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## **GOVERNMENTAL LEASE-PURCHASE AGREEMENT**

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**Name and Address of Lessee:**

**City of Rapid City  
300 Sixth Street  
Rapid City, South Dakota 57701**

**Lessor:**

**Wells Fargo Brokerage Services, LLC  
Northstar East Building, 10th Floor  
MAC: N9303-105  
608 Second Avenue South  
Minneapolis, MN 55479**

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1. LEASE. Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the personal property described in the Supplement attached to this Lease and hereby made a part hereof (collectively the "Lease") upon the terms and conditions set forth in this Lease (such property together with all replacements, repairs and additions incorporated therein or affixed thereto being referred to herein as "Equipment" ). The execution by Lessee of this Lease shall evidence a determination by the Lessee that the Equipment is essential to its proper, efficient and economic operation, that Lessee desires to enter into this Lease for the acquisition of that Equipment under the terms hereof, that the Equipment is necessary for the governmental functions of Lessee, and that Lessor is neither the manufacturer nor a dealer or merchant of said Equipment, but has agreed to provide the funding for and on behalf of Lessee for the acquisition of said Equipment under the terms hereof at the specific request of Lessee.

2. ESCROW AGREEMENT. In order that moneys be available to Lessee for the acquisition of the Equipment, Lessee and Lessor, acting as escrow agent (the "Escrow Agent"), shall execute and deliver an Escrow Agreement dated as of the date hereof (the "Escrow Agreement"). Lessor shall cause to be deposited into escrow the amount specified in the Escrow Agreement, which amount shall be held, invested, and disbursed to pay Equipment costs as provided in the Escrow Agreement. Lessee shall execute and deliver to Lessor an Arbitrage and Tax Certificate in the form attached to the Escrow Agreement and the Officer's Certificate in the form attached hereto. Upon payment of all costs of the Equipment and the acceptance thereof by Lessee, Lessee shall certify such acceptance in the form provided by Lessor.

3. TERM. The term of this Lease shall begin the date Lessor deposits into escrow the amounts specified in the Escrow Agreement (the "Commencement Date") and shall continue unless earlier terminated as provided herein. The Commencement Date shall be recorded on the Supplement.

4. RENT. Lessee shall pay as rent for the full term of this Lease the amount shown in the Supplement as Total Rent, and a portion of each rent payment is paid as, and represents the payment of interest, and Exhibit "A" attached to the Supplement sets forth the interest component of each rent payment during the term. The Total Rent shall be payable in installments each in the amount of the basic rental payment set forth in Exhibit A to the Supplement plus any applicable sales and use tax thereon.

Except as provided in Section 5, the obligation of Lessee to make rent payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between Lessee and Lessor or any other person, Lessee shall make all rent payments and other payments required hereunder when due and shall not withhold any rent payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such rent payments or other payments required under this Lease. Lessee's obligation to make rent payments or other payments during the Lease term shall not be abated through accident or unforeseen circumstances. However, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder; and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damages therefor.

Lessee reasonably believes that funds can be obtained sufficient to make all rent payments during the term of the Lease and hereby covenants that the officer of Lessee responsible for budget preparation shall request the required appropriation for each fiscal year during the term of this Lease from the governing body of Lessee and exhaust all available administrative reviews and appeals in the event such portion of the budget is not approved.

5. **NON-APPROPRIATION OF FUNDS.** If, notwithstanding the making in good faith of a request to the governing body of Lessee for funds to pay its obligations hereunder for any ensuing fiscal year in accordance with appropriate procedures and Section 4 hereof, such governing body does not appropriate funds to be paid to Lessor for the Equipment, Lessee may, upon prior written notice to Lessor effective 60 days after the giving of such notice or upon the exhaustion of the funding authorized for the then current fiscal year, whichever is later, return the Equipment to Lessor at Lessee's expense and thereupon be released of its obligation to make all rental payments to Lessor due after the close of the fiscal year for which funds were appropriated, provided: (i) the Equipment is returned to Lessor freight prepaid and insured to any location in the continental United States designated by Lessor in the same condition as when first delivered to Lessee, reasonable wear and tear resulting solely from authorized use thereof excepted, (ii) the foregoing notice states the failure of the governing body to appropriate the necessary funds as reason for cancellation, and (iii) the notice is accompanied by payment of all amounts then due to Lessor under this Lease. In the event Lessee returns the Equipment pursuant to the terms of this Section 5, Lessor shall retain all sums paid hereunder by Lessee. Lessor shall also be entitled to retain any amount still held in escrow pursuant to the Escrow Agreement.

