

2. The final roadway design shall include at a minimum the following information, and shall include the other actions as described:
  - Cover sheet with location map, sheet index, and legend of symbols.
  - Plan and profile sheet showing existing topography, the proposed improvements, existing utilities and relocations, if required, construction limits, profile grade line, and incorporate all review comments from the City.
  - Typical roadway cross sections.
  - Storm Sewer plans and specifications.
  - Final cross-sections of the proposed improvements at 50 foot intervals.
  - Traffic handling and detouring plan with signage.
  - A complete set of contract documents and technical specifications including tabulation of bid quantities and current prevailing wage rates.
3. Submit final plans and specifications to the City for review and approval.
4. Incorporate final comments from the City into the plans and specifications.
5. Utilities: we will contact all utilities that may be affected by this project and provide them with the roundabout and roadway improvement plans to help facilitate the utility relocations if needed.
6. Provide a final estimate of anticipated construction costs.

**D. Bidding Phase:**

1. Provide Project Manuals and Plans to the City for bidding purposes. Plans shall be half size (11" x 17").
2. Answer contractor's questions during bidding and issue addenda (if required).
3. Review shop drawings when submitted for compliance with the drawings and specifications.

SERVICES NOT INCLUDED:

1. Right-of-Way and Easement Acquisition
2. Environmental reports
3. Construction Stakeout (Note: will be the responsibility of the Contractor)

OWNER'S RESPONSIBILITY:

1. The Owner shall give prompt and thorough consideration to all sketches, drawings, bid documents and other documents laid before him. Prompt decisions will be required if project is to proceed on schedule.
2. Advertisement and receipt of construction bids.

FEE:

1. The total amount of fee to be paid for the "Topographic Survey, Preliminary Design, Final Design and Bidding Phase" outlined in this proposal shall be a lump sum fee of **\$48,055.00**.

PAYMENT:

1. An invoice for progress payments will be submitted monthly during the performance period of this contract for professional services rendered. It is agreed that monthly progress payments for fees earned under this agreement are due and payable within fifteen (15) days of submission of invoices.

2. Any invoices remaining unpaid beyond fifteen (15) days will accrue interest at the rate of one and one-half (1½%) per month on the unpaid balance.
3. It is further understood that if the project is abandoned, or if any work being performed is suspended in whole or in part prior to the completion of any phase, payment will be due in direct proportion to the amount of work accomplished.
4. In addition, payment will be due for all reimbursable expenses incurred prior to receipt of written notice or such abandonment or suspension.

TIME OF PERFORMANCE:

We will make every effort to complete the project within the Owner's time frame and according to schedule. Cochran will not, however, be responsible for delays caused by events beyond our control.

TERMS AND CONDITIONS:

Attached to this proposal is a copy of the Cochran Standard Terms and Conditions. These terms and conditions shall apply to this proposal for professional services, which can also serve as a letter agreement. This document is enclosed for your review and reference.

GENERAL:

The terms and conditions of this contract shall apply to all work performed for the benefit of the project, any contiguous property that may be acquired at a later date, and any work performed off the site that benefits the project (permits, licenses, easements, etc.). Cochran's reputation is based on understanding and meeting all the project objectives of our clients. We look forward to having an opportunity to demonstrate that responsiveness by providing timely and cost effective professional services. If you would like to authorize Cochran to perform the professional services outlined in this proposal, please indicate your acceptance of the terms of this letter agreement by signing in the space provided below **AND** initialing **ALL** other pages. Return one (1) copy for our contract files. If you have any questions or changes regarding this proposal, please contact me at 314-220-7016. Thank you.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED AT COCHRAN'S OPTION.

Sincerely,



David Christensen, P.E.  
**Vice President**

Acceptance:

**City of Ste. Genevieve**

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

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

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

Attachments: Cochran Terms & Conditions  
Cost Estimate

## COCHRAN STANDARD TERMS AND CONDITIONS

- 1 Unless expressly stated in the attached proposal letter ("Proposal"), the Proposal must be accepted in writing within thirty days or the Proposal is void and unenforceable.
- 2 The acceptance of the Proposal is conditioned upon these Terms and Conditions and the terms of the Proposal, which shall be the only terms and conditions applicable to any agreement between Cochran and Client. Requesting performance of the work by Cochran, sending a notice to proceed with the work, or an acknowledgment of the Proposal by the issuance of a purchase order by Client, notwithstanding any terms additional to or different from those contained herein, shall be deemed to be an acceptance of these Terms and Conditions by Client.
- 3 The Proposal and these Terms and Conditions constitute the entire agreement ("Contract") between Cochran and the Client for the services identified in the Proposal. All prior proposals, negotiations, representations, recommendations, statements or agreements made or entered into prior to or contemporaneously with this Contract, whether oral or in writing, are superseded by this Contract unless they are expressly incorporated herein by reference. Any terms contained in any communication from Client which are inconsistent with the Contract shall not be binding upon Cochran.
- 4 Cochran may submit invoices on not less than a monthly basis. Cochran's invoices are due and payable within fifteen (15) days of the submission of each invoice. Interest will accrue at the rate of one and one-half percent (1.5%) per month on all unpaid invoices from the date payment was due. In the event that Client disputes an invoice, Client will pay the undisputed portion of the invoice and provide a written explanation to Cochran of the basis for Client's dispute. If Client fails to pay in full any of Cochran's invoices, Cochran may immediately, without waiving any other rights it may have, suspend work pending resolution of the payment dispute. Client's failure to pay any of Cochran's invoices in full shall be considered a material breach of this Contract.
- 5 Unless specifically stated to the contrary in the Proposal, reimbursable expenses are in addition to the amounts identified for Cochran's fees for basic and additional services. Reimbursable expenses shall include, but are not limited to: Client-authorized out-of-town travel, transportation, and subsistence expenses; fees paid for securing approval of jurisdictional authorities; postage, courier, or other delivery fees; material costs for models, mock-ups, or other presentation media; photographic film and development expenses.
- 6 This Contract is binding upon the heirs, successors and assigns of the parties hereto and may not be assigned by either party without the prior written consent of the other party.
- 7 Nothing in this Contract is intended to create any enforceable third party rights against Client or Cochran.
- 8 Cochran will perform all of its services consistent with that degree of skill and learning ordinarily used under the same or similar circumstances by the members of Cochran's profession working in the same locale.
- 9 If, and to the extent that Cochran's scope of work includes construction phase services, any such services shall be provided in accordance with and governed by the applicable terms of AIA Document A201 General Conditions of the Contract for Construction, 2007 Edition ("General Conditions"). If there is a conflict between the General Conditions and this Contract, this Contract will control.
- 10 When making any interpretation or decision as required by the General Conditions, Cochran will not show partiality to any party, and shall not be liable for interpretations or decisions rendered in good faith.
- 11 Cochran has no responsibility or obligation to supervise or direct the work activities of the Client's employees and representatives, or any construction contractors, sub-contractors or any of their employees, or other persons not employed by Cochran.
- 12 Cochran will abide by any job-site safety programs identified in writing by the Client but will not be responsible for job-site safety of any persons not directly employed by Cochran.
- 13 Cochran has no responsibility or obligation with respect to the construction means, methods, sequencing or procedures of any construction contractors, sub-contractors or any of their employees.
- 14 Cochran is not responsible for the failure of any contractor to perform work properly and in accordance with any applicable documents, plans, specifications, codes or standards.
- 15 Cochran is not responsible for the identification of unsafe conditions, nor for the identification, handling, or removal of hazardous and/or toxic substances found on or brought to the site. Prior to the start of work, the Client shall disclose and identify in writing to Cochran, to the best of Client's knowledge, all hazardous and/or toxic substances located on the site. Client agrees to defend, indemnify and hold Cochran harmless from and against all claims, demands and liabilities of any kind or nature resulting from any hazardous and/or toxic substances that are found on the site and which were not identified by Client - even if not known by Client.

