



MASTER EQUIPMENT LEASE PURCHASE AGREEMENT NO.

Master Equipment Lease Purchase Agreement Number Dated	
"Lessee"	
Milwaukee County Parks, 9480 W Watertown Plank Rd, Wauwatosa, WI 53226	
Fax:	E-mail:
"Lessor"	
TCF National Bank, 1111 West San Marnan Dr, Suite A2 West, Waterloo, IA 50701-8926	
Fax: 319-833-4577	E-mail: customerservice@financediv.com

RECITALS:

1. Lessee desires to lease certain property from the Lessor described in the schedules to this Agreement that are to be executed from time to time by the parties hereto (such schedules, whether now or hereafter executed, are hereby incorporated herein and are hereinafter collectively referred to as the "Schedules," and the items of property leased to Lessee hereunder, together with all substitutions, proceeds, replacement parts, repairs, additions, attachments, accessories and replacements thereto, thereof or therefor, are hereinafter collectively referred to as the "Equipment") subject to the terms and conditions of and for the purposes set forth in this Agreement.

2. This Agreement is made pursuant to that certain Milwaukee County Request for Proposal #98190017 (such Request for Proposal is hereby incorporated herein and is referred to as the "RFP"). The Vendor (as hereinafter defined) responded such RFP on October 31, 2019 (such response, amended by any Best and Final Offer thereafter submitted, is hereby incorporated herein and is referred to as the "Proposal"), and the Lessee issued an Intent to Award awarding the RFP to the Vendor on November 18, 2019. The following order of precedence will govern any conflict among the terms of the Agreement, the RFP and the Proposal: (1) the Agreement; (2) the RFP; and (3) the Proposal.

2. The relationship between the parties shall be a continuing one and items of property may be added to or deleted from the Equipment from time to time by execution of additional Schedules by the parties hereto and as otherwise provided herein.

3. Lessee is authorized under the laws of the State to enter into this Agreement for the purposes set forth herein.

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

**ARTICLE I
DEFINITIONS**

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

"Agreement" means this Master Equipment Lease Purchase Agreement No. including the Schedules and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, together with any amendments to this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commencement Date" means, with respect to any Schedule, the date when the term of this Agreement with respect to that Schedule and Lessee's obligation to pay rent under that Schedule commence, which date (a) Lessee hereby authorizes Lessor to fill in on the executed payment scheduled attached to each Schedule, and (b) shall be the earlier of (i) the date on which the Equipment listed in that Schedule is accepted by Lessee in the manner described in **Section 5.01**, or (ii) the date on which sufficient moneys to purchase the Equipment listed in that Schedule are deposited for that purpose with an escrow agent.

"Equipment" means the property described in a Schedule and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto. Whenever reference is made in this Agreement to Equipment listed in a Schedule, that reference shall be deemed to include all replacements, repairs, restorations, modifications and improvements of or to that Equipment.

"Event of Default" means, with respect to any Lease, an Event of Default described in **Section 12.01**.

"Issuance Year" is the calendar year in which the Commencement Date occurs.

"Lease" means an individual Schedule and this Agreement.

“**Lease Term**” means, with respect to any Lease, the Original Term and all Renewal Terms of that Lease, but ending on the occurrence of the earliest event specified in **Section 3.03**.

“**Lessee**” means the entity described as such in the header of this Agreement, its successors and its assigns.

“**Lessor**” means, with respect to each Schedule and the Lease of which that Schedule is a part, (i) if Lessor’s interest in, to and under that Schedule has not been assigned pursuant to **Section 11.01**, the entity described as such in the header of this Agreement or its successor, or (ii) if Lessor’s interest in, to and under that Schedule has been assigned pursuant to **Section 11.01**, the assignee thereof or its successor.

“**Maximum Lease Term**” means, with respect to any Lease, the Original Term and all Renewal Terms through the Renewal Term including the last Rental Payment Date set forth on the Schedule that is part of that Lease.