6. **REPRESENTATIONS AND WARRANTIES OF LESSEE.** Lessee represents and warrants and, so long as this Lease is in effect or any part of Lessee's obligations to Lessor remain unfulfilled, shall continue to represent and warrant, that:

(a) Lessee is a state, a possession of the United States, the District of Columbia, or a political subdivision of any of the foregoing. If Lessee is incorporated, it is duly organized and existing under the constitution and laws of its jurisdiction of incorporation and will do or cause to be done all things necessary to preserve and keep such organization and existence in full force and effect.

(b) Lessee has been duly authorized by the constitution and laws of the applicable jurisdiction and by a resolution of its governing body (which resolution, if requested by Lessor, is attached hereto) to execute and deliver this Lease and the Escrow Agreement and to carry out its obligations thereunder.

(c) All requirements have been met, and procedures have occurred in order to ensure the enforceability of this Lease and the Escrow Agreement, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Lease.

(d) The Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than Lessee.

(e) Lessee has funds available and properly appropriated to pay rent until the end of its current appropriation period. Lessee has never terminated, or threatened to terminate, a lease-purchase or similar agreement for failure of its governing body to appropriate funds sufficient to perform its obligations thereunder for any fiscal year.

(f) This Lease and the Escrow Agreement constitute valid, legal and binding obligations of Lessee enforceable against Lessee in accordance with the terms thereof.

(g) Lessee will take no action that would cause the interest portion of the rent payments to become includible in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the Code) and Treasury Regulations promulgated thereunder (the Regulations), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest portion of the rent payments does not become includible in gross income of the recipient for federal income tax purposes under the Code and Regulations.

7. **WARRANTIES.** Lessee agrees that it has selected each item of Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor. LESSOR MAKES NO WARRANTY WITH RESPECT TO THE EQUIPMENT, EXPRESSED OR IMPLIED, AND LESSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL

**DAMAGES ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE EQUIPMENT.** Lessee agrees to make rental and other payments required hereunder without regard to the condition of the Equipment and to look only to persons other than Lessor such as the manufacturer, vendor or carrier thereof should any item of Equipment for any reason be defective. So long as no Event of Default has occurred and is continuing, Lessor agrees, to the extent they are assignable, to assign to Lessee, without any recourse to Lessor, any warranty received by Lessor.

8. **TITLE.** Upon acceptance of the Equipment by Lessee hereunder, title to the Equipment will vest in Lessor; provided, however, that upon payment by Lessee of the Total Rent or the exercise by Lessee of its prepayment option with respect to the Equipment and the fulfillment by Lessee of all of its other obligations hereunder, title shall immediately vest in Lessee. Lessee at its expense shall protect and defend the title and keep the Equipment free of all claims and liens other than the rights of Lessee and Lessor hereunder. The Equipment shall remain personal property regardless of its attachment to realty, and Lessee agrees to take such action at its expense as may be necessary to prevent any third party from acquiring any interest in the Equipment as a result of its attachment to realty.

9. **SECURITY AGREEMENT; FURTHER ASSURANCES.** To secure the performance of all Lessee's obligations hereunder, Lessee hereby grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, repairs, replacements and modifications thereto or therefor, including all after-acquired equipment of Lessee, and on any proceeds therefrom. Lessor is hereby authorized to file financing statements to perfect such security interest in accordance with the Uniform Commercial Code. Lessee agrees to execute or deliver such additional documents, including, without limitation, financing statements, opinions of counsel, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of this Lease and Lessor's rights hereunder.

10. **LAWS AND TAXES.** Lessee shall comply with all laws and regulations relating to the Equipment and its use and shall promptly pay when due all sales, use, property, excise and other taxes and all license and registration fees now or hereafter imposed by any governmental body or agency upon the Equipment or its use or the rentals hereunder excluding, however, any taxes on or measured by Lessor's net income. Upon request by Lessor, Lessee shall prepare and file at its expense all tax returns relating to taxes for which Lessee is responsible hereunder which Lessee is permitted to file under the laws of the applicable taxing jurisdiction.

