.O. Box 11407, Birmingham, Alabama 35246-1001**

**Lessee: CITY OF POMPANO BEACH, FLORIDA**

**Address: 100 WEST ATLANTIC BOULEVARD, ROOM 480, POMPANO BEACH, FL 33060**

Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to lease from Lessor, the items of Equipment (the "Equipment") described in Exhibit A attached to this Equipment Lease-Purchase Agreement (the "Lease"), upon the following terms and conditions:

**1. Delivery and Acceptance.** Lessee, or if Lessee so requests, Lessor, shall cause the Equipment to be delivered to Lessee at the location specified in Exhibit A (the "Equipment Location"). Lessee shall pay all transportation and other costs, if any, incurred in connection with the delivery of the Equipment. Lessee shall accept the Equipment as soon as it has been delivered and is operational, or in the event that the manufacturer or vendor allows a pre-acceptance test period, as soon as the test period has expired. Lessee shall evidence its acceptance of the Equipment by executing and delivering to Lessor an acceptance certificate ("Acceptance Certificate") in the form attached hereto as Exhibit B upon receipt of the Equipment.

**2. Term.** This Lease is effective upon the execution hereof by Lessee and Lessor. The term of this Lease commences on the date the Equipment is accepted pursuant to Section 1 above and, unless earlier terminated as expressly provided for in this Lease, terminates absolutely, without further obligation on the part of the Lessee, at the end of the fiscal year in which this Lease is executed and at the end of each succeeding fiscal year for which it may be renewed as hereinafter provided. The term of this Lease will automatically renew for an additional period of one year at the end of each fiscal year unless Lessee gives written notice to Lessor of its intent to terminate the Lease not less than 60 days prior to the end of the fiscal year. If not sooner terminated, the Lease will continue until the Expiration Date set forth in Exhibit C attached hereto (the "Lease Term"). **THIS EQUIPMENT LEASE CANNOT BE CANCELED OR TERMINATED EXCEPT AS EXPRESSLY PROVIDED HEREIN.**

**3. Rent.** Lessee hereby agrees to pay to Lessor or its assignee the lease payments (the "Lease Payments"), including the interest portion, equal to the aggregate amounts specified in Exhibit C; provided, however, that the Lessee shall be obligated to make such Lease Payments during any fiscal year to the extent that such Lease Payments may be made from current revenues lawfully budgeted and appropriated for such purpose during such year. The Lease Payments are payable without notice or demand at the office of the Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and commence on the first Lease Payment date as set forth in Exhibit C and thereafter on the dates set forth in Exhibit C. Any payments received later than ten days from the due date will bear interest from the due date at the rate of 3% in excess of the rate set forth on Exhibit C or the highest rate permitted by law, whichever is less. Except as specifically provided in Section 4 hereof, and to the extent permitted by applicable law, the obligation to make the Lease Payments is absolute and unconditional in all events and is not subject to any set-off, defense, counterclaim or recoupment for any reason whatsoever. Any and all payment(s) received by Lessor hereunder shall be applied to amounts due hereunder at Lessor's sole discretion notwithstanding any contrary instruction or instrumentation by Lessee. Unless Lessor decides, in its sole discretion, to apply any and all payments(s) received from Lessee in a different manner, then any payments shall be applied in the following order of priority: (i) to repay any reimbursement items due Lessor from Lessee pursuant to the provisions of this Lease; (ii) to pay for any amounts owed by Lessee by virtue of its indemnification obligations under Section 16 hereof; (iii) to any accrued interest owed in connection with a late Lease Payment; (iv) to any accrued interest with respect to any Lease Payments then due; and then (iv) to reduce the principal component(s) of the Lease Payment(s) as and when due hereunder.

It is Lessee's present intent to make Lease Payments for the full lease term and in that regard Lessee represents that the use of the Equipment is essential to its proper, efficient and economic operation.

The total obligation of Lessee for the fiscal year of execution is the sum of the Quarterly payments for such fiscal year as set forth on Exhibit C. The total obligation of Lessee in each fiscal year renewal term is the sum of the Quarterly payments during such fiscal year renewal term as set forth on Exhibit C. A schedule of Lessee's total obligation for the fiscal year of execution and for each fiscal year in which this Lease is renewed is attached hereto as Exhibit C.

**4. Nonappropriation of Funds.** In the event no funds or insufficient funds are appropriated and budgeted, or funds are otherwise not available out of current revenues of Lessee by any means whatsoever, in any fiscal period for Lease Payments due under this Lease, then Lessee will immediately notify Lessor or its assignee of such occurrence and this Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Lease Payments herein agreed upon for which funds shall have been appropriated or are otherwise available. In the event of such termination, Lessee hereby agrees to peaceably and immediately surrender possession of the Equipment to Lessor or its assignee on the date of such termination, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States designated by Lessor and to execute any and all documents necessary or convenient to memorialize the relinquishment of all of Lessee's rights, title and or interest in such Equipment to Lessor or its successors and assigns. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment in the event of termination, but, for avoidance of any doubt, no rights to forcible possession.

Notwithstanding any provision to the contrary contained in this Lease, it is expressly understood and agreed that Lease Payments to be made in each fiscal year shall be payable only out of current revenues of Lessee for that fiscal year lawfully budgeted and appropriated during such year.

**5. Limitation on Warranties and Disclaimer.** Lessee acknowledges and agrees that the Equipment is of a size, design and capacity selected by Lessee, that Lessor is neither a manufacturer nor a vendor of such equipment, and that LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO

THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, AND LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO LESSEE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT INCLUDING THE MAINTENANCE, INSTALLATION, OPERATION, OR REPAIR THEREOF. Lessee acknowledges that it has selected the Equipment based upon its own judgment and expressly disclaims any reliance upon any statements or representations made by Lessor. As between the Lessor and Lessee, all Equipment is or will be accepted by the Lessee "as is" after inspection by Lessee, and nothing herein shall be construed to affect, extinguish, limit or otherwise modify Lessee's rights and remedies between Lessee and any manufacturer or servicer.

Lessor hereby assigns to Lessee during the Lease Term, so long as no Event of Default (as hereinafter defined) has occurred and is continuing, all manufacturer's warranties, if any, express or implied with respect to the Equipment, and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's expense.

**6. Authority and Authorization.** Lessee represents, covenants and warrants, and as requested by Lessor, will deliver an opinion of counsel to the effect that: (i) Lessee is a fully constituted political subdivision, agency or public corporation of the State of Florida; (ii) the execution, delivery and performance by Lessee of this Lease has been duly authorized by all necessary action on the part of Lessee; (iii) this Lease has been executed on behalf of the Lessee by its duly authorized officers; and (iv) this Lease constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, together with such other legal matters in connection herewith as Lessor shall reasonably request. Lessee hereby agrees that (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect; (ii) it has complied with all bidding requirements where necessary and by due notification presented this Lease for approval and adoption as a valid obligation on its part; and (iii) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period.

**7. Title.** Upon acceptance of the Equipment by Lessee hereunder, title to the Equipment will vest in Lessee; subject to reversion to Lessor (i) in the event of termination of this Lease by Lessee pursuant to Section 4 hereinabove; or (ii) upon the occurrence of an Event of Default hereunder related to said Equipment, and as long as such Event of Default is continuing. Lessee (i) shall not sell, assign, subject or otherwise dispose of, or permit legal process or encumbrance upon or against any interest in, this Lease or the Equipment; (ii) shall keep the Equipment free of liens and give immediate written notice to Lessor of any such process or encumbrance; and (iii) shall, at its sole expense, protect and defend Lessor's reversionary title and interest against all persons claiming against or through Lessee and, to the extent permitted by applicable law, indemnify and hold Lessor harmless from and against any loss caused thereby. Lessee shall affix to the Equipment any markings requested by Lessor or execute any and all documents reasonably requested to be signed by Lessee to memorialize Lessor's interest in such Equipment.

Lessee, irrevocably, hereby designates, makes, constitutes and appoints Lessor (and all persons designated by Lessor) as Lessee's true and lawful attorney (and agent-in-fact) with power, at such time of default or non-appropriation or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's name, to endorse the name of Lessee upon any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Equipment in order to vest title in Lessor and transfer possession to Lessor.

**8. Public Records.**

A. Lessee is a public agency subject to Chapter 119, Florida Statutes. The Lessor shall comply with Florida's Public Records Law, as amended. Specifically, the Lessor shall:

1. Keep and maintain public records required by the Lessee in order to perform the service.
2. Upon request from the Lessee's custodian of public records, provide the Lessee with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Lessor does not transfer the records to the Lessee.
4. Upon completion of the contract, transfer, at no cost to the Lessee, all public records in possession of the Lessee, or keep and maintain public records required by the Lessee to perform the service. If the Lessor transfers all public records to the Lessee upon completion of the contract, the Lessor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Lessor keeps and maintains public records upon completion of the contract, the Lessor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Lessee, upon request from the Lessee's custodian of public records in a format that is compatible with the information technology systems of the Lessee.

B. Failure of the Lessor to provide the above described public records to the Lessee within a reasonable time may subject Lessor to penalties under 119.10, Florida Statutes, as amended.

**PUBLIC RECORDS CUSTODIAN**

**IF THE LESSOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LESSOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK**

**100 W. Atlantic Blvd., Suite 253**

**Pompano Beach, Florida 33060**

**(954) 786-4611**

**[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)**

9. **Personal Property.** The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee shall, at Lessee's expense, furnish a landlord or mortgagee waiver with respect to the Equipment.

10. **Use; Repairs.** Lessee shall use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinances, insurance policies and regulations relating to, and shall pay all costs, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee, at its expense, will keep the Equipment in good repair, good operating condition and working order, according to the manufacturer's recommended guidelines or the equivalent and meet any and all recertification requirements and shall furnish proof of such maintenance, if requested by Lessor, and shall furnish all needed servicing and parts, which parts shall become the property of Lessor and part of the Equipment. Lessor shall have no responsibility in any of these matters or for the making of any improvements or additions to the Equipment, as further discussed in Section 11 below. If the Equipment is such as is customarily covered by a maintenance agreement, Lessee shall, at its expense, furnish Lessor upon its reasonable request with a maintenance agreement with a party satisfactory to Lessor.