16. Cochran will have no obligation to commence its work until receipt of a written notice-to-proceed from Client and all other information required to be provided by Client. Cochran shall complete its work within any time limits identified in the Proposal. Cochran shall be entitled to an extension of time for performance of its work due to any delays that are due to any cause beyond Cochran's reasonable control. In no event will Client be entitled to any costs, losses, expenses or damages (including, but not limited to, claims or damages attributable to home office overhead costs, loss of profits, loss of business opportunities and/or additional financing costs) as a result of any delay caused or attributable to Cochran.
17. Cochran and Client waive any and all claims against each other for consequential, indirect, incidental and special damages arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, including but not limited to, lost profits, loss of business, financing costs, extended home office overhead and similar types of damages.
18. Provided that written notice of a material breach of this Contract has been provided to the defaulting party and the defaulting party has failed to cure or taken reasonable efforts to cure its default within seven (7) calendar days of its receipt of the notice, the non-defaulting party may terminate this Contract by sending notice of termination to the defaulting party.
19. If the Contract is terminated for any reason not attributable to Cochran, Client will pay for the work performed by Cochran up to the date of termination plus all of Cochran's costs related to the termination (e.g., close-out costs, costs of terminating contracts with consultants, etc.).
20. In the event that there are any changes in applicable laws, codes or regulations after the Contract is executed that result in the need for Cochran to perform additional services and/or incur additional costs, Client shall pay Cochran for said services and costs at the rates set forth in the Proposal.
21. All documents and electronic media produced by Cochran under this Contract ("Instruments of Service") shall remain the property of Cochran, and Cochran shall retain all rights to the same, including copyrights, and they may be used by the Client only for the project identified in the Proposal. In the event of the termination of this Contract, the Client shall return the Instruments of Service to Cochran, and the Instruments of Service may not be used by the Client or a third party to complete the project without the written consent of Cochran.
22. Client and Cochran waive all rights against each other, any contractors and other professionals, and any of their respective consultants, contractors, suppliers, subcontractors, agents and employees, for damages caused by perils to the extent covered by insurance, except such rights as they may have to the insurance proceeds.
23. This Contract and the rights of the parties shall be governed by the laws of the State of Missouri.
24. In the event of any dispute, claim, arbitration or litigation arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, the prevailing party shall be awarded its attorney's fees, expert witness fees, expenses, arbitration fees and expenses, and court costs at the trial and all appellate levels, including costs and fees related to collection efforts. Determination of which party prevailed shall be made by the judge or arbitrator(s). The determination shall be made by reviewing the claims resolved at trial or arbitration (which excludes any claims resolved prior to the taking of evidence), and then determining which party achieved the greater success by quantifying the amounts awarded the party recovering damages or obtaining relief and comparing that result to the relief and/or damages requested by that party at the trial or arbitration. If that party received less than 50% of the relief and/or damages it sought, then the other party prevailed. If that party receives more than 50% of the relief and/or damages it sought, then it prevailed. The judge or arbitrator(s) may consider the percentage of recovery when determining the amount of fees and expenses to be awarded to the prevailing party. If more than one claim is presented, then the judge or arbitrator(s) may elect to evaluate who is the prevailing party on a claim by claim basis, or in the aggregate as they deem appropriate. In making the determination of which party prevailed, the judge or arbitrator(s) shall take into consideration any settlement offers or demands made prior to trial or arbitration.

**Staff Report**

February 9, 2023

To: Board of Aldermen  
From: Happy Welch  
Re: Surplus Property



**Issue:**

We have 52 metal street light poles and 60+ lights that were donated to us that we do not have a purpose for. We have been approached by Valle Schools if we could spare 4 poles and lights for their use at the ballfield.

Alliance is trying to remove as much unused equipment as possible to clean up the yard at the street shed and the city has no plans for using them at this time.

**Recommendation:**

Surplus 4 steel poles and lights.

**RESOLUTION 2023-15**

**A RESOLUTION BY THE BOARD OF ALDERMEN DECLARING 4 STEEL POLES &  
4 LIGHTS SURPLUS PROPERTY**

**WHEREAS**, the City was donated approximately 52 metal street light poles and 60 lights that have been in storage at the street shed and on Front St.; and

**WHEREAS**, the City has been approached by Valle Schools for the need of four of these poles and lights for use at their ballfield; and

**WHEREAS**, the City Administrator requests the Board of Aldermen to declare four lights & poles surplus property.

**BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF STE. GENEVIEVE, MISSOURI AS FOLLOWS:**

**SECTION 1:** The Board of Aldermen hereby declares four steel light poles and 4 lights be declared surplus property and that the City Administrator or his designee is hereby authorized and directed to take any such further action necessary for the donation of the lights.

**SECTION 2:** This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

**PASSED AND APPROVED BY THE BOARD OF ALDERMEN OF THE CITY OF STE. GENEVIEVE, MISSOURI THIS 9<sup>th</sup> DAY OF FEBRUARY, 2023.**

APPROVED AS TO FORM:

\_\_\_\_\_  
Paul Hassler, Mayor

\_\_\_\_\_  
Mark Bishop, City Attorney

REVIEWED BY:

\_\_\_\_\_  
Pam Meyer, City Clerk

\_\_\_\_\_  
Happy Welch, City Administrator

**AN ORDINANCE OF THE CITY OF STE. GENEVIEVE, MISSOURI  
APPROVING A TAX-EXEMPT EQUIPMENT LEASE PURCHASE  
AGREEMENT WITH FIRST STATE COMMUNITY BANK FOR THE  
PURCHASE OF TWO POLICE VEHICLES**

**WHEREAS, CITY OF STE. GENEVIEVE** (Lessee), desires to obtain funds to pay the costs of acquiring the Equipment described in the attached Tax-Exempt Equipment Lease Purchase Agreement; and

**WHEREAS**, in order to facilitate the foregoing and to pay the cost thereof, it is necessary and desirable for Lessee to enter into the Tax-Exempt Equipment Lease Purchase Agreement with First State Community Bank, as Lessor (Lessor), pursuant to which Lessee will lease the Equipment, with an option to purchase, from Lessor, on an annually renewable basis, and commencing on the date Lessor deposits funds equal to the initial principal amount of the Equipment Lease Purchase Agreement into an account held pursuant to the below-mentioned Account Control Agreement, to be used to pay the costs of acquiring and installing the Equipment and to pay related costs; and

**WHEREAS**, the Equipment is not available for immediate delivery, therefore, it is necessary and desirable for Lessee to also enter into an Account Control Agreement, in substantially the form attached to this Ordinance, pursuant to which the proceeds of the Tax-Exempt Equipment Lease Purchase Agreement will be held by the bank therein-named as Deposit Bank (Deposit Bank), in an account established in Lessee's name, but subject to Lessor's security interest and Lessor's approval of disbursements; and

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF STE. GENEVIEVE, AS FOLLOWS:**

**Section 1. Authorization and Approval of the Tax-Exempt Equipment Lease Purchase Agreement.** The Tax-Exempt Equipment Lease Purchase Agreement, together with all exhibits thereto, including but not limited to the Account Control Agreement (Lease Documentation) is hereby approved in substantially the form attached to this Ordinance, with such changes therein as are approved by the officer of Lessee hereafter authorized to execute and deliver the Lease Documentation, the execution of the Lease Documentation by such officer being conclusive evidence of such approval, provided that the Lease Documentation shall be consistent with the following terms:

- a) The aggregate principal portion of Rental Payments will not exceed \$108,120.
- b) The interest portion of Rental Payments will be calculated at an annual interest rate not exceeding 4.99%.
- c) Rental Payments will be due in five approximately equal installments, with the first Rental Payment due on the first anniversary of the Commencement Date of the Tax-

Exempt Equipment Lease Purchase Agreement and succeeding Rental Payments due on the annual anniversary of the Commencement Date (as defined in the Tax-Exempt Equipment Lease Purchase Agreement).

- d) The final scheduled Rental Payment will be due on the fifth anniversary of the Commencement Date.

Moneys sufficient to pay all Rental Payments required to be paid under the Tax-Exempt Equipment Lease Purchase Agreement during Lessee's current fiscal year are hereby appropriated to such payment, and such moneys will be applied in payment of all Rental Payments due and payable during the current fiscal year.

Lessee's obligation to pay Rental Payments (as defined in the Tax-Exempt Equipment Lease Purchase Agreement) is subject to annual appropriation, will constitute a current expense, and will not in any way be construed to be an indebtedness or liability of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness or liability by Lessee, nor will anything contained in the Tax-Exempt Equipment Lease Purchase Agreement constitute a pledge of the general tax revenues, funds or moneys of Lessee, and all provisions of the Tax-Exempt Equipment Lease Purchase Agreement will be construed so as to give effect to such intent.