11. **LESSEE NEGLIGENCE.** Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or the property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.

12. **ASSIGNMENT.** Without Lessor's prior written consent, Lessee will not sell, assign, sublet, pledge, or otherwise encumber or permit a lien arising through Lessee to exist on or against any interest in this Lease or the Equipment or remove the Equipment from its location referred to above. Lessor may assign its interest in this Lease and sell or grant a security interest in all or any part of the Equipment without Lessee's consent. Lessee hereby appoints Lessor as Lessee's agent for purposes of maintaining a written record of all such assignments.

13. **INSPECTION.** Lessor may inspect the Equipment at any time and from time to time during regular business hours.

14. **REPAIRS.** Lessee will use the Equipment with due care and for the purpose for which it is intended. Lessee will maintain the Equipment in good repair, condition and working order and will furnish all parts and services required therefore, all at its expense. All such parts when furnished shall immediately become part of the Equipment for all purposes hereof.

15. **LOSS OR DAMAGE.** In the event any item of Equipment shall become lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of any item of Equipment, Lessee shall promptly pay Lessor (a) the amount of all rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the amount stated in the Supplement or Exhibit A thereto as the Termination Balance. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic

rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer. Any insurance or condemnation proceeds received shall be credited to Lessee's obligation under this Section and Lessee shall be entitled to any surplus.

16. **INSURANCE.** Lessee shall obtain and maintain on or with respect to the Equipment at its own expense (a) liability insurance against liability for bodily injury and property damage with a minimum limit of \$500,000 combined single limit and (b) physical damage insurance insuring against loss or damage to the Equipment in an amount not less than the full replacement value of the Equipment or the amount stated in the Supplement or an exhibit thereto as the Termination Balance whichever is greater. Lessee shall furnish Lessor with certificate of insurance evidencing the issuance of a policy or policies to Lessee in at least the minimum amounts required herein, naming Lessor as an additional insured thereunder for the liability coverage and as loss payee for the property damage coverage. Each such policy shall be in such form and with such insurers as may be satisfactory to Lessor, and shall contain a clause requiring the insurer to give to Lessor at least 10 days prior written notice of any alteration in the terms of such policy or the cancellation thereof, and a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirement thereof.

17. **RETURN OF THE EQUIPMENT.** Upon the termination of this Lease pursuant to Section 5 or Section 21 hereof, Lessee will immediately deliver the Equipment to Lessor in the same condition as when delivered to Lessee, ordinary wear and tear excepted, at such location within the continental United States as Lessor shall designate. Lessee shall pay all transportation and other expenses relating to such delivery.

18. **ADDITIONAL ACTION.** Lessee will promptly execute and deliver to Lessor such further documents and take such further action as Lessor may request in order to more effectively carry out the intent and purpose of this Lease. Lessee shall furnish Lessor, within seven (7) days of availability, a copy of Lessee's audited financial statements. In the event that Lessee does not regularly obtain audited financial statements, Lessee shall provide to Lessor, within seven (7) days of availability, copies of Lessee's annual balance sheet and income statement.

19. **LATE CHARGES.** If any installment of basic rent is not paid when due or within 5 days thereafter, Lessor may impose a late charge of up to 5% of the amount of the installment but in any event not more than permitted by applicable law. Rent payments thereafter received shall be applied first to delinquent installments and then to current installments.

20. **DEFAULT.** Each of the following events shall constitute an "Event of Default" hereunder: (a) Lessee shall fail to pay when due any installment on basic rent; (b) Lessee shall fail to observe or perform any other agreement to be observed or performed by Lessee hereunder or under the Escrow Agreement and the continuance thereof for 10 calendar days following written notice thereof by Lessor to Lessee; (c) any warranty, representation or statement made or furnished to Lessor by or on behalf of Lessee proves to have been false or misleading in any material respect; or (d) Lessee shall voluntarily file, or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt, or similar relief under the federal or state bankruptcy code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver, or liquidator shall be appointed of it or all of a substantial part of its assets.