“**Net Proceeds**” means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys’ fees) incurred in the collection of such claim or award.

“**Original Term**” means, with respect to any Lease, the period from the first Commencement Date for any Schedule under that Lease until the end of the fiscal year of Lessee in effect at that Commencement Date.

“**Purchase Price**” means the amount set forth on any Schedule that Lessee may, at its option, pay to Lessor to purchase the Equipment listed on that Schedule.

“**Renewal Terms**” means, with respect to any Lease, the optional renewal terms of that Lease, each having a duration of one year and a term co-extensive with Lessee’s fiscal year.

“**Rental Payment Dates**” means the dates set forth in the Schedules on which Rental Payments are due.

“**Rental Payments**” means the basic rental payments payable by Lessee pursuant to **Section 4.01**.

“**Schedule**” means any schedule to this Agreement, executed from time to time by the parties hereto.

“**State**” means the State of Lessee’s organization.

“**Vendor**” means a manufacturer of Equipment as well as the agents or dealers of the manufacturer from whom Lessor purchased or is purchasing Equipment.

ARTICLE II REPRESENTATIONS AND COVENANTS OF LESSEE

Section 2.01. Representations and Covenants of Lessee. Lessee represents, warrants and covenants for the benefit of Lessor as follows:

(a) Lessee is a political subdivision duly organized and existing under the laws of the State, as set forth in Wis. Stat. Ch. 59, inclusive of the powers contained therein. Lessee will do or cause to be done all things to preserve and keep in full force and effect its existence as a body corporate and politic.

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

(c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.

(d) This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally.

(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

(f) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the current fiscal year and to meet its other obligations under this Agreement, and such funds have not been expended for other purposes.

(g) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder.

(h) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Lessee.

(i) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.

(j) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(k) The Equipment is essential to the function of Lessee or to the service Lessee provides to its citizens. Lessee has an immediate need for, and expects to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority.

(l) Neither the payment of the Rental Payments hereunder nor any portion thereof is (i) secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments in respect of such property or (ii) derived from payments in respect of property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code). No portion of the Equipment will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code).

(m) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 141-150 thereof, and the applicable regulations of the Treasury Department that relate to each Lease in order to establish and maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation. In furtherance of the foregoing, Lessee covenants and agrees to prepare (or engage a tax professional to prepare on Lessee's behalf) and file all necessary informational returns on a timely basis with the IRS, including, but not limited to, IRS Series 8038 Forms, which must generally be filed on or before the 15th of the 2nd calendar month after the close of the calendar quarter in which the Commencement Date occurs. Lessee agrees to provide Lessor with copies of all such filed returns relating to each Lease contemporaneously with their filing. If Lessee fails to file the necessary informational returns with the IRS on a timely basis, Lessee hereby authorizes Lessor to engage a tax professional of Lessor's choosing to complete the required returns on Lessee's behalf and at Lessee's expense, which Lessee agrees to execute and file. If Lessee files informational returns containing incorrect or incomplete information, Lessee hereby authorizes Lessor to engage a tax professional of Lessor's choosing to file an amendment to the incorrect or incomplete informational return on Lessee's behalf and at Lessee's expense, which Lessee agrees to execute and file.

(n) Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purpose for which this Agreement has been entered into. No part of the proceeds of this Agreement will be invested in any securities, obligations or other investments or used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of this Agreement, would have caused any portion of this Agreement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the applicable regulations of the Treasury Department.

(o) Lessee represents and warrants that it is a governmental unit under the laws of the State; this Agreement is not a private activity bond as defined in Section 141 of the Code, and 95% or more of the net proceeds of this Agreement will be used for local governmental activities of Lessee.

(p) The useful life of the Equipment will not be less than the Maximum Lease Term.

(q) The application, statements and credit or financial information reviewed by Lessor are true and correct and made to induce Lessor to enter into this Agreement and the escrow agreement, if any, and Lessee has experienced no material change in its financial condition since the date(s) of such information.