11. **Alterations.** Lessee shall not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment. Any alteration to the Equipment which cannot be readily removed without damage to the Equipment will become part of the Equipment and the property of Lessor. Notwithstanding the foregoing, any upgrade, addition or modification added by the Lessee as required by law or under any manufacturer's or service's recommendations will, without further action, become a part of the Equipment and the sole property of Lessor.

12. **Location; Inspection.** The Equipment will not be removed from, or if the Equipment consists of rolling stock, its permanent base will not be changed from, the Equipment Location without Lessor's prior written consent which will not be unreasonably withheld. Lessor is entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

13. **Liens and Taxes.** Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes for which Lessee is responsible or liable under this Lease, Lessee shall reimburse Lessor therefor immediately upon demand from Lessor. Lessee hereby agrees to cooperate with Lessor in filing all tax returns and informational statements, if any, required by any federal, state, and/or local governmental agency.

14. **Risk of Loss; Damage; Destruction.** Lessee hereby assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Lease Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee shall immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee, at Lessor's option, shall: either (a) replace the same with like equipment in good repair; or (b) on the next Lease Payment date, pay Lessor: (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease Payment due on such date; and (ii) an amount equal to the applicable Concluding Payment set forth in Exhibit C. In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the Concluding Payment to be made by Lessee with respect to the Equipment which has suffered the event of loss. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payments of, negotiate with insurance carrier(s), bring lawsuits, settle claims or suits, and execute and endorse all documents, checks or drafts issued with respect to any loss, damage, destruction, to, or theft of, the Equipment and/or under any insurance policy relating to the Equipment.

15. **Insurance.** Lessee shall, at its expense, maintain at all times during the Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts, covering such risks, and with such insurers as shall be satisfactory to Lessor, or, with Lessor's prior written consent, may self-insure against any or all such risks. In no event will the insurance limits be less than the amount of the then applicable Concluding Payment with respect to such Equipment. Each insurance policy will name Lessee as an insured and Lessor or its assigns as an additional insured and loss payee, and will contain a clause requiring the insurer to give Lessor at least 30 days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or its assigns as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee shall deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee shall furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee shall promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto. Lessee shall furnish a certificate of insurance or other evidence satisfactory to Lessor that the required insurance coverage is in effect. Lessor has no duty to ascertain the existence of or to examine the insurance policies to advise Lessee if the insurance coverage does not comply with the requirements of this Section.

In the event Lessee fails to maintain the full insurance coverage on the Equipment as required by this Lease or fails to keep the Equipment in good repair and operating condition, Lessor may, but is not obligated to, purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements which are necessary and provide for payment thereof; and all amounts so advanced therefore by Lessor are considered additional rent for the then current Lease Payments, which amounts Lessee hereby agrees to pay, together with interest thereon at the rate of three (3%) per cent per annum in excess of the rate set forth on Exhibit C or at the highest rate permitted by applicable law, whichever is less.

Lessee hereby consents to Lessor's release, upon its failure to obtain appropriate insurance coverage, of any and all information necessary to obtain insurance with respect to the Equipment and/or Lessor's interest therein. Lessor retains the right to substitute its own insurance for any insurance obtained by Lessee in accordance with this Section upon reasonable notice to Lessee with an insurer or through an agent or broker of its choice, at Lessee's sole cost.

16. **Indemnification.** To the extent permitted by applicable law, Lessee hereby indemnifies and agrees to defend and hold Lessor and any successor, assignee or secured party of Lessor, harmless from and against all claims, costs, expenses (including, but not limited to, attorneys' fees and expenses), damages, losses, judgments and liabilities of any nature whatsoever that may be imposed on, incurred by, or asserted against an indemnified party with respect to any item of Equipment or its purchase, acceptance, delivery, ownership, leasing, possession,

maintenance, use, operation or transportation, by the Lessee and its officials, officers, employees and agents, whether or not other parties are involved, or arising out of this Lease or the transactions contemplated hereby, including, without limitation, (a) claims for injury to or death of persons and for damage to property, (b) claims relating to patent, copyright or trademark infringement, and (c) claims relating to latent or other defects in the Equipment whether or not discoverable by Lessor. Lessee hereby agrees to give Lessor prompt notice of any such claim or liability. Any payment made hereunder to Lessor shall include the amount of any taxes required to be paid by Lessor as the result of the receipt of such payment. The provisions of this Section 16 survive the termination of this Lease. The foregoing provisions shall not be deemed or interpreted to be a waiver of sovereign immunity pursuant to F.S. 768.28 by the Lessee in any respect.

**17. Purchase Option.** Upon 30 days prior written notice from Lessee to Lessor, and on the condition that there is no Event of Default, or an event which with notice or lapse of time, or both, could become an Event of Default, then existing, Lessee will be entitled to purchase Lessor's interest in, to the extent thereof, the Equipment on the Lease Payment dates set forth in Exhibit C by paying to Lessor, on such date, the Lease Payment then due together with the Concluding Payment amount set forth opposite such date. Upon satisfaction by Lessee of such purchase conditions, Lessor shall transfer any and all of its right, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except that Lessor shall warrant to Lessee that the Equipment is free and clear of any liens created by Lessor. Unless Lessee exercises an option to purchase the Equipment or renews the terms of this Lease as provided in any Exhibit to this Lease and except as otherwise provided in this Lease, upon expiration of the Term as to each item of Equipment or upon demand of Lessor pursuant to this section, Lessee, at its own risk and expense, including, but not limited to the expense of maintaining all insurance thereon, shall either (a) provide adequate and suitable storage space at the place where the Equipment was delivered hereunder or to which it was moved in accordance with this Lease, and shall permit Lessor to store such Equipment free of charge, and at the risk of Lessee for public liability and physical damage exposure, for a period not to exceed one hundred eighty (180) days, during which period Lessee shall provide Lessor reasonable access thereto; or (b) immediately assemble, prepare for shipment, and return the Equipment to Lessor in the same condition as delivered, ordinary wear and tear excepted, and meeting all recertification requirements, with all damaged or missing parts replaced, at such location within the United States as Lessor designates. Lessee hereby agrees to provide to Lessor written notice at least one hundred eighty (180) days prior to the end of the Term of the Lease if Lessee intends to return the Equipment to Lessor (the "Return Notice"). In the event Lessee fails to deliver to Lessor the Return Notice at least one hundred eighty (180) days prior to the end of the Term of the Lease, the Term will be extended automatically for one hundred eighty (180) days and Lessee shall continue to pay Lease Payments as agreed to by the Lessor and Lessee at such time.

**18. Assignment.** Without Lessor's prior written consent, Lessee shall not (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Lease or the Equipment or any interest in this Lease or the Equipment, or (ii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees or agents. Lessee shall remain primarily liable on this Lease. Lessor may assign its right, title and interest in and to this Lease, the Equipment and any other documents executed with respect to this Lease and/or grant or assign a security interest in this Lease and the Equipment, in whole or in part. Lessee hereby agrees that any such assignment shall not materially change Lessee's duties or obligations under this Lease. Any such assignees shall have all the rights of Lessor under this Lease. No assignment or reassignment of any of Lessee's right, title or interest in this Lease or the Equipment will be effective unless and until Lessor consents to such assignment and Lessor has received a duplicate original counterpart of the document by which the assignment or reassignment is made, disclosing the name and address of each such assignee. DURING THE LEASE TERM LESSEE SHALL KEEP A COMPLETE AND ACCURATE RECORD OF ALL SUCH ASSIGNMENTS IN FORM NECESSARY TO COMPLY WITH SECTION 149(a) OF THE INTERNAL REVENUE CODE OF 1986, OR ANY SUCCESSOR PROVISION THERETO, AND THE REGULATIONS, PROPOSED OR EXISTING, FROM TIME TO TIME PROMULGATED THEREUNDER. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the successors and assigns of the parties hereto. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee shall acknowledge such assignments in writing if so requested.

**19. Events of Default.** The term "Event of Default", as used herein, means the occurrence of any one or more of the following events:

- (a) Subject to Lessee's annual rights in respect of non-appropriation contained herein, Lessee fails to make any Lease Payment (or any other payment including insurance premiums required hereunder) when due in accordance with the terms of this Lease;
- (b) Lessee fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within 20 days after written notice thereof by Lessor; or
- (c) The discovery by Lessor that any statement, representation or warranty made by Lessee in this Lease or in any writing ever delivered by Lessee pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect;
- (d) Lessee shall attempt to abandon, remove, sell, encumber or sublet any item of Equipment or to assign any rights under or interest in this Lease; or
- (e) Lessee shall become insolvent or make an assignment for the benefit of creditors, or a trustee or receiver shall be appointed for Lessee or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Lessee; or
- (f) Lessee shall suffer a material adverse change in its financial conditions or operations; or
- (g) Lessee shall be in default under any other agreement with Lessor or any of its affiliates or any other lender.

**20. Remedies.** Upon the occurrence of an Event of Default, and so long as such Event of Default is continuing, title to the Equipment shall revert to Lessor as provided in Section 7 above, and Lessor may, at its option, at any time or from time to time, exercise any one or more or all of the following rights and remedies without necessity of any further notice to Lessee:

- (a) Lessor may declare all installments of the Lease Payments, for the then remaining for the then current annual term of this Lease, to the extent previously appropriated, to be immediately due and payable, whereupon the same shall become immediately due and payable;

(b) Lessor may terminate this Lease, whereupon Lessor may require that Lessee, at Lessee's expense, promptly (but in any event within 10 days) return all Equipment to the possession of Lessor at such place within the United States as Lessor shall specify (and should Lessee fail to do so, Lessor will have all legal and equitable rights and remedies to take possession of the Equipment itself but, for avoidance of any doubt, no rights to forcible possession), after receipt of which Lessor shall use commercially reasonable efforts to sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, or otherwise dispose of the Equipment, on such terms and notices as Lessor deems reasonable and, in addition to reclaiming the total proceeds received from such lease or sale, recover from Lessee damages, not as a penalty, but liquidated damages for all purposes an amount equal to the sum of (i) any accrued and unpaid Lease Payments, that have been previously appropriated, and all other amounts then due hereunder, as of the later of (A) the date of the Event of Default, (B) the date Lessee has made an effective tender of possession of the Equipment back to Lessor in accordance with the terms hereof, or (C) such other date on which Lessor has obtained possession of the Equipment ("Default Date"); and (ii) any indemnity under Section 16 hereunder, if then determinable, plus interest at the same rate per annum charged by the Internal Revenue Service for the late payment of tax, less the amount received by Lessor upon any such sale, lease, sublease or other disposition of Equipment, after deducting all of Lessor's expenses incurred in connection therewith, including without limitation, all repossession costs, broker's commissions, attorney's fees and expenses, and alteration costs and expenses of preparing the Equipment for disposition, and Lessor may proceed by attachment, lawsuit or otherwise to collect the entire amount of such claim; provided that if the net amount received by Lessor from any such disposition exceeds the aggregate amounts then recoverable from Lessee set forth hereinabove, Lessor shall remit any such excess amount or to Lessee or as otherwise may be required under applicable law; and

(c) Lessor may exercise any other right, remedy or privilege which may be available to it under applicable laws of the State of Florida or any other applicable laws or proceed by appropriate court action to enforce the terms of this Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Equipment.