21. **REMEDIES.** Whenever any event of default referred to in Section 20 hereof shall have happened and be continuing with respect to the Equipment, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(a) Lessor, with or without terminating this Lease may declare all rent payments due or to become due during the fiscal year in effect when the default occurs to be immediately due and payable by Lessee, whereupon such rent payments shall be immediately due and payable.

(b) Lessor, with or without terminating this Lease, may repossess the Equipment by giving Lessee written notice to deliver the Equipment to Lessor, whereupon Lessee shall do so in the manner provided in Section 17; or in the event Lessee fails to do so within 10 days after receipt of such notice, Lessor may enter upon Lessee's premises where the Equipment is kept and take possession of the Equipment and charge Lessee for costs incurred in repossessing the Equipment, including reasonable attorneys' fees. Lessee hereby expressly waives any damages occasioned by such repossession. If the Equipment or any portion of it has been destroyed or damaged beyond repair, Lessee shall pay the applicable Termination Balance of the Equipment, as set forth in the Supplement or Exhibit A thereto (less credit for proceeds of insurance and amounts, if any,

returned to Lessor pursuant to Section 6 of the Escrow Agreement, remaining after subtraction of Lessor's costs with respect to the collection thereof), to Lessor. Notwithstanding the fact that Lessor has taken possession of the Equipment, Lessee shall continue to be responsible for the rent payments due during the fiscal year then in effect. If this Lease has not been terminated, Lessor shall return the Equipment to Lessee at Lessee's expense when the event of default is cured.

(c) If Lessor terminates this Lease and takes possession of the Equipment, Lessor shall within 30 days thereafter use its best efforts to sell the Equipment or any portion thereof in a commercially reasonable manner at public or private sale in accordance with applicable state laws. Lessor shall apply the proceeds of such sale and amounts, if any, returned to Lessor pursuant to Section 6 of the Escrow Agreement to pay the following items in the following order: (i) all costs incurred in securing possession of the Equipment; (ii) all expenses incurred in completing the sale; (iii) the applicable Termination Balance of the Equipment; and (iv) the balance of any rent payments owed by Lessee during the fiscal year then in effect. Any sale proceeds remaining after the requirements of clauses (i), (ii), (iii) and (iv) have been met may be retained by Lessee.

(d) If the proceeds of sale of the Equipment and amounts, if any, held pursuant to the Escrow Agreement are not sufficient to pay the balance of any rent payments owed by Lessee during the fiscal year then in effect, Lessor may take any other remedy available at law or in equity to require Lessee to perform any of its obligations hereunder.

22. NOTICES. Any written notice hereunder to Lessee shall be deemed to have been given when delivered personally or deposited in the United States mails, postage prepaid, addressed to Lessee at its address set forth above or at such other address as may be last known to Lessor.

23. PREPAYMENT. This Lease may be prepaid in whole, but not in part, and on any regular payment date with 45 days written notice to Lessor, upon payment of all rent payments then due, plus the amount set forth as Termination Value on the Supplement or any exhibit thereto.

24. SURVIVAL. Lessee's obligations under Section 10 shall survive termination of this Lease.

25. MISCELLANEOUS. Any provision of this Lease which is unenforceable in any jurisdiction shall, as to jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Lease, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. This Lease shall in all respects be governed by, and construed in accordance with, the substantive laws of the state in which the Lessee is located.

Dated: \_\_\_\_\_, 2009

Lessee: **City of Rapid City**  
Rapid City, South Dakota

Lessor: **Wells Fargo Brokerage Services, LLC**

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

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

Pam Lang

Its: Mayor

Its: Senior Vice President

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

Its: Finance Officer

Counter Signature:

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

Resident Attorney

Wells Fargo Brokerage Services, LLC  
 608 Second Avenue South  
 MAC: N9303-105  
 Northstar East Building, 10th Floor  
 Minneapolis, MN 55479

**SUPPLEMENT TO GOVERNMENTAL  
 LEASE-PURCHASE AGREEMENT**

Name and address of Lessee:

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City of Rapid City  
 300 Sixth Street  
 Rapid City, South Dakota 57701

This is the Supplement to the Governmental Lease-Purchase Agreement dated \_\_\_\_\_, 2009, between Lessor and Lessee. Pursuant to the Governmental Lease-Purchase Agreement and this Supplement, Lessor is leasing to Lessee, and Lessee is leasing from Lessor, the Equipment described below.