(r) Lessee shall pay the excess (if any) of the actual costs of acquiring the Equipment under the Agreement over the amount deposited by Lessor in the escrow fund, if any, established under any related escrow agreement and interest earnings thereon.

(s) Lessee understands and acknowledges that Lessor has not acted and will not act as a fiduciary for Lessee or as Lessee's agent or municipal advisor; Lessor has not and will not provide financial, legal, tax, accounting or other advice to Lessee or to any financial advisor or placement agent engaged by Lessee with respect to this Agreement. Lessee, its financial advisor, placement agent or municipal advisor, if any, shall each seek and obtain its own financial, legal, tax, accounting and other advice with respect to this Agreement from its own advisors (including as it relates to structure, timing, terms and similar matters).

Section 2.02. Conditions to Lessor's Performance under Schedules. As a prerequisite to the performance by Lessor of any of its obligations pursuant to the execution and delivery of any Schedule, Lessee shall deliver to Lessor the following:

(a) An Opinion of Counsel to Lessee, in form and substance acceptable to Lessor in its sole discretion, respecting such Schedule.

(b) A Lessee's Closing Certificate executed by the Clerk or Secretary or other comparable officer of Lessee, in form and substance acceptable to Lessor in its sole discretion, completed to the satisfaction of Lessor.

(c) An Essential Use Certificate executed by a duly authorized officer of Lessee, in form and substance acceptable to Lessor in its sole discretion, completed to the satisfaction of Lessor.

(d) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time pursuant to **Section 6.02**.

(e) Such other items, if any, as are set forth in such Schedule or are reasonably required by Lessor.

This Agreement is not a commitment by Lessor to enter into any Schedule not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Schedule, it being understood that whether Lessor enters into any proposed Schedule shall be a decision solely within Lessor's discretion.

Lessee will cooperate with Lessor in Lessor's review of any proposed Schedule. Without limiting the foregoing, Lessee will provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Schedule. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of Lessee and other matters related to Lessee.

ARTICLE III LEASE OF EQUIPMENT

Section 3.01. Lease of Equipment. Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment listed in each Schedule in accordance with the provisions of this Agreement and that Schedule for the Lease Term for the Lease of which that Schedule is a part.

Section 3.02. Lease Term. The Original Term of each Lease will commence on the Commencement Date and will terminate on the last day of Lessee's current fiscal year. The Lease Term for each Lease may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for an additional Renewal Term up to the Maximum Lease Term for that Lease. At the end of the Original Term and at the end of each Renewal Term until the Maximum Lease Term has been completed for a Lease, Lessee will be deemed to have exercised its option to continue that Lease for the next Renewal Term unless Lessee has terminated that Lease pursuant to **Section 3.03** or **Section 10.01**. The terms and conditions during any Renewal Term will be the same as the terms and conditions during the Original Term, except that the Rental Payments will be as provided in the Schedules.

Section 3.03. Termination of Lease Term. The Lease Term for each Lease will terminate upon the earliest of any of the following events:

- (a) the expiration of the Original Term or any Renewal Term of that Lease and the nonrenewal of that Lease in the event of nonappropriation of funds pursuant to **Section 3.05**;
- (b) the exercise by Lessee of the option to purchase the Equipment granted under that Lease under the provisions of **Article X** and payment of the Purchase Price and all amounts payable in connection therewith;
- (c) a default by Lessee and Lessor's election to terminate that Lease under **Article XII**; or
- (d) the payment by Lessee of all Rental Payments required to be paid by Lessee under that Lease when such payments are due through the expiration of the Maximum Lease Term.

Section 3.04. Continuation of Lease Term. Lessee currently intends, subject to the provisions of **Section 3.05** and **Section 4.04**, to continue the Lease Term for each Lease through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Maximum Lease Term for each Lease can be obtained. The responsible financial officer of Lessee will do all things lawfully within his or her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such Rental Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend a Lease for any Renewal Term is solely within the discretion of the then current governing body of Lessee.