In addition, Lessee will remain liable for all covenants and, to the extent permitted by applicable law, indemnities under this Lease and for all legal fees and other costs and expenses, including court costs and reasonable attorney's fees, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor. A cancellation hereunder shall occur only upon notice by Lessor and only as to such Items of Equipment as Lessor specifically elects to cancel, and this Lease shall continue in full force and effect as to the remaining items of Equipment, if any. Lessee shall be liable for and shall pay to Lessor all attorneys' fees and expenses and other costs incurred by Lessor in exercising Lessor's remedies, including placing any Equipment in the condition required by Section 10 hereof. No remedy referred to in this Lease is intended to be exclusive, but each shall be in addition to any other remedy referred to or otherwise available to Lessor at law or in equity. No express or implied waiver by Lessor of any Default will constitute a waiver of any other Default by Lessor or a waiver of any of Lessor's rights and no delay by Lessor in enforcing any right or requiring performance of any provisions of this Lease by Lessee will be a waiver of such right or affect the right of Lessor to enforce such provision.

Notwithstanding any provision of this Section to the contrary, the Lessee may terminate this Lease as provided in Section 4, and the Lessee shall not be liable under this Lease for any Lease Payments in excess of the amount otherwise due under Section 3.

**21. Notices.** All notices to be given under this Lease shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to mailing if mailed in accordance with this Section.

**22. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**23. Governing Law.** This Lease shall be construed in accordance with, and governed by the laws of, the State of Florida.

**24. Delivery of Related Documents.** Lessee shall execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease. At the request of Lessor, Lessee shall furnish Lessor annual financial statements of Lessee within 210 days after the end of Lessee's fiscal year.

**25. Entire Agreement: Waiver.** This Lease, together with the Acceptance Certificate and other attachments hereto, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitute the entire agreement between the parties with respect to the lease of the Equipment, and this Lease shall not be modified, amended, altered or changed except with the written consent of Lessee and Lessor. Any provision of this Lease found to be invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remainder of this Lease. The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

**26. Covenant Regarding Tax-Exempt Interest.** The Lessee hereby represents and warrants that the interest portion of each Lease Payment will not be includible in gross income of the Lessor. The Lessee hereby covenants and agrees that it will not take any action, or fail to take any action, if such action or failure to act would cause the interest portion of each Lease Payment to be or become includible in gross income of the Lessor for purposes of federal income taxation. Without limiting the generality of the preceding sentence, the Lessee hereby covenants and agrees that, to the extent necessary for the interest portion of each Lease Payment to be so excludable from gross income,

(a) the Equipment shall not be used in any private business use; the Lease Payments shall not be secured by, or derived from, property used in a private business use; no portion of the proceeds of this Lease shall be used to make or finance loans to persons other than governmental units; and proceeds of this Lease shall not be used in any manner that would cause this Lease to be or become a "private activity bond", as defined in Section 141 of the Code; and

(b) the Lessee shall submit to the Secretary of the Treasury a statement or report with respect to the execution and delivery of this Lease as required by Section 149(e) of the Code.

If Lessor determines in good faith (which determination shall be supported by an opinion of nationally recognized bond counsel) or if the Internal Revenue Service shall claim in writing that the interest portion of the Lease Payments is includible in the gross income of Lessor or any former Lessor ("Taxable"), then the interest rate hereunder shall be adjusted to the Prime Rate plus 1.0%, determined daily according to the Prime Rate in effect for such date, effective as to the earliest date that such interest was Taxable. Any additional amount of interest due for the period prior to the date Lessee was notified that interest was Taxable and began making payments at the adjusted rate shall be paid by Lessee, at the option of Lessor, (i) within thirty (30) days after the date Lessee is notified of the amount due, or (ii) on such other payment schedule as shall be satisfactory to Lessor.

“Prime Rate” shall mean the rate of interest announced by Regions Bank (the “Bank”) as its prime rate, with the understanding that the Bank’s prime rate is one of its base rates established from time to time for lending purposes and is not necessarily the best or lowest rate offered by the Bank and is evidenced by the recording thereof after its announcement in such internal publication or publications as the Bank may designate.

**27. Representations of Lessee.** Lessee hereby represents and warrants that: (i) Lessee is a duly constituted, organized and validly existing political subdivision existing under the laws of the State of Florida and is authorized to lease personal property and to sell or lease or otherwise dispose of personal property; (ii) Lessee has full power, authority, and legal right to execute, deliver and perform the agreements on its part contained in this Lease; (iii) the person or persons executing this Lease on behalf of Lessee have been duly authorized under the laws of the State of Florida and a duly adopted resolution of Lessee’s governing body is in full force and effect on the date hereof to execute this Lease on behalf of Lessee and to obligate Lessee hereunder; (iv) Lessee has taken all necessary steps or complied with all procedures required for the authorization and execution of this Lease; (v) all Lease Payments which are to be made hereunder will be paid out of funds which are legally available for such purpose; (vi) Lessee has obtained or made, or does not require, the approval of or the giving of notice to any Federal, State, local or foreign governmental authority in order to enter into this Lease; (vii) Lessee is not required to submit this Lease to Lessee’s electorate for approval; (viii) Lessee, by entering into this Lease, does not violate any law binding on Lessee or contravene any indenture, credit agreement, or any other agreement under which Lessee is a party or by which it is bound; (ix) this Lease constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms; (x) there are no pending or threatened actions or proceedings before any court, administrative agency or other tribunal or body or judgments which may materially adversely affect Lessee’s financial condition or operations; (xi) the Equipment is personal property and is not now nor will it become either real property or a fixture or inventory; (xii) the use of the Equipment is essential, necessary, useful, and appropriate to the lawful purposes of Lessee and in the discharge of its duties as a governmental body; (xiii) the Lease application (if any) is true and is not misleading; (xiv) the execution of this Lease does not constitute a default in any other agreement of Lessee; (xv) there is not existing, and Lessee will not directly or indirectly create, incur, assume or suffer to exist, any mortgage, security interest, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, title thereto or any interest therein, except the respective rights of Lessor and Lessee under this Lease and further excepting any mortgage, security interest, pledge, lien or encumbrance granted by Lessor; (xvi) the Equipment is of size, design, capacity and manufacture selected by Lessee and will be suitable for Lessee’s purposes; (xvii) Lessee will cause to be done, executed, acknowledged and delivered all such further acts, instruments, conveyances and assurances as Lessor shall require for accomplishing the purposes of this Lease; (xviii) Lessee, shall promptly furnish to Lessor such information as may be required to enable Lessor to timely file any reports required to be filed by it under this Lease with any governmental authority; (xix) Lessee has complied with the insurance provisions of Section 15; (xx) Lessee will execute or file any reports or tax forms required by State or Federal authorities; (xxi) Lessee and its governing body reasonably believe that Lessee shall have sufficient available funds during each fiscal year through the maximum term to elect to appropriate monies to make the Lease Payments hereunder; and (xxii) all actions of the governing body of the Lessee and its members concerning this Lease have been taken in accordance with the laws of the State of Florida.

**28. Arbitration.** Lessee represents to Lessor that its business and affairs constitute substantial interstate commerce and that it contemplates using the Equipment in substantial interstate commerce. Except as otherwise specifically set forth below, any action, dispute, claim, counterclaim or controversy (“Dispute” or “Disputes”), between or among Lessor, Lessee or any guarantor, including any claim based on or arising from an alleged tort, shall be resolved by arbitration as set forth below. As used herein, Disputes shall include all actions, disputes, claims, counterclaims or controversies arising in connection with this Lease (including all Exhibits and other addenda), any extension of or amendments to this Lease, any security or collateral given to Lessor, any action taken (or any omission to take any action) in connection with any of the foregoing, any part, present and future agreement between or among Lessor, Lessee or any guarantor (including this Lease and any related guaranty agreement), and any past, present or future transactions between or among Lessor, Lessee or any guarantor.

To the extent permitted by applicable law, all Disputes will be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) in Birmingham, Alabama. Defenses based on statutes of limitations, estoppel, waiver, laches and similar doctrines, that would otherwise be applicable to an action brought by a party, shall be applicable in any such arbitration proceeding, and the commencement of an arbitration proceeding with respect to this Lease shall be deemed the commencement of an action for such purposes.

Whenever an arbitration is required hereunder, the arbitrator shall be selected in accordance with the Commercial Arbitration Rules of the AAA. The AAA shall designate a panel of 10 potential arbitrators knowledgeable in the subject matter of the Dispute. Each of Lessor and Lessee shall designate, within thirty (30) days of the receipt of the list of potential arbitrators, one of the potential arbitrators to serve, and the two arbitrators so designated shall select a third arbitrator from the eight remaining potential arbitrators. The panel of three arbitrators shall determine the resolution of the Dispute.

**29. No Agency.** Lessee hereby acknowledges and agrees that neither the manufacturer, the supplier, nor any salesman, representative or other agent of the manufacturer or supplier, is an agent of Lessor. No salesman, representative or agent of the manufacturer or supplier is authorized to waive or alter any term of condition of this Lease and no representation as to the Equipment or any other matter by the manufacturer or supplier shall in any way affect Lessee’s duty to pay Lease Payments and perform its other obligations as set forth in this Lease.