EQUIPMENT DESCRIPTION			
Quantity	VIN or Serial Number		
Location of Equipment (if different from Lessee's address)		SCHEDULE OF RENT PAYMENTS	
		Basic Rental Payments	Number Of Payments
Commencement Date: _____, 2009		\$ _____	-0-
Term in months		Interest Rate	First Payment Due
		_____%	Final Purchase Option Price
Rental payment period		\$1.00	
		FINANCE AMOUNT: \$ _____	
		TOTAL RENT: \$ _____	

Additional Provisions:

LESSOR: Wells Fargo Brokerage Services, LLC

LESSEE: City of Rapid City  
 Rapid City, South Dakota

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

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

Pam Lang

Its: Mayor

Its: Senior Vice President

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

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

Its: Finance Officer

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

**INCUMBENCY CERTIFICATE**

I, \_\_\_\_\_, do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of the City of Rapid City, a political subdivision or agency duly organized and existing under the laws of the State of South Dakota that I have custody of the records of such entity, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of such entity holding the offices set forth opposite their respective names. I further certify that (I) the signatures set opposite their respective names and titles are their true and authentic signatures and (II) such officers have the authority on behalf of such entity to enter into that certain Governmental Lease-Purchase Agreement dated \_\_\_\_\_, 2009 and Supplement thereto between such entity and Wells Fargo Brokerage Services, LLC (Lessor) and the Escrow Agreement dated \_\_\_\_\_, 2009 between such entity and Wells Fargo Brokerage Services, LLC, as escrow agent.

NAME	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I have duly executed this certificate this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
SECRETARY/CLERK



[FORM OF LEGAL OPINION]

\_\_\_\_\_, 2009

Wells Fargo Brokerage Services, LLC  
Public Finance Division  
Northstar East Building, 10<sup>th</sup> Floor  
MAC: N9303-105  
608 Second Avenue South  
Minneapolis, Minnesota 55479

Ladies and Gentlemen:

As counsel for the City of Rapid City (“Lessee”), I have examined the Governmental Lease-Purchase Agreement dated \_\_\_\_\_, 2009 and Supplement dated \_\_\_\_\_, 2009 (the “Lease”), between Lessee and Wells Fargo Brokerage Services, LLC (“Lessor”), the Escrow Agreement dated April 2, 2009 (the “Escrow Agreement”) between Lessee and Lessor, as escrow agent, and such other documents, instruments and records as I have considered relevant for purposes of this opinion. Based upon such examination, and such research and investigation as I deemed necessary, I am of the opinion that:

- 1) Lessee is a political subdivision or agency of the State of South Dakota, duly organized and existing under the laws of such state.
- 2) Lessee is authorized and has power under applicable law to enter into the Lease and Escrow Agreement, and to carry out its obligations thereunder and the transactions contemplated thereby.
- 3) The Lease and Escrow Agreement have been duly authorized, approved, executed and delivered by and on behalf of Lessee, and are valid and binding contracts of Lessee enforceable in accordance with their terms, except to the extent limited by state and federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors’ rights.
- 4) The authorization, approval and execution of the Lease and Escrow Agreement and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public bidding and all other laws, rules and regulations of the State.
- 5) The execution of the Lease and the appropriation of moneys to pay the rent payments coming due thereunder do not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

- 6) There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the Lease and Escrow Agreement; the proper authorization, approval and/or execution of the Lease, Escrow Agreement, Exhibits thereto and other documents contemplated thereby; the appropriation of moneys to make rent payments under the Lease for the current fiscal year of Lessee; or the ability of Lessee otherwise to perform its obligations under the Lease and Escrow Agreement and the transactions contemplated thereby.
  
- 7) Resolution No. \_\_\_\_\_ of the governing body of Lessee, was duly and validly adopted by such governing body on \_\_\_\_\_, 2009, and such resolution has not been amended or repealed and remains in full force and effect.