Section 3.05. Nonappropriation. Lessee is obligated only to pay such Rental Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. In the event sufficient funds will not be appropriated or are not otherwise legally available to pay the Rental Payments required to be paid under a Lease in the next occurring Renewal Term, that Lease will be deemed to be terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice will not extend the Lease Term beyond such Original Term or Renewal Term. If a Lease is terminated in accordance with this Section, Lessee agrees, at Lessee's cost and expense, to peaceably deliver the Equipment then subject to that Lease to Lessor at the location or locations specified by Lessor.

ARTICLE IV RENTAL PAYMENTS

Section 4.01. Rental Payments. Lessee will pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor in the amounts and on the dates set forth in the Schedules without notice or demand. Rental Payments will be in consideration for Lessee's use of the Equipment during the fiscal year in which such payments are due. Lessee agrees to pay Lessor a fee, in an amount determined by Lessor, not to exceed the maximum amount from time to time permitted by applicable law, for any check or automatic payment withdrawal request that is returned to Lessor because of insufficient funds available in Lessee's account or a stop payment.

In the event that it is determined that any of the interest components of Rental Payments may not be excluded from gross income for purposes of federal income taxation, Lessee agrees to pay to Lessor promptly after any such determination and on each Rental Payment Date thereafter an additional amount determined by Lessor to compensate Lessor for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive absent manifest error.

Section 4.02. Interest Component. As set forth on the payment schedules attached to the Schedules, a portion of each Rental Payment is paid as, and represents payment of, interest.

Section 4.03. Rental Payments To Be Unconditional. Except as provided in this Agreement or the RFP, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any accident, condemnation or unforeseen circumstances.

Section 4.04. Rental Payments to Constitute a Current Expense of Lessee. The obligation of Lessee to pay Rental Payments hereunder will constitute a current expense of Lessee, are from year to year and do not constitute a mandatory payment obligation of Lessee in any fiscal year beyond the then current fiscal year of Lessee. Lessee's obligation hereunder will not in any way be

construed to be an indebtedness of Lessee in contravention of any applicable constitutional, charter or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor will anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

ARTICLE V EQUIPMENT

Section 5.01. Delivery, Installation and Acceptance of the Equipment. When the Equipment listed in any Schedule has been delivered and installed, Lessee will promptly inspect such Equipment and accept such Equipment after Lessee, in its sole discretion, determines that such Equipment is satisfactory, and evidence said acceptance by executing and delivering to Lessor an acceptance certificate in form and substance acceptable to Lessor. After it has been installed, the Equipment will not be moved from the location specified in the applicable Schedule, or if rolling stock, its permanent base will not be changed, without Lessor's consent, which consent will not be unreasonably withheld.

Section 5.02. Enjoyment of Equipment. Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Equipment during the Lease Term, and Lessee will peaceably and quietly have and hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.

Section 5.03. Right of Inspection. Lessor will have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

Section 5.04. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee will obtain all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided, however, that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under this Agreement.

Section 5.05. Maintenance of Equipment; Alterations. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition. Lessor will have no responsibility to maintain, repair or make improvements or additions to the Equipment. If any item of Equipment is such as is customarily covered by a maintenance contract, Lessee will enter into a maintenance contract for that Equipment with the applicable Vendor. Lessee will 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.

ARTICLE VI TITLE TO EQUIPMENT; SECURITY INTEREST

Section 6.01. Title to the Equipment. During the Lease Term, title to the Equipment and any and all additions, repairs, replacements or modifications will vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title to the Equipment that is subject to any Lease will thereafter immediately and without any action by Lessee vest in Lessor, and Lessee will immediately surrender possession of the Equipment to Lessor upon (a) any termination of that Lease other than termination pursuant to **Section 10.01** (including but not limited to any termination pursuant to **Section 3.05**) or (b) the occurrence of an Event of Default with respect to that Lease. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section will occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee will, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee, irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee's true and lawful attorney (and agent in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's or such assignee'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.