**30. Finance Lease.** Lessee hereby acknowledges that for purposes of the Florida Uniform Commercial Code this Lease is a finance lease and Lessor is not an agent of the manufacturer or vendor of the equipment. Lessee hereby acknowledges that Lessee has selected the supplier of the equipment and directed Lessor to purchase the equipment from the supplier. Lessee hereby acknowledges that it is entitled under the UCC to all warranties and other rights provided to Lessee by the supplier of the equipment and to contact the supplier for an accurate and complete statement of any such express warranties and other rights and any disclaimers or limitations of such rights or of remedies.

**31. Waivers of Lessee.** To the extent permitted by Florida law, Lessee hereby waives any and all rights and remedies conferred by including, without limitation, any rights to (a) cancel or repudiate the Lease, (b) reject or revoke acceptance of the Equipment, (c) recover damages from the Lessor for breach of warranty or for any other reason, (d) claim a security interest in any rejected Equipment in the Lessee’s possession or control, (e) deduct from rent all or any part of any claimed damages resulting from the Lessor’s default under the Lease, (f) accept partial delivery of the Equipment, (g) “cover” by making any purchase or lease of substitute equipment, (h) recover from the Lessor or any assignee of the Lessor any general, special, incidental or consequential damages for any reason whatsoever, and (i) specific performance, replevin or the like for any of the Equipment. The Lessee also waives any statutory right it may have now or in the future to require the Lessor to sell or re-lease the Equipment or otherwise to mitigate damages.

**32. Additional Provisions.** Any additional provisions and modifications, if any, to the standard language of this Lease are set forth in Exhibit D attached hereto.

**LESSOR: REGIONS EQUIPMENT FINANCE CORPORATION**

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

STATE OF  
FLORIDA  
COUNTY OF  
BROWARD

The foregoing instruments were acknowledged before me this \_\_\_\_\_da  
y of \_\_\_\_\_, 2019, by \_\_\_\_\_, on behalf of  
REGIONS EQUIPMENT FINANCE CORPORATION, who is/are personally known to  
me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or  
Stamped)

\_\_\_\_\_  
Commission Number



**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY  
MANAGER

Attest:

\_\_\_\_\_  
ASCELETA  
HAMMOND  
CITY CLERK

(SEAL)

Approved As To Form:

\_\_\_\_\_  
MARK E. BERMAN  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**EXHIBIT A  
TO  
EQUIPMENT LEASE-PURCHASE AGREEMENT  
DATED: May 21, 2019  
BETWEEN REGIONS EQUIPMENT FINANCE CORPORATION  
AND  
CITY OF POMPANO BEACH, FLORIDA**

Description of Equipment

-	Extrication Equipment	Rescue Equipment
1	ATV Cart	Light Machinery/Equipment
-	SCBAs	Light Machinery/Equipment
	SCBAs-currently not in 2019 proposed budget	
1	SUV	Motor Vehicles
1	UTV	Motor Vehicles
1	ATV	Motor Vehicles
1	PWC (waverunner)	Light Machinery/Equipment
1	Jet Ski	Light Machinery/Equipment
1	SUV	Motor Vehicles
1	Ford F-750	Motor Vehicles
1	Ford Cab Crew F-450	Motor Vehicles
1	Ford F-750	Motor Vehicles
1	WANCO	Light Machinery/Equipment
1	Lawn Mower SCAG 72'	Heavy Machinery/Equipment
1	Toro Workman	Heavy Machinery/Equipment
1	3505-D Toro	Heavy Machinery/Equipment
1	Ford F-450 Crew Cab	Motor Vehicles
1	AMIDA ODLSE15LA - ARROW/MESSAGE BOARD	Light Machinery/Equipment
1	SCAG Mower	Heavy Machinery/Equipment
1	Pool Cover (Houston Sworn)	Furniture & Fixtures
1	Club Car	Light Machinery/Equipment
1	Digital Marquee	
1	Digital Marquee	
1	Rescue Van	Motor Vehicles
1	12-Lead Defibrillators	Rescue Equipment
1	12-Lead Defibrillators	Rescue Equipment
1	SUV	Motor Vehicles
1	Ford F-650	Motor Vehicles
1	Pacmac Sterling	Heavy Machinery/Equipment

Equipment Location

**100 WEST ATLANTIC BOULEVARD, ROOM 480, POMPANO BEACH, FL 33060**

"Equipment" as defined and described hereinabove, also includes any related software (embedded therein or otherwise), all tooling, tools, repair parts and spare parts used or useful in respect of the foregoing, and all alterations, substitutions, additions, modifications, attachments, accessories and accessions to any of the foregoing, together with all supplier agreements, warranty agreements, extended services agreement and other instruments and documents that relate to the acquisition, installation, maintenance or warranty of any Equipment and all books and records relating to the

Equipment, including all of the following: operating manuals, training manuals, service records, in whatever form, including digital and electronic form.

Identified by:

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

**EXHIBIT B  
TO  
EQUIPMENT LEASE-PURCHASE AGREEMENT  
DATED: May 21, 2019  
BETWEEN REGIONS EQUIPMENT FINANCE CORPORATION  
AND  
CITY OF POMPANO BEACH, FLORIDA**

Acceptance Certificate

Regions Equipment Finance Corporation  
P. O. Box 11407  
Birmingham, Alabama 35246

Ladies and Gentlemen:

In accordance with the terms of the Equipment Lease-Purchase Agreement dated **May 21, 2019** (the "Lease") between **Regions Equipment Finance Corporation** ("Lessor"), and **CITY OF POMPANO BEACH, FLORIDA** ("Lessee"), Lessee hereby certifies and represents to, and agrees with, Lessor as follows:

1. The Equipment, as such term is defined in the Lease, has been delivered and installed at the Equipment Location specified in Exhibit A to the Lease and was accepted by Lessee on **May 21, 2019**.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. No Event of Default (as defined in the Lease) and no event which with notice or lapse of time, or both, would become an Event of Default, has occurred and is continuing.

Dated: **May 21, 2019**

**CITY OF POMPANO BEACH, FLORIDA**

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

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

**EXHIBIT C**  
**TO**  
**EQUIPMENT LEASE-PURCHASE AGREEMENT**  
**DATED: May 21, 2019**  
**BETWEEN REGIONS EQUIPMENT FINANCE CORPORATION**  
**AND**  
**CITY OF POMPANO BEACH, FLORIDA**

Commencement Date: **May 21, 2019**  
Expiration Date: May 21, 2024  
Interest Rate: **2.19%**

Total Obligation of **CITY OF POMPANO BEACH, FLORIDA** for fiscal year of execution and each renewal year thereafter:

<u>Fiscal Year</u>	<u>Total Obligation</u>	<u>Concluding</u>
<b>2019</b>	<b>\$2,000,000.00</b>	<b>Payment</b>
		<b>\$105,845.68</b>

SEE ATTACHED AMORT SCHEDULE

Loan Amortization					
date	funding	payment	interest	principal	balance
5/21/2019	\$ 2,000,000.00				\$ 2,000,000.00
8/21/2019		\$ 105,845.68	\$ 10,945.50	\$ 94,900.18	\$ 1,905,099.82
11/21/2019		\$ 105,845.68	\$ 10,426.14	\$ 95,419.55	\$ 1,809,680.27
2/21/2020		\$ 105,845.68	\$ 9,903.93	\$ 95,941.76	\$ 1,713,738.51
5/21/2020		\$ 105,845.68	\$ 9,378.86	\$ 96,466.82	\$ 1,617,271.69
8/21/2020		\$ 105,845.68	\$ 8,850.92	\$ 96,994.76	\$ 1,520,276.93
11/21/2020		\$ 105,845.68	\$ 8,320.10	\$ 97,525.59	\$ 1,422,751.34
2/21/2021		\$ 105,845.68	\$ 7,786.36	\$ 98,059.32	\$ 1,324,692.02
5/21/2021		\$ 105,845.68	\$ 7,249.71	\$ 98,595.97	\$ 1,226,096.05
8/21/2021		\$ 105,845.68	\$ 6,710.12	\$ 99,135.57	\$ 1,126,960.48
11/21/2021		\$ 105,845.68	\$ 6,167.57	\$ 99,678.11	\$ 1,027,282.37
2/21/2022		\$ 105,845.68	\$ 5,622.06	\$ 100,223.62	\$ 927,058.75
5/21/2022		\$ 105,845.68	\$ 5,073.56	\$ 100,772.12	\$ 826,286.63
8/21/2022		\$ 105,845.68	\$ 4,522.06	\$ 101,323.62	\$ 724,963.00
11/21/2022		\$ 105,845.68	\$ 3,967.54	\$ 101,878.14	\$ 623,084.86
2/21/2023		\$ 105,845.68	\$ 3,409.99	\$ 102,435.70	\$ 520,649.17
5/21/2023		\$ 105,845.68	\$ 2,849.38	\$ 102,996.30	\$ 417,652.87
8/21/2023		\$ 105,845.68	\$ 2,285.71	\$ 103,559.97	\$ 314,092.89
11/21/2023		\$ 105,845.68	\$ 1,718.95	\$ 104,126.73	\$ 209,966.16
2/21/2024		\$ 105,845.68	\$ 1,149.09	\$ 104,696.59	\$ 105,269.57
5/21/2024		\$ 105,845.68	\$ 576.11	\$ 105,269.57	\$ -
	-----	-----	-----	-----	
	\$ 2,000,000.00	\$ 2,116,913.67	\$ 116,913.67	\$ 2,000,000.00	

Identified by:  
Lessor: \_\_\_\_\_  
Lessee: \_\_\_\_\_

**EXHIBIT D**  
**TO**  
**EQUIPMENT LEASE-PURCHASE AGREEMENT**  
**DATED: May 21, 2019**  
**BETWEEN REGIONS EQUIPMENT FINANCE CORPORATION**  
**AND**  
**CITY OF POMPANO BEACH, FLORIDA**

Additional Provisions and  
Modifications to Standard Terms

None (detail out as required).