The below-named officer of Lessee is hereby authorized and directed to execute and deliver the Lease Documentation on behalf of and as the act and deed of Lessee:

Name: Happy Welch

Title: City Administrator

**Section 2. Further Authority.** Lessee will, and the officials and agents of Lessee are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of Lessee with respect to the Lease Documentation and the Equipment. If Lessee acquires any portion of the Equipment prior to the Commencement Date of the Tax-Exempt Equipment Lease Purchase Agreement, it is the intention of the Lessee's governing body that Lessee will be reimbursed for the cost of such acquisition from the proceeds of the Tax-Exempt Equipment Lease Purchase Agreement upon the Commencement Date.

**Section 3. Repeal of Conflicting Ordinances.** All prior Ordinances approved by Lessee's governing body that are in conflict with this Ordinance are hereby repealed to the extent of any conflict.

**Section 4. Effective Date.** This Ordinance will take effect and be in full force from and after its passage by the Board of Aldermen of the City of Ste. Genevieve, Missouri and approval by the Mayor.



DATE OF FIRST READING: \_\_\_\_\_.

DATE OF SECOND READING: \_\_\_\_\_.

PASSED AND APPROVED THIS \_\_\_ DAY OF \_\_\_\_\_, 2023 BY A ROLL CALL VOTE OF THE STE. GENEVIEVE BOARD OF ALDERMEN AS FOLLOWS:

VOTE

- ALDERWOMAN KRISTI CLEGHORN
- ALDERWOMAN SUSAN JOHNSON
- ALDERMAN BOB DONOVAN
- ALDERMAN MIKE JOKERST
- ALDERMAN JEFF EYDMANN
- ALDERMAN MIKE RANEY
- ALDERWOMAN ASHLEY ARMBRUSTER
- ALDERMAN JOSEPH PRINCE

\_\_\_ Yes \_\_\_ No \_\_\_ Absent

Approved as to form:

\_\_\_\_\_  
Paul Hassler, Mayor

\_\_\_\_\_  
Mark Bishop, City Attorney

SEAL

Reviewed by:

\_\_\_\_\_  
Pam Meyer, City Clerk

\_\_\_\_\_  
Happy Welch, City Administrator

**TAX-EXEMPT EQUIPMENT LEASE PURCHASE AGREEMENT**

Dated as of February 9, 2023

<b>Legal Name of Lessee</b>		<b>Federal Tax I.D. No.</b>	
City of Ste. Genevieve		43-6003164	
<b>Legal Name of Lessor</b>			
First State Community Bank			
<b>KEY TERMS</b>	<b>Commencement Date</b>	<b>Acquisition Amount</b>	<b>BANK QUALIFICATION</b>
	See Exhibit B	\$108,120.00	
	<b>End of Maximum Lease Term</b>	<b>Rental Payments</b>	
	03/02/2028	See Payment Schedule attached as Exhibit B.	
	<b>Fiscal Year Ending Date</b>	<b>Interest Rate</b>	
09/30	4.990%	By checking the box below, Lessee hereby designates this Agreement as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended (the "Code"), and represents that the aggregate face amount of all tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by Lessee and its subordinate entities during the calendar year in which the Commencement Date occurs, is not reasonably expected to exceed \$10,000,000. <input checked="" type="checkbox"/> Bank-Qualification Elected _____ (initialed by Lessee's authorized representative)	

**TERMS AND CONDITIONS**

**1. Lease and Term.** Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount shown above to acquire and install the Equipment listed on **Exhibit A** hereto (the "Equipment"). Lessor hereby leases, transfers and lets the Equipment to Lessee, and Lessee hereby acquires, rents and leases the Equipment from Lessor, in accordance with the provisions of this Agreement. Lessee's obligation to pay rent under this Agreement commences on the date that funds are advanced to Lessee or the seller or vendor of the Equipment ("Vendor") to pay all or a portion of the cost of the Equipment (the "Commencement Date"), which is also the date that the interest portion of the Rental Payments begins to accrue. The initial term of this Agreement will end on the last day of Lessee's current fiscal year ("Original Term"). This Agreement may be continued, solely at the option of Lessee, for additional one-year renewal terms ("Renewal Term") ending on the last day of each succeeding fiscal year of Lessee, up to the Maximum Lease Term shown above. At the end of the Original Term and at the end of each Renewal Term until the Maximum Lease Term has been completed, Lessee will be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee has terminated this Agreement pursuant to paragraphs 4 or 23 hereof. 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 Payment Schedule attached as **Exhibit B** ("Payment Schedule"), for each such Renewal Term. The Original Term and all Renewal Terms are referred to collectively as the "Lease Term."

**2. Delivery of Equipment; Payment of Acquisition Amount.** Upon Lessee's satisfaction of the conditions stated in paragraph 5 of this Agreement, Lessor will disburse funds equal to the Acquisition Amount to Lessee for deposit in the account established and held pursuant to an Account Control Agreement in substantially the form attached as **Exhibit C**. Title to the Equipment will vest in Lessee, as described in paragraph 11 of this Agreement. Lessee has selected, or will select the Equipment and cause it to be delivered to Lessee at the location specified in **Exhibit A**.

**3. 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 on the Payment Schedule, as it may be revised from time to time as provided herein. Rental Payments will be in consideration for Lessee's use of the Equipment during the fiscal year in which such payments are due. Lessee will pay a charge on any Rental Payment not received on or before its due date at a rate equal to 10% per annum or the maximum amount permitted by law, whichever is less, from the due date. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest. *Except as provided in paragraph 4, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events, without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Equipment or related equipment, or any accident, condemnation or unforeseen circumstances.*

**4. Continuation of Lease Term; Nonappropriation.** Lessee currently intends, subject to the provisions of this paragraph, to continue the Lease Term and to pay the Rental Payments through the Maximum Lease Term. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Maximum Lease Term 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 the Rental Payments in each annual budget submitted for approval in accordance with applicable procedures of Lessee. Notwithstanding the foregoing, the decision to appropriate funds and to extend this Agreement for any Renewal Term is solely within the discretion of Lessee's then current governing body, and Lessee is obligated only to pay such Rental Payments as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. If sufficient funds have not been appropriated or are not otherwise legally available to pay the Rental Payments required to be paid in the next occurring Renewal Term, this Agreement 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 within 10 days following the end of the Original Term or Renewal Term of Lessee's failure to renew this Agreement, but failure to give such notice will not extend the Lease Term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this paragraph, Lessee agrees, at Lessee's cost and expense, to peaceably deliver the Equipment to Lessor at the location or locations specified by Lessor. The obligation of Lessee to pay Rental Payments hereunder will constitute a current expense 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 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.

**NOTE: TERMS AND CONDITIONS ARE CONTINUED ON PAGES 2 THROUGH 5 OF THIS AGREEMENT, AND IN EXHIBITS A, B, C AND D HERETO, ALL OF WHICH ARE INCLUDED BY REFERENCE AND BECOME PART HEREOF. BY SIGNING BELOW, EACH PARTY AGREES TO ALL TERMS AND CONDITIONS OF THE AGREEMENT.**

<b>LESSEE SIGNATURE</b>	Lessee: <b>City of Ste. Genevieve</b>
	By: _____
	Printed Name: <u>Happy Welch</u>
	Title: <u>City Administrator</u>
	Notice Address: 165 S 4th Street Ste. Genevieve, MO 63670

<b>LESSOR SIGNATURE</b>	Lessor: <b>First State Community Bank</b>
	By: _____
	Printed Name: <u>Marshall Hite</u>
	Title: <u>Vice President</u>
	Notice Address: 201 E. Columbia Farmington, MO 63640

**5. Conditions to Lessor's Performance.** The performance by Lessor of any of its obligations under this Agreement is conditioned upon Lessee's delivery to Lessor of the following within 30 days of the effective date of this Agreement:

- (a) A copy of a fully executed Account Control Agreement, in substantially the form attached as **Exhibit C**;
- (b) A certified copy of a resolution of Lessee's governing body, substantially in the form attached hereto as **Exhibit D**, authorizing the execution and delivery of this Agreement and the Account Control Agreement, and performance by Lessee of its obligations under this Agreement and the Account Control Agreement;
- (c) Evidence of insurance as required by paragraph 14 hereof;
- (d) A fully completed and executed IRS Form 8038-G or 8038-GC, as applicable, with respect to this Agreement, to be filed by Lessor with the IRS; and
- (e) Such other items reasonably required by Lessor.