Section 6.02. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement and to the extent permitted by law, Lessee grants to Lessor a first and prior security interest in the Equipment and on all additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom. Lessee agrees to execute such additional documents in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest. Lessee agrees that financing statements may be filed with respect to the security interest in the Equipment created herein.

As further security therefor, Lessee grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time comprising each escrow fund established under any related escrow agreement and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party.

Section 6.03. Personal Property. Lessor and Lessee agree that the Equipment is and will remain personal property. The Equipment 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 such real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

ARTICLE VII ADDITIONAL COVENANTS

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee will keep the Equipment free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all property taxes and other similar charges. If the use, possession or acquisition of the Equipment is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Lessee will pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee will pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee will be obligated to pay only such installments that accrue during the Lease Term.

Section 7.02. Insurance. Lessee is a municipal body corporate that self-funds for general liability under Wis. Stat. §§ 893.80 and 895.46(1), and automobile liability under § 345.05. Lessee is also permissibly self-insured under Wis. Stat. § 102.28(2)(b) for Workers' Compensation. The protection is applicable to officers, employees and agents while acting within the scope of their employment or agency. Retentions and other costs of risk, including our contractual obligations, are financed under appropriation and fund accounting principles applicable to government operations. Nothing in this Lease shall be construed as a waiver by Lessee of any rights to immunity, limitation of liability or any other protection that the Lessee may have by law.

Section 7.03. Advances. In the event Lessee fails to maintain the insurance required by this Agreement, pay taxes or charges required to be paid by it under this Agreement or fails to keep the Equipment in good repair and operating condition, Lessor may (but will be under no obligation to) purchase the required policies of insurance and pay the cost of the premiums thereof, pay such taxes and charges and make such Equipment repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor will become additional rent for the then current Original Term or Renewal Term. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 18% per annum or the maximum permitted by law, whichever is less.

Section 7.04. Financial Information. Upon Lessor's reasonable request, Lessee will annually provide Lessor with current financial statements, budgets and proofs of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be requested by Lessor.

Section 7.05. Release and Indemnification. To the extent permitted by law, Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any person or damage to any property whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or the property of others which is proximately caused by the grossly negligent conduct of Lessee, its officers, employees or agents. To the extent permitted by law, Lessee will indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, reasonable counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of Lessee's gross negligence or willful misconduct. The indemnification arising under this paragraph will continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of any Lease Term for any reason. Lessee's liability shall be limited by Wisconsin State Statutes §§345.03(3) for automobile and §§893.80(3) for general liability.

ARTICLE VIII DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 8.01. Risk of Loss. Per the terms of the RFP, risk of loss to the Equipment shall not transfer to the Lessee until the Equipment is delivered to its destination.

Section 8.02. Damage, Destruction and Condemnation; Use of Net Proceeds. If (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof or the interest of Lessee or Lessor in the Equipment or any part thereof will be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment, unless Lessee has exercised its option to purchase the Equipment pursuant to **Section 10.01**. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Lessee.

Section 8.03. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in **Section 8.02**, Lessee will either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Lessor’s interest in the Equipment pursuant to **Section 10.01**. If Lessee will make any payments pursuant to this Section, Lessee will not be entitled to any reimbursement therefor from Lessor nor will Lessee be entitled to any diminution of the amounts payable under **Article IV**.