Identified by:

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

(To be written on Lessee's Letterhead)

ESSENTIAL USE LETTER

Dated: \_\_\_\_\_

**Regions Equipment Finance Corporation**

P.O. Box 11407  
Birmingham, Alabama 35246-1001

Re: Equipment Lease-Purchase Agreement dated May 21, 2019

Gentlemen:

This letter is being written with respect to the use of the equipment (the "Equipment") to be leased to the undersigned pursuant to the above-referenced Equipment Lease-Purchase Agreement. The Equipment will be used by

\_\_\_\_\_

(Department or Division Using Equipment)

for the following purposes:

\_\_\_\_\_

\_\_\_\_\_

(State how and for what purposes the Equipment will be used)

The undersigned hereby represents that the use of the Equipment is essential and necessary to its proper, efficient and economic operation of its governmental functions and its purchase is pursuant to a legitimate public purpose.

Very truly yours,

**CITY OF POMPANO BEACH, FLORIDA**

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

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

INCUMBENCY CERTIFICATE

I, \_\_\_\_\_, do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of **CITY OF POMPANO BEACH, FLORIDA**, a political subdivision or agency or public corporation duly organized and existing under the laws of the State of Florida ("Lessee"), that I have custody of the records of such entity, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of Lessee holding the offices set forth opposite their respective names. I further certify that (i) the signatures set opposite their respective names and titles are their true and authentic signatures and (ii) such officers have the authority on behalf of Lessee to enter into that certain Equipment Lease-Purchase Agreement dated May 21, 2019, between Lessee and Regions Equipment Finance Corporation, as evidenced by the copy of the resolution of the Lessee attached hereto.

NAME

TITLE

SIGNATURE

\_\_\_\_\_  
ANDREW JEAN-PIERRE

\_\_\_\_\_  
ERICA SIMMONS

\_\_\_\_\_  
ALLISON FEURTADO

\_\_\_\_\_  
REX HARDIN

IN WITNESS WHEREOF, this certificate has been executed by the undersigned and the seal of Lessee has been affixed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Secretary/Clerk

[SEAL]



## **RESOLUTION**

Replace this page with final Version of Resolution prepared by City's Attorney and approved by REFCO Legal.

(To be written on Counsel's Letterhead)

OPINION OF COUNSEL

Dated: \_\_\_\_\_

**Regions Equipment Finance Corporation**

P.O. Box 11407  
Birmingham, Alabama 35246-1001

Re: Equipment Lease-Purchase Agreement dated **May 21, 2019**

Ladies and Gentlemen:

I have acted as Counsel to CITY OF POMPANO BEACH, FLORIDA ("Lessee") with respect to that certain Equipment Lease-Purchase Agreement (the "Lease") dated **May 21, 2019**, by and between **Regions Equipment Finance Corporation** and Lessee. I have reviewed the Lease and such other documents, records and certificates of Lessee and appropriate public officials as I have deemed relevant and am of the opinion that:

1. Lessee is a political subdivision or agency of the State of Florida;
2. The execution, delivery and performance by Lessee of the Lease have been duly authorized by all necessary action on the part of Lessee and no other necessary approval or consent is required in order for the Lease to be a legal, valid and binding obligation of Lessee enforceable in accordance with its terms; and
3. The Lease constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms.
4. All necessary approvals, consents, and franchises (if applicable) have been obtained for the acquisition and operation of the equipment financed pursuant to the terms of the Lease.
5. Lessee has complied with all competitive bid law provisions of Florida law applicable to the Lease and the equipment financed thereby.

This opinion is rendered to and may be relied upon by **Regions Equipment Finance Corporation**, and or its successors and assigns and its legal counsel.

Very truly yours,

\_\_\_\_\_  
(Attorney for the Lessee)

**NOTICE AND CONSENT TO ASSIGNMENT**

May 21, 2019

**CITY OF POMPANO BEACH, FLORIDA  
100 WEST ATLANTIC BOULEVARD  
ROOM 480  
POMPANO BEACH, FL 33060**

Attention:

Re: Equipment Lease-Purchase Agreement dated **May 21, 2019**, between **CITY OF POMPANO BEACH, FLORIDA** ("Lessee") and **Regions Equipment Finance Corporation (REFCO)**, an affiliated entity of Regions Bank.

Addressee:

Please be advised that **Regions Equipment Finance Corporation (REFCO)**, an affiliated entity of Regions Bank ("Lessor") has assigned all its rights, title and interest in and to the above referenced Equipment Lease- Purchase Agreement (the "Lease"), the Equipment leased thereunder, and the right to receive payments thereunder to **Regions Bank** (the "Assignee").

All payments due under the Lease should be made to the Assignee at the following address:

**Regions Bank**  
**C/O Regions Equipment Finance Corporation**  
**P.O. Box 11407**  
**Birmingham, Alabama 35246-1001**

Please acknowledge your acceptance of the assignment, your recordation of the assignment pursuant to the assignment provisions of the Lease, and your agreement to make the payment due under the Lease to the Assignee by the signature of a duly authorized officer in the space provided on the enclosed counterpart of this letter and return it to us at the address shown above.

Sincerely,

**REGIONS EQUIPMENT FINANCE CORPORATION, an affiliated entity of Regions Bank.**

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

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

ACKNOWLEDGE AND ACCEPTED:

**CITY OF POMPANO BEACH, FLORIDA**

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

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

CERTIFICATE WITH RESPECT TO TAX-EXEMPT INTEREST

I, \_\_\_\_\_, the \_\_\_\_\_ of **CITY OF POMPANO BEACH, FLORIDA** ("Lessee"), am duly charged with the authority for executing that certain Equipment Lease-Purchase Agreement dated as of **May 21, 2019** (the "Lease") by and between Lessee and Regions Equipment Finance Corporation and do hereby certify as follows:

1. This certificate is executed for the purpose of establishing that the interest component of each Lease Payment will not be included in gross income of the Lessor for purposes of federal income taxation.
2. Lessee is a political subdivision of the State of **Florida**.
3. The Agreement is being issued in Calendar year ending **2019** (the "Calendar Year").
4. All proceeds of the Lease will be used to acquire the Equipment on the date of acceptance thereof by the Lessee, and Lessee shall never invest, or have the opportunity to invest, any proceeds of the Lease. None of the proceeds shall be used to reimburse Lessee for any expenditure made prior to sixty (60) days from the date of this Certificate.
5. The Lessee has not established any sinking fund or other similar fund for the payment of the Lease Payments.
6. No portion of the gross proceeds of the Lease will be used to make or finance loans to persons other than governmental units or be used in any trade or business carried on by any person other than a governmental unit.
7. No portion of the payment of principal of, or interest on, the Lease is directly or indirectly (i) secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or (ii) to be derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used for a private business use.
8. This certificate is based on facts and circumstances in existence on this date.

IN WITNESS WHEREOF, this certificate has been executed on behalf of Lessee by the undersigned officer.

Dated: **May 21, 2019**

**CITY OF POMPANO BEACH, FLORIDA:**

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

CERTIFICATE OF APPROPRIATION

I, \_\_\_\_\_, the \_\_\_\_\_ of **CITY OF POMPANO BEACH, FLORIDA** ("Lessee") hereby certify that all lease payments due by Lessee under that certain Equipment Lease-Purchase Agreement dated as of **May 21, 2019**, between Lessee and **Regions Equipment Finance Corporation**, as Lessor, for the fiscal year ending **2024**, are within such fiscal year's budget for Lessee and within an available, unexhausted and unencumbered appropriation for Lessee.

IN WITNESS WHEREOF, this certificate has been executed on behalf of Lessee by the undersigned officer.

Dated: \_\_\_\_\_.\_\_\_\_\_

**CITY OF POMPANO BEACH, FLORIDA**

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

Name: \_\_\_\_\_

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

**PAY PROCEEDS LETTER  
TO  
EQUIPMENT LEASE-PURCHASE AGREEMENT  
DATED: May 21, 2019  
BETWEEN REGIONS EQUIPMENT FINANCE CORPORATION  
AND  
CITY OF POMPANO BEACH, FLORIDA**

Regions Equipment Finance Corporation  
1900 Fifth Avenue North  
Suite 2400  
Birmingham, Alabama 35203

**Re:** The Lease, executed by **CITY OF POMPANO BEACH, FLORIDA** (the "Company") and either Regions Equipment Finance Corporation ("Regions") (the Lease, as it incorporates the terms of the Equipment Lease-Purchase Agreement is hereinafter referred to as the "Agreement").

With reference to the Agreement, you are hereby authorized to disburse proceeds in the amount of **\$2,000,000.00** by funds transfer or deposit, in such amounts and with such payees as are listed below:

Payee: **CITY OF POMPANO BEACH, FLORIDA**  
Ref. No.: ESCROW ACCOUNT  
Amount: \$2,000,000.00

Funds Transfer to Account No. 0270839522 in Payee's Name at REGIONS BANK ABA# 063104668;  
**Notification Information:**

Should the closing occur at a later date, the proceeds should be adjusted accordingly.

**LESSEE: CITY OF POMPANO BEACH, FLORIDA**

**BY:** \_\_\_\_\_

**ITS:** \_\_\_\_\_

**REGIONS EQUIPMENT FINANCE CORPORATION**

**AUTO DEBIT AUTHORIZATION LETTER**

Regions Equipment Finance Corporation  
1900 Fifth Avenue North  
Birmingham, Alabama 35203

Ladies and Gentlemen:

This letter authorizes and requests Regions Equipment Finance Corporation and Regions Equipment Finance, Ltd. (collectively, the "Lessor") to withdraw from the undersigned's account with the bank or financial institution indicated below (the "Bank") all amounts due under the Financing and Lease Agreement (the "Lease"), including without limitation: (a) all periodic rent payable pursuant to the Lease; and (b) all late fees, personal property tax, non-sufficient funds charges, and other amounts due under the Lease commencing May 30, 2019. Lessor is further requested to deliver a copy of this letter to the Bank as the undersigned's authorization to assist Lessor in accordance with the terms of this letter.

Anything herein to the contrary notwithstanding, the undersigned agrees:

1. All actions contemplated by this letter are taken as a convenience to the undersigned only. Nothing herein, and no action taken hereunder, shall be deemed to release the undersigned from any obligations pursuant to the Lease, including, without limitation, the obligation to pay rent, and the undersigned agrees that if, for any reason, Lessor is unable to effect the automatic withdrawal contemplated hereby, the undersigned shall, immediately upon notice and demand, pay all rent then due and payable under the Lease.