**6. Lessee's Representations, Warranties and Covenants.** Lessee represents, warrants and covenants for Lessor's benefit:

- (a) Lessee is a political subdivision duly organized and existing under the constitution and laws of the State of Missouri, and 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 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;
- (c) This Agreement constitutes a 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;
- (d) 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 Commencement Date;
- (e) 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 Original Term and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes;
- (f) Lessee has complied with public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment;
- (g) 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 Lessee's knowledge 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;
- (h) 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;
- (i) 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 of 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;
- (j) Each item of the Equipment is essential to Lessee's governmental function or to the service it provides to its citizens;
- (k) Lessee has an immediate need for, and expects to make immediate use of, substantially all of the Equipment, which need is not temporary or expected to diminish in the foreseeable future;

- (l) 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;
- (m) Neither the payment of the Rental Payments hereunder nor any portion thereof is (1) 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 (2) 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);
- (n) None 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);
- (o) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest portions of Rental Payments from gross income for purposes of federal income taxation;
- (p) 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;
- (q) 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;
- (r) If, on the first page of this Agreement, Lessee has designated this Agreement as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code, Lessee and its subordinate entities will not issue tax-exempt obligations, including this Agreement, in an aggregate amount exceeding \$10,000,000 during the calendar year in which the Commencement Date occurs; and
- (s) Lessee will take such other actions as may be necessary to comply with the Code and with other applicable future law, in order to ensure that the interest portion of the Rental Payments will remain excluded from federal gross income, to the extent any such actions can be taken by Lessee.

**7. Enjoyment of Equipment.** Lessor will 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.

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

**9. 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 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 Lessor's opinion, adversely affect the Lessor's interest in and to the Equipment or its interest or rights under this Agreement.

**10. Maintenance and Location of Equipment.** 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, or repair or to make improvements or additions to the Equipment. If requested to do so by Lessor, Lessee will enter into a maintenance contract for the Equipment with Vendor. The location of the primary use, or garaging, of the Equipment will be as set forth on **Exhibit A**, or at such other location within

Lessee's boundaries. Lessee will provide prompt written notice to Lessor of the new primary use, or garaging, location.

**11. Title to the Equipment.** Title to the Equipment is deemed to vest in Lessor on the Commencement Date upon payment of the Acquisition Amount to the vendor, and immediately and automatically (without any further action by Lessor or Lessee) title to the Equipment and any and all additions, repairs, replacements or modifications will vest in Lessee, subject to Lessor's rights under this Agreement. Title will, 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 this Agreement other than termination pursuant to paragraph 23 hereof or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this paragraph 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 Lessee's name 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.

**12. Retention of Security Interest.** To secure the payment of all of Lessee's obligations under this Agreement and to the extent permitted by law, Lessor retains a security interest constituting a first lien on 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 granted herein. Lessee will, at Lessee's expense, file an application for and obtain the first certificate of title for each of the vehicles leased hereunder, designating Lessee as owner and Lessor as first lienholder, and a certificate of registration issued in Lessee's name. Lessee will, at Lessee's expense, take such action as shall be necessary from time to time to avoid suspension or revocation of any certificates of title and to renew and maintain all certificates of registration. If Lessee is required to obtain any new certificate of title or of registration, Lessee will, at Lessee's expense and with written notice to Lessor of such action, obtain such new certificate of title or of registration in the form described above. Immediately upon receipt, Lessee will deliver the original certificate of title to Lessor and will notify the Lessor of the license plate number of each vehicle constituting Equipment leased hereunder. Lessee will provide Lessor with all license, registration and vehicle identification numbers relating to each vehicle and will arrange for the registration and titling of all such vehicles. Lessee will notify Lessor of any changes to the certificate of registration or license plate within 10 days of such change. Lessee will comply with all present and future laws, regulations, and orders relating to the Equipment leased hereunder.

**13. 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. 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 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.

**14. Insurance.** At its own expense, Lessee will maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in Missouri and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Equipment, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by

the laws of Missouri; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). All insurance proceeds from casualty losses will be payable as hereinafter provided. Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term. All such casualty and liability insurance will be with insurers that are acceptable to Lessor, will name Lessee and Lessor as insureds and will contain a provision to the effect that such insurance will not be cancelled or modified materially without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance will contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

**15. Advances.** In the event Lessee fails to maintain the insurance required by 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 premiums on the same and make such 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 10% per annum or the maximum permitted by law, whichever is less. In accordance with Section 427.120 of the Revised Statutes of Missouri, unless Lessee provides evidence of the insurance coverage required by this Agreement, Lessor may purchase insurance at Lessee's expense to protect Lessor's interests hereunder. This insurance may, but need not, protect Lessee's interests. The coverage that Lessor may purchase may not pay any claim that Lessee may make or any claim that may be made against Lessee in connection with the Equipment. Lessee may later cancel any insurance purchased by Lessor, but only after providing evidence that Lessee has obtained insurance as required by this Agreement. If Lessor purchases insurance for the Equipment, Lessee will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges Lessor may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added as additional rent. The costs of the insurance may be more than the cost of insurance Lessee may be able to obtain on its own.

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

**17. Release and Indemnification.** 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, 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 (a) the entering into this Agreement, (b) the ownership of any item of the Equipment, (c) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. 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 the Lease Term for any reason.

**18. Risk of Loss.** Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Equipment from any cause whatsoever. No such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof will relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

**19. Damage, Destruction and Condemnation.** If (a) any of the Equipment is damaged or destroyed, 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 or repair of the Equipment, unless Lessee has exercised its option to purchase all the Equipment pursuant to paragraph 23 hereof. Any balance of the Net Proceeds remaining after such repair or replacement has been completed will be paid to Lessee.

**20. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any replacement or repair referred to in paragraph 19 hereof, Lessee will either (a) complete such replacement or repair and pay any costs thereof in excess of the amount of the Net Proceeds, (b) purchase Lessor's interest in all the Equipment pursuant to paragraph 23 hereof or (c) with Lessor's consent, pay the Net Proceeds to Lessor to be applied as a prepayment in accordance with paragraph 3 hereof. If Lessee will make any payments pursuant to this paragraph, Lessee will not be entitled to any reimbursement therefor from Lessor nor will Lessee be entitled to any diminution of the amounts payable under this Agreement, except as a result of a partial prepayment.

**21. 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. 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.**

**22. Vendor's Warranties.** Lessee may have rights under the contract evidencing the purchase of the Equipment; Lessee is advised to contact the Vendor for a description of any such rights. Lessor hereby assigns to Lessee during the Lease Term all warranties running from Vendor to Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee will not be in default hereunder, to 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 Lessor's rights and obligations with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties by the Vendor.

**23. Purchase Option; Partial Prepayments.** (a) Lessee will have the option to purchase the Equipment (all, not part), upon giving written notice to Lessor at least 30 days before the date of purchase, on any date, upon payment in full of the Rental Payments then due hereunder plus the accrued interest portion of Rental Payments to the purchase date plus any other amounts then due hereunder plus (i) the Purchase Price designated on the Payment 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 portion of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of actual days elapsed over a 360-day year. Upon the exercise of the option to purchase set forth above, title to the Equipment will be vested in Lessee, free and clear of any claim by or through Lessor. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder during the Original Term and each Renewal Term represent the fair value of the use of the Equipment and that the amount required to exercise Lessee's option to purchase the Equipment pursuant to this paragraph represents, as of the end of the Original Term or any Renewal Term, the fair purchase price of the Equipment. 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 this Agreement or to exercise its option to purchase the Equipment hereunder. In making such determinations, Lessee and Lessor have given consideration to (i) the costs of the Equipment, (ii) the uses and purposes for which the Equipment will be employed by Lessee, (iii) 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 (iv) 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.

(b) Rental Payments may be prepaid on any date, upon giving written notice to Lessor at least 30 days before the date of prepayment. Amounts received will be applied first to the interest portion of Rental Payments due hereunder, and then to reduce the principal portion of Rental Payments, applied in inverse order of payments due.

**24. Assignment by Lessor.** Lessor's interest in, to and under this Agreement 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 Lessee's consent; provided that any assignment will not be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number 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 agrees to the filing of financing statements with respect to the Equipment and this Agreement. Lessee will not have the right to and will not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor.

**25. Assignment and Subleasing by Lessee.** None of Lessee's right, title and interest in, to and under this Agreement and in 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 and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest portions of the Rental Payments 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 and the Equipment.