**ARTICLE IX
WARRANTIES**

Section 9.01. Disclaimer of Warranties. *LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE EQUIPMENT OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. LESSEE HEREBY WAIVES ANY CLAIM IT MIGHT HAVE AGAINST LESSOR FOR ANY LOSS, DAMAGE OR EXPENSE CAUSED BY THE EQUIPMENT OR BY ANY DEFECT THEREIN, OR BY THE USE OR MAINTENANCE OF, OR SERVICING OR ADJUSTMENT TO, THE EQUIPMENT AND, AS TO LESSOR, LEASES THE EQUIPMENT AS-IS AND WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE’S USE OR MAINTENANCE OF ANY EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT.*

Section 9.02. Vendor’s Warranties. Lessee acknowledges that Lessor is not a dealer or manufacturer of Equipment of any kind and is not the seller of the Equipment, and that each unit of Equipment is of a type, size, design and capacity selected solely by Lessee. Lessee also acknowledges that Lessor finances the Equipment without any obligation to install, test, erect, service or maintain the Equipment. The only warranty applicable to any Equipment is the Vendor's warranty and Lessor makes no warranty of any kind to Lessee. Lessee may have rights under the contract evidencing the purchase of the Equipment; Lessee is advised to contact the applicable Vendor for a description of any such rights. To the extent such warranties are transferable and so long as an Event of Default has not occurred and is not continuing hereunder, Lessor hereby assigns to Lessee during the Lease Term all warranties running from Vendor to Lessor and during such time Lessee may assert from time to time whatever claims and rights (including without limitation warranties) related to the Equipment that Lessor may have against the Vendor. Lessee’s sole remedy for the breach of any such warranty, indemnification or representation will be against the Vendor, and not against Lessor. Any such matter will not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of such warranties by the Vendor. Lessee acknowledges that each Lease constitutes a “finance lease” under UCC Article 2A in all respects, and that Lessor’s sole obligations to Lessee under each Lease is not to interfere with Lessee’s quiet enjoyment of the Equipment so long as Lessee is not in default thereunder. Subject to the foregoing sentence and to the extent permitted by law, Lessee unconditionally and irrevocably waives any and all rights and remedies against Lessor at law or in equity (including, without limitation, any rights and remedies granted Lessee under Article 2A of the Uniform Commercial Code and/or the right to reject any Equipment or repudiate each Lease). Lessee agrees that Lessor assumes no liability for and makes no representation as to the treatment by Lessee of each Lease, the Equipment or the Rental Payments for financial statement or tax purposes.

**ARTICLE X
OPTION TO PURCHASE**

Section 10.01. Purchase Option. Provided no Event of Default has occurred hereunder, Lessee will have the option to purchase the Equipment listed in any Schedule, in whole, but not in part, upon giving written notice to Lessor at least 30 days before the date of purchase, at the following times and upon the following terms:

- (a) On any Rental Payment Date, upon payment in full of the Rental Payment then due hereunder plus all other amounts due under that Lease plus the then-applicable Purchase Price set forth on that Schedule to Lessor, if applicable; or
- (b) on the date the last Rental Payment is due (assuming the applicable Lease is renewed for the Maximum Lease Term), if the applicable Lease is still in effect on that day, upon payment in full of all Rental Payments and all other amounts then due and the payment of One Dollar to Lessor; or
- (c) In the event of substantial damage to or destruction or condemnation (other than by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Equipment listed in that Schedule, on the day Lessee specifies as the purchase date in Lessee’s notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payment and all other amounts then due under that Lease plus (i) the Purchase Price set forth on that Schedule

for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (ii) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due under that Schedule on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360-day year of twelve 30-day months.

Upon the exercise of the option to purchase set forth above, title to the Equipment so purchased will be vested in Lessee on an as-is, where-is basis, free and clear of any claim by or through Lessor.

Section 10.02. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments under each Schedule during the Original Term and each Renewal Term represent the fair value of the use of the Equipment listed in that Schedule and that the amount required to exercise Lessee's option to purchase the Equipment listed in that Schedule pursuant to **Section 10.01** represents, as of the end of the Original Term or any Renewal Term under that Schedule, the fair purchase price of the Equipment listed in that Schedule. Lessee hereby determines that the Rental Payments do not exceed a reasonable amount so as to place Lessee under a practical economic compulsion to renew the term of any Schedule or to exercise its option to purchase the Equipment under any Schedule. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Equipment, (b) the uses and purposes for which the Equipment will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Equipment and the use of the Equipment pursuant to the terms and provisions of this Agreement, and (d) Lessee's option to purchase the Equipment. Lessee hereby determines and declares that the acquisition and installation of the Equipment and the leasing of the Equipment pursuant to this Agreement will result in equipment of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Equipment were performed by Lessee other than pursuant to this Agreement. Lessee hereby determines and declares that the Maximum Lease Term does not exceed the useful life of the Equipment.