2. Nothing herein, and no action on Lessor's part, shall be deemed to create any undertaking or obligation on Lessor's part and the undersigned hereby agrees to indemnify and hold harmless Lessor and the Bank for all actions taken by each of them, their officers, employees, agents and attorneys in connection with the matters contemplated by this letter.

Name and Address of Bank:

Bank Name: \_\_\_\_\_

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

Name on Account: \_\_\_\_\_

Account Number: \_\_\_\_\_

ABA Number: \_\_\_\_\_

**CITY OF POMPANO BEACH, FLORIDA:**

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

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

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

## **DOCUMENT CHECKLIST FOR FLORIDA MUNICIPAL LEASES**

### **Completed**

- \_\_\_ 1. **Proposal Letter** (Regions Equipment Finance Corporation form) - to be signed by the authorized representatives of Lessee and Regions Equipment Finance Corporation.
- \_\_\_ 2. **Lease Purchase Agreement** (Regions Equipment Finance Corporation word-processed form) - to be signed by the authorized representatives of Lessee and Regions Equipment Finance Corporation; Lessee's authorized representative to be certified in the Incumbency Certificate. Each of the following exhibits is also to be completed and signed:
  - (a) Exhibit A - Description and Location of Equipment. To be signed by the authorized representatives of Regions Equipment Finance Corporation and Lessee.
  - (b) Exhibit B - Certificate of Acceptance. To be signed by the Lessee.
  - (c) Exhibit C - Payment Schedule. To be signed by the authorized representatives of Regions Equipment Finance Corporation and Lessee.
  - (d) Exhibit D - Additional Provisions and Modifications to Standard Terms - If there are no such provisions, type in NONE. To be signed by the authorized representatives of Regions Equipment Finance Corporation and Lessee.
- \_\_\_ 3. **Essential Use Letter** (Regions Equipment Finance Corporation form) - to be re-typed on Lessee's letterhead and to be signed by the authorized representative of Lessee.
- \_\_\_ 4. **Incumbency Certificate with Resolution** attached (Regions Equipment Finance Corporation form) - to be signed by the Secretary, City Clerk or other appropriate officer of the School Board, City, etc. that is Lessee and to contain the name and specimen signature of the authorized representative signing the other Lessee documents.
- \_\_\_ 5. **Opinion of Lessee's Counsel** on Counsel's letterhead (Regions Equipment Finance Corporation form) - to be signed by the attorney to the Town, School District, or other entity which is Lessee.
- \_\_\_ 6. **Certificate of Appropriation** (Regions Equipment Finance Corporation form) - to be signed by Lessee's authorized representative.
- \_\_\_ 7. **Notice and Consent to Assignment** (Regions Equipment Finance Corporation form) - to be signed by the authorized representatives of Lessee and Regions Equipment Finance Corporation.
- \_\_\_ 8. **Certificate with Respect to Tax-Exempt Interest** (Regions Equipment Finance Corporation form) - to be signed by Lessee's authorized representative.
- \_\_\_ 9. **Form 8038** - Information Return for Tax-Exempt Bond Issues to be signed by Lessee's authorized representative.
- \_\_\_ 10. Original **invoice** from manufacturer or vendor to Regions Equipment Finance Corporation covering the equipment.
- \_\_\_ 11. Copy of the **insurance policy** or certificate showing Regions Equipment Finance Corporation as loss payee and additional insured as appropriate, covering the equipment and related liability.



## **EXHIBIT B**

(Funding Agreement)

**FUNDING AGREEMENT**  
**TO REGIONS BANK ACCOUNT NO 0270839522**

THIS AGREEMENT is made and entered into this **21st day of May, 2019** by and among **Regions Equipment Finance Corporation**, an Alabama Corporation, as Lessor ("Lessor"), **City of Pompano Beach**, as Lessee ("Lessee"), and **Regions Bank**, as Funding Agent ("Funding Agent").

**W I T N E S S E T H:**

**WHEREAS, Lessor and Lessee are parties to that certain Lease dated May 21, 2019 date herewith (the "Lease"), a copy of which is attached hereto as Exhibit "A" and made a part hereof; and**

WHEREAS, in connection with the Lease, Lessor has agreed to purchase Equipment, as defined therein and as selected by Lessee, and to lease such Equipment to Lessee pursuant to the terms specified therein; and

WHEREAS, Lessee has agreed to select the vendors, related services, and Equipment to be purchased by Lessor, and to lease the same from Lessor pursuant to the terms of the Lease; and

WHEREAS both Lessor and Lessee desire the Funding Agent to act as such hereunder.

NOW, THEREFORE, in consideration of the premises which shall be deemed an integral part of this Agreement and not as mere recitals thereto, and in consideration of the mutual agreements and covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound thereby, agree as follows:

1. Deposits.

(a) Within **five** business days of the date of this Agreement, Lessor shall deposit or cause to be deposited with Funding Agent the amount of **Two Million Dollars and Zero Cents (\$2,000,000.00)** for the purpose of funding the purchase of the Equipment and services related thereto as provided in the Lease, and for such other purposes as stated herein.

(b) **Lessee represents and warrants that the amount provided for in subparagraph (a) above is sufficient to purchase and install the Equipment and to procure the related services. It is the intention of the Lessor and the Lessee that the Lessee shall obtain and complete such purchase, installation and procurement pursuant to purchase orders issued for the goods, services and Equipment selected by, delivered to, and accepted by Lessee. In the event the initial deposit provided for in subparagraph (a) above is inadequate to complete the purchase and installation of the Equipment, to make the same operational, and to procure services related to the Equipment as provided for in the Lease, then Lessee shall deposit or cause to be deposited with Funding Agent an amount sufficient to complete such purchase, installation and**

procurement. The amounts payable by Lessee are to be payable solely from Lessee's available funds, as described in Section 4 of the Lease, and the foregoing provisions are subject thereto.

(c) In the event the initial deposit provided for in subparagraph (a) above is greater than the amount required to complete the purchase and installation of the Equipment, as well as procurement of services related to the Equipment as provided for in the Lease, then after the completion of the purchase and installation of the Equipment as evidenced by the Lessee's Final Acceptance Certificate as provided for in Section 5(d) hereof, Funding Agent shall pay the balance of the deposited funds to Lessor, who shall apply quarterly such balance or the remaining portions thereof to the quarterly amounts due from Lessee pursuant to the Lease, until the balance of such deposited funds are depleted fully.

(d) Subject to the terms and conditions of this Agreement, legal and equitable rights to all deposited funds shall remain in Lessor. Funding Agent shall hold, safeguard, administer, and disburse the deposited funds in accordance with the provisions hereof.

2. Term. The term of this Agreement shall commence on the date hereof and shall continue thereafter until the disbursement of the entire deposited funds held by Funding Agent as provided herein.

3. Disbursement of Deposited Fund.

(a) Funding Agent hereby covenants and agrees to disburse the deposited funds, with interest accrued thereon, if any, in accordance with this Agreement, unless otherwise specifically instructed in writing by Lessor and Lessee jointly.

(b) If Funding Agent receives conflicting instructions regarding disbursement of all or part of the deposited funds or otherwise determines that it is appropriate to seek a determination of entitlement to the deposited funds or any part thereof, then it may, at its option, interplead the balance of the deposited funds or such portion thereof then held by the Funding Agent to the custody of any court of competent jurisdiction, as determined by Funding Agent to have jurisdiction, together with such legal pleadings as it may deem appropriate, and thereupon be discharged from all further duties and liabilities under this Funding Agreement.

4. Status and Actions of Funding Agent. The acceptance by the Funding Agent of its duties hereunder is subject to the following terms and conditions, which all parties hereto agree shall govern and control with respect to the right, duties and liabilities of the Funding Agent:

(a) Funding Agent has a business relationship with Lessor. Both are owned by a single holding company. Because of this relationship, use of Funding Agent in this capacity may provide Lessor a financial or other benefit.

(b) Funding Agent acts hereunder as a depository. Funding Agent shall not be responsible or liable in any manner for the sufficiency, correctness, genuineness, validity

or sufficiency of any of the executed agreements, documents or other items or for any claim or action by any person, firm, corporation or trustee concerning the right or power of any depositor to make any transfer or the validity of the transfer of any part of the deposited amount to the Funding Agent;

(c) Funding Agent shall be entitled to act upon, without any independent duty to investigate, any certificate, statement, notice, demand, request, consent, waiver, receipt, agreement or other instrument whatever, not only in reliance upon its due execution and the validity and effectiveness of its provisions, but also as to the accuracy and completeness of any information therein contained, which Funding Agent shall in good faith believe to be genuine and to have been signed or presented by a proper person or persons, and shall be protected in so acting.

(d) Funding Agent shall be entitled to request and receive from any party hereto such documents in addition to those provided for herein as Funding Agent may deem necessary to resolve any questions of fact involved in the provisions hereof.

(e) Funding Agent is authorized to and may, at the joint expense of Lessor and Lessee, consult counsel of its choice in respect to any dispute or conflict, or in respect to the construction of any of the provisions hereof, or in respect to any question relating to its duties or responsibilities under this Agreement, and shall incur no liability and shall be fully protected for any action taken or omitted in good faith on advice of such counsel.

(f) Funding Agent may, but shall be under no obligation to, advance any of its own funds in connection with the maintenance or administration of this Agreement, to institute or defend any action, suit or legal proceeding in connection herewith, or to take any other action likely to involve Funding Agent in expense. The Lessor and Lessee shall indemnify the Funding Agent and hold it harmless against the cost and expense (including without limitation, attorney's fees and expenses) of any such defense or action.

(g) If deemed appropriate by Funding Agent, Funding Agent shall be entitled to demand and receive jointly from Lessor and Lessee such funds as Funding Agent shall deem necessary to institute the interpleader actions described herein.

(h) Funding Agent is not a party to and is not bound by any agreement between any one or more of the parties hereto, except this Funding Agreement, unless otherwise expressly stated herein. Funding Agent shall not be bound by any amendment to this Agreement or by any other agreement between Lessor and Lessee unless Funding Agent shall have executed such amendment or agreement;

(i) Funding Agent shall have only such duties and responsibilities as are expressly set forth in this Agreement, being purely ministerial in nature, and it shall have no responsibility in respect to any of the deposited funds other than faithfully to follow the instructions herein contained.