**26. Events of Default Defined.** Subject to the provisions of paragraph 4 hereof, any of the following will be "Events of Default" under this Agreement:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in paragraph (a) above, 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 this Agreement 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 this Agreement 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 this Agreement;

(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 Lessee's assets, (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 Lessee's assets, 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.

**27. Remedies on Default.** Whenever any Event of Default 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 hereunder to the end of the then current Original Term or Renewal Term to be due; (b) with or without terminating this Agreement, Lessor may enter the premises where the Equipment is located and retake possession of the Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at a place specified by Lessor, and sell or lease the Equipment or, for Lessee's account, sublease the Equipment, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term, 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 the Equipment and all brokerage, auctioneers' and attorneys' fees); and (c) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all 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.

**28. 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 hereunder, it will not be necessary to give any notice, other than such notice as may specifically be required in this Agreement.

**29. Termination of Lease Term.** The Lease Term will terminate upon the earliest of any of the following events: (a) the expiration of the Original Term or any Renewal Term of this Agreement and the nonrenewal of this Agreement in the event of nonappropriation of funds pursuant to paragraph 4 hereof; (b) the exercise by Lessee of the option to purchase the Equipment granted under paragraph 23 hereof and payment of the Purchase Price and all amounts payable

in connection therewith; (c) a default by Lessee and Lessor's election to terminate this Agreement under paragraph 27 hereof; or (d) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Maximum Lease Term.

**30. Notices.** All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto will designate in writing to the other for notices to such party), to any assignee at its address as it appears on the register maintained by Lessee.

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

**32. 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.

**33. No Other Agreements.** ORAL OR UNEXECUTED AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT LESSEE AND LESSOR FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS REACHED COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN LESSEE AND LESSOR, EXCEPT AS LATER AGREED IN WRITING.

**34. Amendments.** This Agreement may be amended, changed or modified in any manner only 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.

**35. 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.

**36. 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 of this Agreement.

**37. Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Missouri.

**38. Electronic Transactions.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**39. Effective Date.** This Agreement will be effective as of the date first written above.

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#### CERTIFICATION OF CLERK OR SECRETARY OF LESSEE

I, the undersigned, being the duly appointed or elected clerk or secretary of Lessee, do hereby certify that the officer of Lessee who executed the foregoing Agreement on behalf of Lessee and whose genuine signature appears thereon, is the duly qualified and acting officer of Lessee as stated beneath his or her signature and has been authorized by to execute the foregoing Agreement on behalf of Lessee.

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: Pam Meyer  
Title: City Clerk

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<b>Legal Name of Lessee</b>	<b>Federal Tax I.D. No.</b>
City of Ste. Genevieve	43-6003164
<b>Legal Name of Lessor</b>	
First State Community Bank	

**EXHIBIT A TO TAX-EXEMPT EQUIPMENT LEASE PURCHASE AGREEMENT**

Dated as of February 9, 2023

**SCHEDULE OF EQUIPMENT**

The Equipment leased pursuant to this Agreement includes each vehicle listed below, and all additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom:

<b>Equipment Description (make, model, etc.)</b>	<b>Serial Number/VIN</b>	<b>Location of Primary Use/Garaging</b>	<b>Vendor Name &amp; Address</b>
2023 Dodge Durango Pursuit Vehicle AWD		City of Ste. Genevieve	Lou Fusz Chrysler Jeep Dodge Ram 3480 Highway K O'Fallon, MO 63368
2023 Dodge Durango Pursuit Vehicle AWD		City of Ste. Genevieve	Lou Fusz Chrysler Jeep Dodge Ram 3480 Highway K O'Fallon, MO 63368
Upfitting Equipment	See invoice and payment request	City of Ste. Genevieve	Public Safety Upfitters LLC 1724 Westpark Center Drive Suite B Fenton, MO 63026

\_\_\_\_\_ (initialed by Lessee's authorized representative)

<b>Legal Name of Lessee</b>	<b>Federal Tax I.D. No.</b>
City of Ste. Genevieve	43-6003164
<b>Legal Name of Lessor</b>	
First State Community Bank	

**EXHIBIT B TO TAX-EXEMPT EQUIPMENT LEASE PURCHASE AGREEMENT**  
**Dated as of February 9, 2023**

**PAYMENT SCHEDULE**

*(To be updated by Lessor as of the Commencement Date)*

**Commencement Date:** March 2, 2023 *(The Commencement Date is the date on which (a) funds in an amount equal to the Acquisition Amount are either advanced to the Vendor of the Equipment or deposited in the account established and held pursuant to an Account Control Agreement (referenced in the Agreement), and (b) Lessee's obligation to pay Rental Payments commences.)*

**Acquisition Amount:** \$108,120.00

**Interest Rate:** The Interest Rate used to calculate Interest Portions of Rental Payments is 4.990% (based upon an actual/360 day-count), subject to increase upon a Determination of Taxability, as described in the following paragraph:

**Increased Interest Rate Upon Determination of Taxability:** Notwithstanding anything in the Agreement to the contrary, Lessee agrees that, upon a Determination of Taxability, Rental Payments shall be adjusted to reflect that the Interest Rate used to calculate Interest Portions of Rental Payments will be increased by 100 basis points retroactive to the date that, according to the Determination of Taxability, the Interest Portions of Rental Payments are no longer excludable from gross income for federal income tax purposes. Lessee agrees to promptly acknowledge an amended Payment Schedule. "Determination of Taxability" means (a) a determination by the commissioner or any district director of the Internal Revenue Service, (b) a determination by any court of competent jurisdiction, or (c) receipt by Lessee or Lessor of an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that the Interest Portions of the Rental Payments is includible in gross income for federal income tax purposes of Lessor; provided, however, that no such Determination of Taxability under clause (a) or (b) shall be deemed to have occurred if Lessee has been afforded the opportunity to contest such determination, has elected to contest such determination in good faith and is proceeding with all reasonable dispatch to prosecute such contest until the earlier of (i) a final determination from which no appeal may be taken with respect to such determination or (ii) abandonment of such appeal by Lessee.

**Payment Dates and Amounts:** Rental Payments are due, subject to paragraph 4 of the Agreement, on the dates and in the amounts shown on the attached "Amortization Schedule." The term "Purchase Price" (as used in the Agreement), for an applicable Payment Date, refers to the Remaining Balance shown on the Amortization Schedule, after applying the Rental Payment due on the corresponding Payment Date.

<b>Lessee's Billing Address:</b>
City of Ste. Genevieve
165 S 4th Street
Ste. Genevieve, MO 63670
Attn: City Administrator

<b>Lessor's Payment Address:</b>
First State Community Bank
201 E. Columbia
Farmington, MO 63640
Attn: Government Lending Department

The undersigned acknowledge the above provisions and the attached Amortization Schedule *(which has been initialed by Lessee's representative)*:

<b>LESSEE SIGNATURE</b>	Lessee: <b>City of Ste. Genevieve</b>
	By: _____
	Printed Name: <u>Happy Welch</u>
	Title: <u>City Administrator</u>

<b>LESSOR SIGNATURE</b>	Lessor: <b>First State Community Bank</b>
	By: _____
	Printed Name: <u>Marshall Hite</u>
	Title: <u>Vice President</u>



**City of Ste. Genevieve**

**\$108,120.00**

**Schedule of Lease Payments**

<u>Payment Date</u>	<u>Principal</u>	<u>Rate</u>	<u>Interest</u>	<u>Total P&amp;I</u>
3/2/2023				
3/2/2024	19,532.75	4.99%	5,485.10	25,017.85
3/2/2025	20,535.95	4.99%	4,481.90	25,017.85
3/2/2026	21,574.92	4.99%	3,442.93	25,017.85
3/2/2027	22,666.47	4.99%	2,351.38	25,017.85
3/2/2028	23,809.91	4.99%	1,207.94	25,017.85
<u>Total</u>	<u>108,120.00</u>		<u>16,969.25</u>	<u>125,089.25</u>

Initials\_\_\_\_\_

Legal Name of Lessee	Federal Tax I.D. No.
City of Ste. Genevieve	43-6003164
Legal Name of Lessor	
First State Community Bank	

**EXHIBIT C TO TAX-EXEMPT EQUIPMENT LEASE PURCHASE AGREEMENT**

Dated as of February 9, 2023

**ACCOUNT CONTROL AGREEMENT**

Legal Name of Deposit Bank	Deposit Bank's ABA Number	
First State Community Bank	081918425	
Account Name		
<b>Acquisition Account for Equipment Lease Purchase Agreement</b>		
Commencement Date	Account No.	Amount of Initial Deposit
March 2, 2023	6165740	\$108,120.00

**TERMS AND CONDITIONS**

**1. Incorporation into the Agreement.** This Account Control Agreement is among the Lessee and the Lessor and Deposit Bank identified above, and relates to and is made a part of the Tax-Exempt Equipment Lease Purchase Agreement (the "Agreement") dated as of the Commencement Date shown above between Lessor and Lessee. *Except as otherwise defined herein, all terms defined in the Agreement will have the same meaning for the purposes of this Account Control Agreement as in the Agreement.*

**2. Establishment and Maintenance of Account.** Deposit Bank has agreed to establish and maintain for Lessee, the Acquisition Account identified above.