ARTICLE XI ASSIGNMENT AND SUBLEASING

Section 11.01. Assignment by Lessor. Lessor's interest in, to and under this Agreement, each Lease and the Equipment may be assigned and reassigned in whole or in part to one or more assignees by Lessor without the necessity of obtaining the consent of Lessee; provided that any assignment will not be effective against Lessee until Lessee has received written notice of the name and address of the assignee. Lessee will retain all such notices as a register of all assignees and will make all payments to the assignee or assignees designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interest in the Equipment and in this Agreement and each Lease and agrees to the filing of financing statements with respect to the Equipment and this Agreement and each Lease. Lessee will not have the right to and will not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may have against Lessor.

Section 11.02. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement, any Lease or the Equipment may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Equipment if Lessee obtains the prior written consent of Lessor and an opinion of regionally recognized "Red Book"-listed counsel in the area of tax-exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments under the applicable Lease from gross income for federal income tax purposes. Any such sublease of all or part of the Equipment will be subject to this Agreement and the rights of Lessor in, to and under this Agreement, the applicable Lease and the Equipment.

ARTICLE XII EVENTS OF DEFAULT AND REMEDIES

Section 12.01. Events of Default Defined. Subject to the provisions of **Section 3.05**, any of the following will be "Events of Default" under any Lease:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid under that Lease at the time specified in that Lease;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed under that Lease, other than as referred to in **Section 12.01(a)**, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor will agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to that Lease or its execution, delivery or performance will prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Any provision of that Lease will at any time for any reason cease to be valid and binding on Lessee, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee will deny that it has any further liability or obligation under that Lease;

(e) Lessee will (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(f) An order, judgment or decree will be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree will continue unstayed and in effect for any period of 30 consecutive days.

Section 12.02. Remedies on Default. Whenever any Event of Default under any Lease exists, Lessor will have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee under that Lease to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating that Lease, Lessor may enter the premises where the Equipment that is subject to that Lease is located and retake possession of that Equipment or require Lessee at Lessee's expense to promptly return any or all of that Equipment to the possession of Lessor at a place specified by Lessor, and sell or lease that Equipment or, for the account of Lessee, sublease that Equipment, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee under that Lease plus the applicable Purchase Price, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing that Equipment and all brokerage, auctioneers' and attorneys' fees); provided that the amount of Lessee's liability under this subparagraph (b) shall not exceed the Rental Payments and other amounts otherwise due under that Lease plus the remaining Rental Payments and other amounts payable by Lessee to the end of the then current Original Term or Renewal Term; and

(c) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement as the owner of the Equipment that is subject to that Lease.

Any net proceeds from the exercise of any remedy hereunder (after deducting all expenses of Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing Equipment and all brokerage, auctioneer's or attorneys' fees) shall be applied as follows:

(i) If such remedy is exercised solely with respect to a single Lease, Equipment subject to that Lease or rights under this Agreement related to that Lease, then to amounts due pursuant to that Lease and other amounts related to that Lease or that Equipment; or

(ii) If such remedy is exercised with respect to more than one Lease, Equipment subject to more than one Lease or rights under this Agreement related to more than one Lease, then to amounts due pursuant to those Leases pro rata.

In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all reasonable legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

Section 12.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as

often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Agreement it will not be necessary to give any notice, other than such notice as may be required in this Agreement.