(j) Funding Agent may resign and be discharged from its duties hereunder at any time by giving notice of such resignation to Lessor and Lessee specifying a date when such resignation shall take effect (which date shall be no fewer than fifteen (15) days after the date of delivery of such notice). Upon receipt of such notice, the Lessor shall appoint a successor funding agent, such successor to become Funding Agent hereunder upon the resignation date specified in the subject notice, at which time the resigning Funding Agent shall transfer the balance of the deposited funds to the successor Funding Agent, together with a statement detailing the history of all deposits, earnings, and disbursements. Any funding agent which shall succeed Funding Agent shall be a person or entity possessing trust powers in the State of Alabama; and

(k) Funding Agent shall not be held liable for any error of judgment, or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything that it may do or refrain from doing in connection herewith. Funding Agent shall be indemnified and held harmless, jointly and severally, by Lessor and Lessee against any and all claims, costs, expenses, damages and other liabilities incurred by it hereunder, including attorneys' fees and costs, whether or not litigation is commenced, except for those resulting from its own willful misconduct or gross negligence.

The provisions of this Section 4 shall survive the termination of this Agreement.

#### 5. Instructions to Funding Agent.

(a) Use of Deposited Funds. Deposited funds shall be used for the purpose of funding the purchase of the Equipment and services related thereto (including installing such Equipment and making the same operational), as provided in the Lease, and for such other purposes as stated herein.

(b) Investment of Deposited Funds. The Funding Agent shall invest the deposited funds, at the written instruction of Lessee, in United States Treasury Bills, or Government Agency obligations, any fund secured by United States Treasury Bills, money market funds, or other interest-bearing or non-interest bearing bank accounts (including without limitation interest-bearing or non-interest bearing bank accounts of Regions Bank), with any remainder being deposited and maintained in an interest-bearing or non-interest bearing demand account with the Funding Agent (as directed by the Lessee), until disbursement of the entire deposited funds. Earnings, if any, on the deposited funds will be added to the deposit and shall become a part thereof. Income and expenses of the deposited funds will be taxed and reported in accordance with applicable income tax laws. The Funding Agent will pay from the deposited funds tax liabilities, if any, payable by the Funding Agent relative to the deposited funds.

(c) Acceptance, Acceptance Certificate, and Notices of Rejection. Lessee will inspect each Item, and either accept or reject delivery and installation. Lessee shall inform Lessor, Funding Agent, and the vendor of the rejected goods or services of Lessee's rejection of any Item, by providing a written notice of rejection to the Lessor,

Funding Agent and such vendor following the delivery, installation or rendering of the rejected goods or services. Lessee's acceptance after having such right of inspection shall constitute Lessee's acknowledgement that: (i) each Item is of the size, design, capacity, specification and manufacture selected by Lessee; (ii) Lessee is satisfied that such Item is suitable for its purpose and such Item is fit for its intended use; (iii) Lessor is neither a manufacturer of such Items nor a dealer therein; (iv) Funding Agent is neither a manufacturer of such Items nor a dealer therein; (v) Lessee waives any and all defenses which it may have against Lessor or Funding Agent arising from the Item including, but not limited to, the operation, delivery, installation or condition; and (vi) Lessee accepts said Equipment **AS IS, WHERE IS AND WITH WAIVER OF ALL WARRANTIES AS SET FORTH IN THE MASTER LEASE**. Lessee will sign a Certificate of Acceptance acknowledging acceptance of delivery and installation, and warranting that the items are being deployed in conformity with this Agreement and the Lease. Each Acceptance of Certificate shall include a description of the items being accepted, including, but not limited to, references to serial numbers, Schedule Number, and Purchase Order Number, and a statement as to whether the Acceptance Certificate includes, or does not include, all Items contained in the referenced Schedule and Purchase Order. Acceptance Certificate to accomplish the foregoing shall be completed by Lessee, using the form of Acceptance Certificate attached hereto as Exhibit B, or such other form as Lessor may subsequently provide for such purpose. Upon completion of the delivery and installation of all of the Items contained in all of the Schedules to the Lease, Lessee shall issue a Final Acceptance Certificate to Lessor and to Funding Agent, indicating such completion.

(e) Payment of Vendors. Upon receiving Acceptance Certificate, as defined in subparagraph (d) above, Funding Agent shall pay from the available deposited funds the providers of Equipment and related services pursuant to the terms and conditions specified in the Purchase Orders, unless otherwise mutually directed in writing by Lessor and Lessee jointly, and in this regard it is understood that Lessee may, with advance notice to Funding Agent, make direct payments to certain vendors on behalf of Funding Agent and request reimbursement from Funding Agent in the amount of such payments upon provision of proof of payment to Funding Agent. Lessee shall be responsible for the payment of all costs, fees, charges, expenses, damages, interest charges, claims, losses and liabilities in connection with or arising out of payment of invoices following the receipt of Acceptance Certificates as provided herein. Funding Agent shall provide to Lessor and to Lessee copies of documentation evidencing each payment by Funding Agent.

(f) Other Payments. Funding Agent shall also pay from the deposited funds other fees, charges and expenses as authorized herein or as mutually directed in writing by the Lessor and Lessee jointly. Funding Agent shall provide to Lessor and to Lessee copies of documentation evidencing each payment by Funding Agent.

(g) Statement of Account. Funding Agent shall provide statements to Lessor and to Lessee, no less frequently than once each calendar quarter, accounting for the deposits and disbursements of deposited funds.

(h) For purposes of subparagraphs (c) through (g) above, Purchase Orders, notices of rejection, Acceptance Certificates, evidence of payments, and statements sent to Lessor shall be sent to the attention of:

Lisa Fulghum  
Regions Equipment Finance Corporation  
4851 Tamiami Trail North  
Naples, FL 34103

or such other person as Lessor may designate in writing from time to time.

For purposes of subparagraphs (c) and (d) above, Purchase Orders, notices of rejection, and Certificates of Acceptance sent to Funding Agent shall be sent to the attention of:

Amish Patel  
Regions Bank  
2800 Ponce De Leon Boulevard  
Miami, FL 33134

or such other person as Funding Agent may designate in writing from time to time.

For purposes of subparagraphs (e) through (g) above, evidence of payments and statements sent to Lessee shall be sent to the attention of:

Andrew Jean-Pierre  
City of Pompano Beach  
100 West Atlantic Boulevard, Room 480  
Pompano Beach, FL 33060

or such other person as Lessee may designate in writing from time to time.

6. Expenses and Compensation. Intentionally Left Blank

7. Interpleader Action Authorized. In the event of disagreement about the interpretation of this Agreement, or about the rights and obligations or the propriety of any action contemplated by the Funding Agent hereunder or upon the occurrence of the events described in Section 4(j) above, Funding Agent may, at its sole discretion, file an action in interpleader. The Lessor and Lessee shall indemnify the Funding Agent, jointly and severally, for all costs, including reasonable attorney's fees, in connection with the aforesaid interpleader action.

8. Default.

(a) In the event Lessee defaults in the performance of any of the terms of this Agreement or there is a default under the Lease, Lessor, shall, in a writing delivered to Funding Agent and Lessee, notify Funding Agent and Lessee of such default. Lessee shall have fifteen (15) days after the receipt of the aforesaid notice of default to cure same (or cause the same to be cured) and, in a writing acknowledged by Lessor and delivered to Funding Agent, notify Funding Agent of the cure of such default. If a default by

Lessee hereunder is not cured by Lessee within the fifteen-day curative period specified above, Funding Agent shall deliver the deposited funds to Lessor within five (5) days after the expiration of the aforesaid fifteen-day curative period.

(b) In the event that there is a dispute between Lessor and Lessee as to the existence of a default by Lessee in the performance of any of the terms of this Agreement or the Lease, or as to whether a default by Lessee has been cured as herein provided, Funding Agent shall, in its sole discretion, exercise one of the following options:

- (1) continue to hold the deposited funds pending resolution of such dispute between Lessor and Lessee; or
- (2) commence an interpleader action and deliver the deposited funds and any other assets, if any, being held by Funding Agent into the clerk of the court and be released from all obligations and liabilities created by this Agreement with respect to the deposited funds so delivered to the court.

9. Taxes. Lessee agrees to pay for any and all taxes that may be imposed on Funding Agent, excluding federal, state and local taxes imposed on, or measured by, the net income of Funding Agent, as a result of the services provided for herein.

10. Notices. All notices required or desired to be given hereunder shall be deemed sufficient if delivered personally or by certified mail, return receipt requested, and addressed as follows:

Lisa Fulghum  
Regions Equipment Finance Corporation  
4851 Tamiami Trail North  
Naples, FL 34103

Amish Patel  
Regions Bank  
2800 Ponce De Leon Boulevard  
Miami, FL 33134

City of Pompano Beach  
Andrew Jean-Pierre  
100 West Atlantic Boulevard, Room 480  
Pompano Beach, FL 33060

or to such other address as the party for which such notice is intended shall have previously indicated by notice to the other parties hereto similarly given. In addition to the foregoing, a party may give notice by electronic mail provided however such notice shall not be deemed received until the addressee confirms in writing such receipt either by electronic reply or by written response otherwise delivered in accordance with these notice procedures.



11. Attorneys' Fees. Lessor and Lessee hereby agree that in the event it should become necessary for either party to employ an attorney to enforce against the other any of its rights hereunder, then the prevailing party shall be entitled to reimbursement of all costs and expenses, including attorneys' fees, which may be reasonably incurred or paid at any time or times by it in connection therewith, including, without limitation, attorneys' fees and costs at trial court and appellate court levels.

12. Rules of Construction.

121 Entire Agreement. This Agreement, including all exhibits and schedules hereto as referenced herein, constitutes the entire agreement between the parties hereto pertaining to the subject matters hereof, and supersedes all negotiations, preliminary agreements, and all prior and contemporaneous discussions and understandings of the parties in connection with the subject matters hereof, provided, however, that nothing herein shall be deemed to affect adversely Lessor's rights, powers and privileges as provided in the Lease. Except as otherwise herein provided, no covenant, representation or condition not expressed in this Agreement, or in an amendment hereto made and executed in accordance with the provisions of subsection 12.2 of this section, shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

122 Amendments. No change, modification or termination of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties hereto.

123 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

124 Separability. If any section or provision of this Agreement or the application of such section or provision is held invalid, the remainder of the Agreement and the application of such section or provision to persons or circumstances, other than those with respect to which it is held invalid, shall not be affected thereby.