**3. Security Interest.** As collateral security for the obligations and liabilities of Lessee under the Agreement, Lessee has and hereby does grant to Lessor, a present and continuing security interest in the following, or proceeds thereof: (a) the Acquisition Account, and (b) all contract rights, claims and privileges in respect of the Acquisition Account, and all proceeds of the foregoing, and Deposit Bank acknowledges that this Account Control Agreement constitutes notice of Lessor's security interest in such collateral and does hereby consent thereto.

**4. Control of Account.** In order to give Lessor control over the Acquisition Account, as control is defined in the Uniform Commercial Code, Lessee and Deposit Bank agree that no withdrawals may be made from the Acquisition Account, without written approval by Lessor. Deposit Bank agrees to comply with any and all instructions (the "Instructions") from time to time originated by Lessor directing disposition of funds in the Acquisition Account, without further consent by Lessee. Deposit Bank further agrees that it will institute procedures to prevent Lessee from making withdrawals from the Acquisition Account, without approval of Lessor. The parties hereto agree that (i) the Instructions may include, without limitation, the giving of stop payment orders and may further include instructions to transfer funds to or for Lessor's benefit and (ii) Deposit Bank shall have no duty to inquire or determine whether Lessor is entitled, under the Agreement, to give any Instructions. Lessee hereby agrees that Deposit Bank shall be entitled to rely on any Instructions, as set forth herein, even if (i) the Instructions are contrary to any instructions or demands that Lessee may deliver to Deposit Bank and/or (ii) a result of such Instructions is the dishonoring by Deposit Bank of items which may be presented for payment.

**5.** In accordance with the Agreement, Lessor will deposit in the Acquisition Account the Amount of Initial Deposit specified above. Moneys

held by Deposit Bank hereunder will be held in accordance with the Arbitrage Instructions attached as Schedule 1 to this Account Control Agreement, in an FDIC-insured account, fully collateralized as required by Missouri law for deposits of public funds. All interest and gain earned on deposits in the account will be deposited in the Acquisition Account.

**6.** Moneys in the Acquisition Account will be used to pay for the cost of acquisition of the Equipment listed in the Agreement. Such payment will be made from the Acquisition Account upon presentation to Deposit Bank of one or more properly executed Payment Request, a form of which is attached to this Account Control Agreement as **Schedule 2**, executed by Lessee, and consented to by Lessor, together with an invoice for the cost of the acquisition of said Equipment. In making any disbursement pursuant to this paragraph 6, Deposit Bank may conclusively rely as to the completeness and accuracy of all statements in such Payment Request and Acceptance Certificate, and Deposit Bank will not be required to make any inquiry, inspection or investigation in connection therewith. The submission of each Payment Request and Acceptance Certificate will constitute unto Deposit Bank and Lessor an irrevocable determination by Lessee that all conditions precedent to the payment of the amounts set forth therein have been completed.

**7.** The Acquisition Account will terminate upon the occurrence of the earlier of (a) the presentation a Payment Request and Acceptance Certificate, properly executed by Lessee, certifying that all of the Equipment has been accepted, or (b) the presentation of written notification by Lessor that the Agreement has been terminated pursuant to paragraph 4 or paragraph 26 of the Agreement. Upon termination as described in clause (a) of the previous sentence, any amount remaining in the Acquisition Account will be, *first*, applied to pay all reasonable fees and expenses incurred by Deposit Bank in connection with this Account Control Agreement, as evidenced by its statement forwarded to Lessor and Lessee, and, *second*, paid to Lessor, for application against the outstanding principal portion of Rental Payments under the Agreement, as provided therein, unless Lessor consents that payment of such amount be made in such other manner requested by Lessee, so long as Lessee delivers to Lessor an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor, that such alternative disposition will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is used to prepay principal, the Rental Payment Schedule attached to the Agreement

will be revised accordingly as specified by Lessor. Upon termination as described in clause (b) of the first sentence of this paragraph, any amount remaining in the Acquisition Account will immediately be paid to Lessor.

8. Deposit Bank may at any time resign by giving at least 30 days' written notice to Lessee and Lessor, but such resignation will not take effect until the appointment of a successor Deposit Bank. The substitution of another Deposit Bank or trust company to act as Deposit Bank under this Account Control Agreement may occur by written agreement of Lessor and Lessee. In addition, Deposit Bank may be removed at any time, with or without cause, by an instrument in writing executed by Lessor and Lessee. In the event of any resignation or removal of Deposit Bank, a successor Deposit Bank will be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Deposit Bank will indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Deposit Bank. Thereupon such successor Deposit Bank will, without any further act or deed, be fully vested with all the powers, rights, duties and obligations of Deposit Bank under this Account Control Agreement and the predecessor Deposit Bank will deliver all moneys and securities held by it under this Account Control Agreement to such successor Deposit Bank whereupon the duties and obligations of the predecessor Deposit Bank will cease and terminate. If a successor Deposit Bank has not been so appointed with 90 days of such resignation or removal, Deposit Bank may petition a court of competent jurisdiction to have a successor Deposit Bank appointed.

9. Any corporation or association into which Deposit Bank may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, will be and become successor Deposit Bank hereunder and will be vested with all the powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

10. Deposit Bank incurs no responsibility to make any disbursements pursuant to this Account Control Agreement, except from funds held in the Acquisition Account. Deposit Bank makes no representations or warranties as to the title to any Equipment listed in the Agreement or as to the performance of any obligations of Lessor or Lessee.

11. Deposit Bank may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. Deposit Bank will not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of this Account Control Agreement other than its own execution thereof or any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder will be limited to those specifically provided herein.

12. Unless Deposit Bank is guilty of negligence or willful misconduct with regard to its duties hereunder, Lessee, to the extent permitted by law,

and Lessor jointly and severally hereby agree to indemnify Deposit Bank and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Deposit Bank under this Account Control Agreement; and in connection therewith, to indemnify Deposit Bank against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

13. The aggregate amount of the costs, fees, and expenses of Deposit Bank in connection with the creation of the account described in and created by this Account Control Agreement and in carrying out any of the duties, terms or provisions of this Account Control Agreement is a one-time fee in the amount of \$-0-, to be paid by Lessee concurrently with the execution and delivery of this Account Control Agreement. Notwithstanding the foregoing, Deposit Bank will be entitled to its customary deposit account fees and reimbursement from Lessee of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms or provisions of this Account Control Agreement. Claims for such reimbursement may be made to Lessee and in no event will such reimbursement be made from funds held by Deposit Bank pursuant to this Account Control Agreement. Deposit Bank agrees that it will not assert any lien whatsoever on any of the money on deposit in the Deposit Account for the payment of fees and expenses for services rendered by Deposit Bank under this Account Control Agreement or otherwise.

14. If Lessee, Lessor or Deposit Bank are in disagreement about the interpretation of the Lease or this Account Control Agreement, or about the rights and obligations, or the propriety of any action contemplated by Deposit Bank hereunder, Deposit Bank may, but will not be required to, file an appropriate civil action to resolve the disagreement. Deposit Bank will be indemnified by Lessor and Lessee, to the extent permitted by law, for all costs, including reasonable attorneys' fees and expenses, in connection with such civil action, and will be fully protected in suspending all or part of its activities under this Account Control Agreement until a final judgment in such action is received.

15. Deposit Bank may consult with counsel of its own choice and will have full and complete authorization and protection for any action or non-action taken by Deposit Bank in accordance with the opinion of such counsel. Deposit Bank will otherwise not be liable for any mistakes of facts or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or willful misconduct.