ARTICLE XIII MISCELLANEOUS

Section 13.01. Notices. Any written notice hereunder to Lessee or Lessor shall be deemed to have been given when delivered personally, deposited with a nationally recognized overnight courier (with all fees pre-paid), delivered via facsimile or e-mail (with confirmation of transmission), or deposited in the United States mail, certified or registered mail, addressed to recipient at its address set forth above or at such other address as may be substituted therefor by notice given pursuant to the terms hereof. Lessee hereby agrees that Lessor, including its vendors, service providers, partners, affiliates, successors and assigns, may contact Lessee at any telephone number provided to Lessor, by placing voice telephone calls (including the use of automatic telephone dialing systems or prerecorded voice messaging) or, in the case of wireless telephones or other wireless devices, by sending email or automated (SMS) text messages.

Section 13.02. Binding Effect. This Agreement will inure to the benefit of and will be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. Severability. In the event any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 13.04. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 13.05. Amendments. This Agreement may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Agreement or any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

Section 13.06. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument. There shall be only one original counterpart of this Agreement and it shall bear Lessor's original signature and be marked "Original." To the extent that this Agreement constitutes chattel paper (as that term is defined by Article 2A of the Uniform Commercial Code), a security or ownership interest intended to be created through the transfer and possession of this Agreement can be done only by the transfer of such original bearing Lessor's original ink or electronic signature; provided that if there shall simultaneously exist both the "Paper Out" printed version and an electronic version of any Lease, then the "Paper Out" version bearing the legend "Original" applied by Lessor shall constitute the sole chattel paper original.

Section 13.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 13.08. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin.

Section 13.09. Electronic Transactions. Lessee hereby consents to the use of electronic signatures and represents and warrants that its electronic signature on this Agreement or any related documents shall be unconditionally valid and legally enforceable, and agrees not to contest, call into question or otherwise challenge the validity or enforceability of any electronic signature (or the authority of the electronic signer to sign) or raise any of the foregoing as a defense or counterclaim. Lessor, in its sole discretion, may permit Lessee to electronically copy and/or deliver by telecopier or other electronic means of transmission an executed counterpart of this Agreement, and any document, schedule, amendment, addendum, supplement or agreement related hereto or executed in connection herewith. By so copying and/or delivering any such document, Lessee hereby represents and agrees (a) that such transmission constitutes due delivery of such executed document, (b) that the counterpart of such executed document as printed by the recipient, including Lessee's signature thereon, shall be deemed to constitute an original and shall be admissible in any court or other legal proceeding as an original, and (c) to deliver to Lessor, promptly on request, such document bearing Lessee's original "wet ink" signature; provided that neither delivery nor failure to deliver the document bearing Lessee's original "wet ink" signature shall limit or modify the representations and agreements set forth in clauses (a) and (b).

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their corporate names by their duly authorized officers as of the date first above written.

LESSEE SIGNATURE	<u>Milwaukee County Parks</u>
	Name of Lessee
	By: _____ Signature
	Print Name and Title: _____

LESSOR SIGNATURE	<u>TCF National Bank</u>
	Name of Lessor
	By: _____ Signature
	Print Name and Title: _____

CERTIFICATE OF CLERK OR SECRETARY	<p>I, the undersigned, do hereby certify that the officer of Lessee who executed the foregoing Agreement on behalf of Lessee and whose genuine signature appears thereon, (i) is the duly qualified and acting officer of Lessee as stated beneath his or her signature, (ii) is duly authorized to execute and deliver the foregoing Agreement on behalf of Lessee, and (iii) that the fiscal year of Lessee ends on the last day of June.</p>
	<p>Signature: _____ Title: _____ Date: _____</p>
	<p>THE ABOVE CERTIFICATION MUST BE SIGNED BY THE CLERK OR SECRETARY OF LESSEE, AND THE CLERK OR SECRETARY MUST BE A DIFFERENT INDIVIDUAL THAN THE OFFICER SIGNING IN THE "LESSEE SIGNATURE" BOX.</p>