125 Headings and Captions. The titles or captions of sections contained in this Agreement are provided for convenience of reference only and shall not be considered a part hereof for purposes of interpreting or applying this Agreement; and, therefore, such titles or captions do not define, limit, extend, explain, or describe the scope or extent of this Agreement or any of its terms provisions, representations, warranties, conditions, etc., in any manner or way whatsoever.

126 Gender and Number. All pronouns and variations thereof shall be deemed to refer to the masculine, feminine or neuter and to the singular or plural as the identity of the person or entity or persons or entities may require.

127 Binding Effect on Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

128 Continuance of Agreement. The rights, responsibilities and duties of the parties hereto and the representations, warranties, covenants and agreements herein contained shall survive the Closing and the execution hereof, shall continue to bind the parties hereto, and shall continue in full force and effect until each and every obligation

of the parties hereto, pursuant to this Agreement and any document or agreement incorporated herein by reference, shall have been fully performed.

129 Remedies. All remedies shall be cumulative and not alternative.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above-written.

Lessee: **CITY OF POMPANO BEACH**

Witnesses:

By: REX HARDIN, MAYOR

By: GREGORY P. HARRISON, CITY  
MANAGER

Attest:

(SEAL)

ASCELETA  
HAMMOND CITY  
CLERK

Approved As To Form:

MARK E. BERMAN  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF  
BROWARD

The foregoing instruments were acknowledged before me this \_\_\_\_\_ day  
of

\_\_\_\_\_, 2019, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON**  
as  
City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach,  
Florida, a municipal corporation, on behalf of the municipal corporation, who are personally  
known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Lessor: **REGIONS EQUIPMENT FINANCE CORPORATION**

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

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

STATE OF ALABAMA  
COUNTY OF JEFFERSON

The forgoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019

By(name)\_\_\_\_\_, the(title)\_\_\_\_\_ of Regions  
Equipment Finance Corporation on behalf of Lessor.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:\_\_\_\_\_

Funding Agent: **REGIONS BANK**

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

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

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

The forgoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019

By(name) \_\_\_\_\_, the(title) \_\_\_\_\_ of Funding  
Agent on behalf of Regions Bank.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**FORM OF DISBURSEMENT REQUEST**

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

1. The amount of the requested disbursement:\$ \_\_\_\_\_

2. The method of disbursement:

Official Check:

☐ (made payable to: \_\_\_\_\_)

Mailed to: \_\_\_\_\_

☐ Bank Account Transfer to Acct #: \_\_\_\_\_

Acct name: \_\_\_\_\_ Wire Transfer

☐ Bank Name: \_\_\_\_\_ ABA#: \_\_\_\_\_

Credit Acct Name: \_\_\_\_\_ Credit Acct #:

Special Instructions: \_\_\_\_\_

3. A brief description of the purpose of the payment: \_\_\_\_\_

4. The undersigned certifies as follows:

(1) Payment of the disbursement for the purpose requested will not cause the undersigned to be in violation of any of its representations, warranties or covenants under the **Lease Purchase Agreement** dated **May 21, 2019** (the "Contract") including, but not limited to its covenants in the Contract.

(2) The amounts requested to be disbursed were properly incurred in connection with the acquisition of the Equipment and were not subject of any previous request for disbursement.

(3) The Equipment for which the disbursement is requested has been finally accepted by the Borrower.

5. Attached hereto are the following: Bills, receipts, invoices, or other documents evidencing the amounts and purposes for which the disbursement is requested.

**CITY OF POMPANO BEACH**

**REGIONS EQUIPMENT FINANCE CORPORATION**

**By:** \_\_\_\_\_  
\_\_\_\_\_  
(Title)

**By:** \_\_\_\_\_  
\_\_\_\_\_  
(Title)

**Original Loan Amount: \$2,000,000.00**

**Information Return for Tax-Exempt Governmental Obligations**

► Under Internal Revenue Code section 149(e)

► See separate instructions.

**Caution:** If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
<b>1</b> Issuer's name <b>CITY OF POMPANO BEACH, FLORIDA</b>		<b>2</b> Issuer's employer identification number (EIN) <b>59- 6000411</b>	
<b>3a</b> Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		<b>3b</b> Telephone number of other person shown on 3a	
<b>4</b> Number and street (or P.O. box if mail is not delivered to street address) <b>100 WEST ATLANTIC BOULEVARD, ROOM 480</b>	Room/suite	<b>5</b> Report number (For IRS Use Only) <b>3</b>	
<b>6</b> City, town, or post office, state, and ZIP code <b>POMPANO BEACH, FL 33060</b>		<b>7</b> Date of issue <b>5/21/2019</b>	
<b>8</b> Name of issue <b>Equipment-Lease Purchase Agreement dated May 21, 2019</b>		<b>9</b> CUSIP number	
<b>10a</b> Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		<b>10b</b> Telephone number of officer or other employee shown on 10a	

<b>Part II Type of Issue (enter the issue price).</b> See the instructions and attach schedule.			
<b>11</b> Education . . . . .	<b>11</b>		
<b>12</b> Health and hospital . . . . .	<b>12</b>		
<b>13</b> Transportation . . . . .	<b>13</b>		
<b>14</b> Public safety . . . . .	<b>14</b>		
<b>15</b> Environment (including sewage bonds) . . . . .	<b>15</b>		
<b>16</b> Housing . . . . .	<b>16</b>		
<b>17</b> Utilities . . . . .	<b>17</b>		
<b>18</b> Other. Describe ►	<b>18</b>	2,000,000	00
<b>19</b> If obligations are TANs or RANs, check only box 19a <input type="checkbox"/>			
If obligations are BANs, check only box 19b <input type="checkbox"/>			
<b>20</b> If obligations are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>			

<b>Part III Description of Obligations.</b> Complete for the entire issue for which this form is being filed.					
	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
<b>21</b>	<b>5/21/2024</b>	<b>\$2,000,000.00</b>	<b>\$ N/A</b>	<b>2.66 years</b>	<b>2.19%</b>

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>					
<b>22</b> Proceeds used for accrued interest . . . . .	<b>22</b>				
<b>23</b> Issue price of entire issue (enter amount from line 21, column (b)) . . . . .	<b>23</b>	2,000,000	00		
<b>24</b> Proceeds used for bond issuance costs (including underwriters' discount) . . . . .	<b>24</b>				
<b>25</b> Proceeds used for credit enhancement . . . . .	<b>25</b>				
<b>26</b> Proceeds allocated to reasonably required reserve or replacement fund . . . . .	<b>26</b>				
<b>27</b> Proceeds used to currently refund prior issues . . . . .	<b>27</b>				
<b>28</b> Proceeds used to advance refund prior issues . . . . .	<b>28</b>				
<b>29</b> Total (add lines 24 through 28) . . . . .	<b>29</b>				
<b>30</b> Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) . . . . .	<b>30</b>	2,000,000	00		

<b>Part V Description of Refunded Bonds.</b> Complete this part only for refunding bonds.	
<b>31</b> Enter the remaining weighted average maturity of the bonds to be currently refunded . . . . .	years
<b>32</b> Enter the remaining weighted average maturity of the bonds to be advance refunded . . . . .	years
<b>33</b> Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) . . . . .	
<b>34</b> Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)	

**Part VI Miscellaneous**

<b>35</b> Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .	<b>35</b>		
<b>36a</b> Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .	<b>36a</b>		
<b>b</b> Enter the final maturity date of the GIC ▶ _____			
<b>c</b> Enter the name of the GIC provider ▶ _____			
<b>37</b> Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .	<b>37</b>		
<b>38a</b> If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:			
<b>b</b> Enter the date of the master pool obligation ▶ _____			
<b>c</b> Enter the EIN of the issuer of the master pool obligation ▶ _____			
<b>d</b> Enter the name of the issuer of the master pool obligation ▶ _____			
<b>39</b> If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . .			<input type="checkbox"/>
<b>40</b> If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . .			<input type="checkbox"/>
<b>41a</b> If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:			
<b>b</b> Name of hedge provider ▶ _____			
<b>c</b> Type of hedge ▶ _____			
<b>d</b> Term of hedge ▶ _____			
<b>42</b> If the issuer has superintegrated the hedge, check box . . . . .			<input type="checkbox"/>
<b>43</b> If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . .			<input type="checkbox"/>
<b>44</b> If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . .			<input type="checkbox"/>
<b>45a</b> If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement . . . . . ▶ _____			
<b>b</b> Enter the date the official intent was adopted ▶ _____			

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

▶ \_\_\_\_\_ Date \_\_\_\_\_ ▶ \_\_\_\_\_ Type or print name and title

**Paid Preparer Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name ▶ _____			Firm's EIN ▶ _____	
Firm's address ▶ _____			Phone no. _____	

# Request for Taxpayer Identification Number and Certification

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

**Give Form to the  
requester. Do not  
send to the IRS.**

Print or type.  
See Specific Instructions on page 3.

<b>1</b> Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
<b>2</b> Business name/disregarded entity name, if different from above CITY OF POMPANO BEACH, FLORIDA	
<b>3</b> Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ►	<b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <i>(Applies to accounts maintained outside the U.S.)</i>
<b>5</b> Address (number, street, and apt. or suite no.) See instructions. 100 WEST ATLANTIC BOULEVARD, ROOM 480	Requester's name and address (optional)
<b>6</b> City, state, and ZIP code POMPANO BEACH, FL 33060	
<b>7</b> List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

<b>Social security number</b>										
			-				-			
<b>or</b>										
<b>Employer identification number</b>										
5	9		-	6	0	0	0	4	1	1

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person ►	Date ►
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*



By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The treaty number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

## What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note: ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

### Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

### Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

#### Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a) J—

A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

## Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

## Line 6

Enter your city, state, and ZIP code.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note:** See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.SSA.gov](http://www.SSA.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/Businesses](http://www.irs.gov/Businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. Go to [www.irs.gov/Forms](http://www.irs.gov/Forms) to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to [www.irs.gov/OrderForms](http://www.irs.gov/OrderForms) to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.**

You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
6. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

**\*Note:** The grantor also must provide a Form W-9 to trustee of trust.

**Note:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records From Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.**

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Visit [www.irs.gov/IdentityTheft](http://www.irs.gov/IdentityTheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.