16. This Account Control Agreement will be governed by and construed in accordance with the laws of the State of Missouri.

17. In the event any provision of this Account Control 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.

18. This Account Control Agreement may be amended, changed or modified in any manner only by written agreement of Lessor, Deposit Bank and Lessee. Any waiver of any provision of this Account Control 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.

*[Remainder of page intentionally left blank]*

19. This Account Control 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.

20. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, teletypes, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

<b>LESSEE SIGNATURE</b>	Lessee: <b>City of Ste. Genevieve</b>
	By: _____
	Printed Name: <b>Happy Welch</b>
	Title: <b>City Administrator</b>
Notice Address: 165 S 4th Street Ste. Genevieve, MO 63670	

<b>LESSOR SIGNATURE</b>	Lessor: <b>First State Community Bank</b>
	By: _____
	Printed Name: <b>Marshall Hite</b>
	Title: <b>Vice President</b>
Notice Address: 201 E. Columbia Farmington, MO 63640	

<b>DEPOSIT BANK SIGNATURE</b>	Deposit Bank: <b>FIRST STATE COMMUNITY BANK</b>
	By: _____
	Printed Name: <b>Nikki Jarrett</b>
	Title: <b>Government Lending Specialist</b>
Notice Address: 201 E. Columbia Farmington, MO 63640	

Legal Name of Lessee	Federal Tax I.D. No.
City of Ste. Genevieve	43-6003164
Legal Name of Lessor	
First State Community Bank	

**SCHEDULE 1  
TO ACCOUNT CONTROL AGREEMENT**

**ARBITRAGE INSTRUCTIONS AND REPRESENTATIONS**

These Arbitrage Instructions provide procedures for complying with § 148 of the Internal Revenue Code of 1986, as amended (the "Code"), in order to preserve the exclusion from federal gross income of the interest portions of the Rental Payments under the Tax-Exempt Equipment Lease Purchase Agreement, dated as of February 9, 2023 (the "Agreement"), between the above-referenced Lessee and Lessor.

**1. Temporary Period/Yield Restriction.** Except as described in this paragraph, money in the Acquisition Account must not be invested at a yield greater than the yield on the Agreement. Proceeds of the Agreement in the Acquisition Account and investment earnings on such proceeds may be invested without yield restriction for three years after the Commencement Date of the Agreement. If any unspent proceeds remain in the Acquisition Account after three years, such amounts may continue to be invested without yield restriction so long as Lessee pays to the IRS all yield reduction payments under § 1.148-5(c) of the Treasury Regulations.

**2. Lease Proceeds Exempt from the Rebate Requirement.**

(a) *The Agreement Qualifies as a Rebate-Exempt Small Issue.* Lessee hereby represents the following:

- (1) Lessee is a governmental unit under State law with general taxing powers;
- (2) the Agreement is not a "private activity bond" as defined in Code § 141;
- (3) 95% or more of the net proceeds of the Agreement are to be used for local governmental activities of Lessee; and

(4) the aggregate face amount of all tax-exempt bonds and obligations (other than private activity bonds), and qualified tax credit bonds as defined in Code § 54A(d)(1) to be issued by Lessee during the calendar year in which the Commencement Date occurs, is not reasonably expected to exceed \$5,000,000. Lessee understands that, for this purpose; (a) Lessee and all entities which issue bonds on behalf of Lessee are treated as a single issuer; (b) all bonds or obligations issued by an entity subordinate to Lessee are treated as issued by Lessee; and (c) bonds or obligations issued by Lessee to currently refund any other bond are not taken into account to the extent that the amount of the refunding bonds does not exceed the outstanding amount of the refunded obligations.

*If any tax-exempt bonds or obligations issued or to be issued during the current calendar year are attributable to financing the construction of public school facilities, then Lessee makes the following representations, in lieu of paragraph (4) above:*

The aggregate face amount of all tax-exempt bonds and obligations (other than private activity bonds), and qualified tax credit bonds as defined in Code § 54A(d)(1) to be issued by Lessee during the calendar year in which the Commencement Date occurs, is not reasonably expected to exceed the sum of (A) \$5,000,000 plus (B) the lesser of \$10,000,000 or the portion of the face amount of all bonds and other obligations expected to be issued in the calendar year in which the Commencement Date occurs, which will be attributable to the financing of the construction of public school facilities. Lessee understands that, for this purpose; (a) Lessee and all entities which issue bonds on behalf of Lessee are treated as a single issuer; (b) all bonds or obligations issued by an entity subordinate to Lessee are treated as issued by Lessee; and (c) bonds or obligations issued by Lessee to currently refund any other bond are not taken into account to the extent that the amount of the refunding bonds does not exceed the outstanding amount of the refunded obligations. Lessee further understands that the term "construction" generally means capital expenditures incurred to construct, reconstruct, renovate, rehabilitate, or improve buildings or structures, but does not include expenditures to acquire land, any interest in land, or other real property, or to acquire or improve moveable personal property, such as furniture, computers, photocopiers, books, or vehicles.

**3. Opinion of Special Tax Counsel.** These Arbitrage Instructions may be modified or amended in whole or in part upon receipt of an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations, satisfactory to Lessor, that such modifications and amendments will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes.

\* \* \*

Legal Name of Lessee	Federal Tax I.D. No.
City of Ste. Genevieve	43-6003164
Legal Name of Lessor	
First State Community Bank	

**SCHEDULE 2  
TO ACCOUNT CONTROL AGREEMENT**

**FORM OF PAYMENT REQUEST AND ACCEPTANCE CERTIFICATE**

To: First State Community Bank, as Deposit Bank  
 Attn: Nikki Jarrett, Government Lending Specialist  
 (Send by e-mail to [njarrett@FSCB.com](mailto:njarrett@FSCB.com))

Re: Payment Requested from **Account No. 6165740**, "**City of Ste. Genevieve**",  
**Acquisition Account for Equipment Lease Purchase Agreement**" held pursuant to the Account Control Agreement dated as of  
 February 9, 2023, between Lessee and Lessor identified above, and Deposit Bank (the "*Deposit Bank*")

Ladies and Gentlemen:

Deposit Bank is hereby requested to pay from the Acquisition Account to the person or corporation designated below as Payee, the sum set forth below in payment of a portion or all of the cost of the Acquisition Cost of the Equipment, as described below. The amount shown below is due and payable under the invoice of the Payee **attached hereto** with respect to the cost of the acquisition and installation of the Equipment, and has not formed the basis of any prior request for payment.

The Equipment described below is part or all of the property described on the Equipment Schedule attached as Exhibit A to the Tax-Exempt Equipment Lease Purchase Agreement dated as of February 9, 2023 (the "*Agreement*") described in the Account Control Agreement.

Payee Name and Address & Description of Cost Paid	Amount to be Paid	Payment Delivery Instructions (if not provided on attached invoice)
First State Community Bank Filing fees for UCC, Notice of Lien, IRS Form 8038-G	\$120.00	

Lessee hereby certifies and represents to and agrees with Lessor and Deposit Bank as follows:

- (1) (a) The Equipment described herein has been delivered, installed and accepted on the date hereof, or (b) the amount requested is in payment of closing costs relating to the Agreement.
- (2) If (1)(a) is applicable, Lessee has conducted such inspection and/or testing of said Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts said Equipment for all purposes.
- (3) If (1)(a) is applicable, Lessee is currently maintaining the insurance coverage required by paragraph 14 of the Agreement.
- (4) No event or condition that constitutes, or with notice or lapse of time or both would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.

DATED: \_\_\_\_\_

<b>LESSEE SIGNATURE</b>	Lessee: <b>City of Ste. Genevieve</b>
	By: _____
	Name: <u>Happy Welch</u>
	Title: <u>City Administrator</u>

<b>LESSOR APPROVAL OF PAYMENT</b>	Lessor: <b>First State Community Bank</b>
	By: _____
	Name: <u>Marshall Hite</u>
	Title: <u>Vice President</u>

***[Attach Invoice(s) to be Paid]***

**EXHIBIT D TO TAX-EXEMPT EQUIPMENT LEASE PURCHASE AGREEMENT**

**Dated as of February 9, 20**

**COPY OF AUTHORIZING RESOLUTION OR ORDINANCE APPROVED BY LESSEE'S GOVERNING BODY  
(per paragraph 5)**

*(Attach approved and signed authorizing resolution or ordinance, in substantially the form attached.)*



**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.

**Part I Reporting Authority** If Amended Return, check here

<b>1</b> Issuer's name <b>City of Ste. Genevieve</b>		<b>2</b> Issuer's employer identification number (EIN) <b>43-6003164</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>165 S 4th Street</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>Ste. Genevieve, MO 63670</b>		<b>7</b> Date of issue <b>03/02/2023</b>
<b>8</b> Name of issue <b>Tax-Exempt Equipment Lease Purchase Agreement dated February 9, 2023</b>		<b>9</b> CUSIP number <b>None</b>
<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>Happy Welch, City Administrator</b>		<b>10b</b> Telephone number of officer or other employee shown on 10a <b>573-883-5400</b>

**Part II Type of Issue (enter the issue price).** 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>	108,120	00
<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>		
<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 type="checkbox"/>

**Part III Description of Obligations.** 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>	03/02/2028	\$ 108,120	\$ 108,120	3.0988 years	5.0023 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

<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>	108,120	00
<b>24</b> Proceeds used for bond issuance costs (including underwriters' discount) . . . . .	<b>24</b>	120	00
<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>	120	00
<b>30</b> Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) . . . . .	<b>30</b>	108,000	00

**Part V Description of Refunded Bonds.** Complete this part only for refunding bonds.

<b>31</b> Enter the remaining weighted average maturity of the bonds to be currently refunded . . . . .	►	
<b>32</b> Enter the remaining weighted average maturity of the bonds to be advance refunded . . . . .	►	
<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>  |  |  |
| <b>36a</b> |  |  |
| <b>37</b>  |  |  |
- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .
  - 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .
  - b** Enter the final maturity date of the GIC ▶ \_\_\_\_\_
  - c** Enter the name of the GIC provider ▶ \_\_\_\_\_
  - 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .
  - 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶  and enter the following information:
    - b** Enter the date of the master pool obligation ▶ \_\_\_\_\_
    - c** Enter the EIN of the issuer of the master pool obligation ▶ \_\_\_\_\_
    - d** Enter the name of the issuer of the master pool obligation ▶ \_\_\_\_\_
  - 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . . ▶
  - 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . . ▶
  - 41a** If the issuer has identified a hedge, check here ▶  and enter the following information:
    - b** Name of hedge provider ▶ \_\_\_\_\_
    - c** Type of hedge ▶ \_\_\_\_\_
    - d** Term of hedge ▶ \_\_\_\_\_
  - 42** If the issuer has superintegrated the hedge, check box . . . . . ▶
  - 43** 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 . . . . . ▶
  - 44** If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . . ▶
  - 45a** If some portion of the proceeds was used to reimburse expenditures, check here ▶  and enter the amount of reimbursement . . . . . ▶ \_\_\_\_\_
  - b** Enter the date the official intent was adopted ▶ \_\_\_\_\_

<b>Signature and Consent</b>	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.				
	Signature of issuer's authorized representative _____ Signature of issuer's authorized representative	Date	Happy Welch, City Administrator Type or print name and title		
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Nicole Jarrett				P03007890
	Firm's name ▶ First State Community Bank	Firm's EIN ▶ 43-0688689		Firm's address ▶ 201 E. Columbia, Farmington, MO 63640	
	Firm's address ▶ 201 E. Columbia, Farmington, MO 63640		Phone no. 573-756-4547		

**Staff Report**

February 9, 2023



To: Board of Aldermen  
From: Happy Welch  
Re: Police Grant Overtime Policy

**Issue:**

The police department is applying for Special Traffic Enforcement Program grant funds to pay for police officer overtime to enforce traffic laws. Officers will be paid 2x their hourly wage through the grant.

To be eligible, we must adopt an overtime policy in our Personnel Manual that allows the 2x hourly rate for all officers including the Chief and Lieutenant.

**Recommendation:**

Approve the addition to the overtime policy.

**BILL NO. 4541**

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF STE. GENEVIEVE, MISSOURI AMENDING THE PERSONNEL MANUAL AS SET FORTH BELOW.**

**WHEREAS**, this ordinance is done pursuant to Chapter 120, Personnel, Section 120.010, Personnel Manual Adopted, to revise the Personnel Policy (exhibits attached) for the City of Ste. Genevieve, Missouri (“City”), and;

**WHEREAS**, the Personnel Policy is the guide for all departments to follow for proper employment practices and is a guide for employment with the City, and;

**WHEREAS**, the Personnel Policy is a separate document detached from the codebook with a copy retained in the city clerk’s office, and;

**WHEREAS**, the amended changes proposed to the Personnel Policy have been reviewed by the Board of Aldermen who believe these changes are in the best interests of the City;

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF STE. GENEVIEVE, MISSOURI AS FOLLOWS:**

**SECTION 1. Section 405 “Overtime Pay Policy”** is hereby deleted in its entirety and replaced with “Exhibit “B” attached hereto and made part of this ordinance.

**SECTION 2. EFFECTIVE DATE.** This ordinance shall be in full force and effect from and after its date of passage.

**SECTION 3. REPEALER.** All ordinance and parts thereof in conflict with this ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 4. SEVERABILITY.** The invalidity of any section, clause, sentence or provision of this ordinance shall be given effect without such invalid part or parts.

**DATE OF FIRST READING:** \_\_\_\_\_.

**DATE OF SECOND READING:** \_\_\_\_\_.

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023 BY A ROLL CALL VOTE OF THE BOARD OF ALDERMEN AS FOLLOWS:**

VOTE

**ALDERWOMAN KRISTI CLEGHORN  
ALDERWOMAN SUSAN JOHNSON  
ALDERMAN BOB DONOVAN  
ALDERMAN MIKE JOKERST  
ALDERMAN JEFFREY EYDMANN  
ALDERMAN MICHAEL RANEY  
ALDERWOMAN ASHLEY ARMBRUSTER  
ALDERMAN JOE PRINCE**

    YES     NO     ABSENT

Approved as to Form:

\_\_\_\_\_  
Paul Hassler, Mayor

\_\_\_\_\_  
Mark Bishop, City Attorney

SEAL

Reviewed by:

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Pam Meyer, City Clerk

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Happy Welch, City Administrator

#### **405 Overtime Pay Policy.**

Effective Date: 05/12/22

Revision:

When operating requirements or other needs cannot be met during regular working hours, employees may be scheduled to work overtime hours. When possible, advance notification of these mandatory assignments will be provided. All overtime work must receive the supervisor's prior authorization.

The City of Ste. Genevieve shall comply with the provisions of the Fair Labor Standards Act (FLSA) in the administration of overtime policy. The following exempt positions shall not qualify for overtime benefits:

City Administrator

City Clerk

Police Chief

Assistant Police Chief (Lieutenant)

Tourism Director

Community Development Administrator

Overtime compensation is paid to all nonexempt employees in accordance with federal and state wage and hour restrictions. Overtime pay is based on actual hours worked. Vacation time shall be counted toward overtime. Time off for sick leave, or any leave of absence will not be considered hours worked for purposes of performing overtime calculations **except for a Traffic Enforcement Project**. Overtime assignments will be distributed as equitably as practical to all non-exempt employees qualified to perform the required work. Eligible non-exempt employees shall qualify for overtime benefits for each hour worked in excess of 40 hours in any given work week. Overtime pay shall be at a rate of one and one-half times the regular rate of pay.

The normal work schedule for Law Enforcement employees is twelve (12) hours a day in a 171 hour work period and a 28 day work cycle or eight (8) hours a day in an 86 hour work period and a 14 day work cycle. Law Enforcement employees do not qualify for overtime pay until after the employee has worked 171 hours within the 28 day cycle or 86 hours when assigned the 14 day cycle. An employee must be permitted to use compensatory time on the date requested unless doing so would "unduly disrupt" the operations of the City. All uses of compensatory time shall require the approval of the City Administrator.

**The City policy regarding overtime pay for exempt salaried, non-exempt salaried and part-time police officers when engaged in assignments of Traffic Enforcement Overtime is to pay at a rate of two (2) times the regular rate of pay per hour regardless of the hours worked during the pay period while working on the Traffic Enforcement Project approved by the Board of Aldermen prior to project implementation. Hours worked in that pay period will be processed in accordance with the Fair Labor Standards Act (FLSA).**

Employees who work overtime without receiving prior authorization from the supervisor may be subject to disciplinary action, up to and including possible termination of employment. It is the intention of the City that the Department supervisors minimize all overtime hours within their departments.