Very truly yours,

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Counsel for Lessee

Wells Fargo Brokerage Services, LLC,  
MAC: N9303-105  
608 Second Avenue South  
Northstar East Building, 10th Floor  
Minneapolis, MN 55479

*Certificate of  
Insurance*

Coverage is provided for the following Named Insured:

Name of Insured

City of Rapid City

Street Address

300 Sixth Street

City/State

Rapid City, South Dakota

Zip

57701

**DETAILED DESCRIPTION AND LOCATION OF EQUIPMENT COVERED**

**DESCRIPTION OF COMPREHENSIVE GENERAL LIABILITY INSURANCE**

Insurance Company (not agency)

Policy number

Effective date

Expiration date

**BODILY INJURY LIABILITY**

Single Claim / Each occurrence  
\$500,000.00

Aggregate  
\$1,500,000.00

**PROPERTY DAMAGE LIABILITY**

Each occurrence

Aggregate

Wells Fargo Brokerage Services, LLC, its successors and assigns, is endorsed as an Additional Insured on the Comprehensive General Liability insurance described above:  Yes  No

**DESCRIPTION OF PHYSICAL DAMAGE INSURANCE**

Insurance Company

Policy number

Effective date

Expiration date

The Physical Damage Insurance issued in the amount of \$\_\_\_\_\_ consists of:

Fire and Extended Coverage including Vandalism, Malicious Mischief and Theft

All Risk Insurance with the following exceptions:

Wells Fargo Brokerage Services, LLC, its successors and assigns, is endorsed as Loss Payee on the Physical Damage Insurance described above:  Yes  No

The Policy, as to the interest of Loss Payee, shall not be invalidated by any act of omission or commission or neglect or misconduct of the Named Insured at any time, not by any foreclosure or other proceeding or notice of sale relating to the insured property, not by any change in the title or ownership thereof or the occupation of the premises for purposes more hazardous than are permitted by the Policy, provided, that in case the Named Insured shall fail to pay any premium due under the Policy, Loss Payee may, at its option, pay such premium.

The Policy may be canceled at any time by either Insurer or Named Insured according to its provisions, but in any such case the Policy shall continue in full force and effect for the exclusive benefit of Loss Payee for ten days after written notice to Loss Payee of such cancellation and shall then cease.

Lease No. \*\*\*\*\*

Agency name

Street Address

City

State

Zip

Signature of Agent

Agent telephone number

Date

**OFFICER'S CERTIFICATE**

TO: WELLS FARGO BROKERAGE SERVICES, LLC

RE: GOVERNMENTAL LEASE-PURCHASE AGREEMENT DATED \_\_\_\_\_, 2009 AND SUPPLEMENT DATED \_\_\_\_\_, 2009

FOR:

I am duly qualified and acting as the officer identified below of the City of Rapid City (Lessee); and, with respect to the Governmental Lease-Purchase Agreement dated \_\_\_\_\_, 2009 and Supplement thereto dated \_\_\_\_\_, 2009 (the Lease), by and between Lessee and Wells Fargo Brokerage Services, LLC (Lessor) and the Escrow Agreement dated \_\_\_\_\_, 2009 (the Escrow Agreement), by and between Lessee and Wells Fargo Brokerage Services, LLC as escrow agent, that:

1. The rent payments provided for in the Supplement or Exhibit A thereto shall commence and be due and payable on \_\_\_\_\_ and the \_\_\_\_ of each \_\_\_\_\_ thereafter, in the amounts shown thereon.

2. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all rent payments required to be paid under the Lease during the current fiscal year of Lessee, and such moneys will be applied in payment of all rent payments due and payable during such current fiscal year.

3. Lessee is exempt from all personal property taxes, and is exempt from sales and/or use taxes with respect to the Equipment and the rent payments.

4. During the Lease term the Equipment will be used by Lessee to perform essential governmental functions. Such functions are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the Lease and Escrow Agreement; the proper authorization, approval and execution of the Lease, the Escrow Agreement, and other documents contemplated thereby; the appropriation of moneys, or any other action taken by Lessee to provide moneys, sufficient to make rent payments coming due under the Lease in Lessee's current fiscal year; or the ability of Lessee otherwise to perform its obligations under the Lease and Escrow Agreement and the transactions contemplated thereby.

Dated: \_\_\_\_\_, 2009

**City of Rapid City  
Rapid City, South Dakota**

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

Its: \_\_\_\_\_

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of \_\_\_\_\_, 2009, by and between the City of Rapid City, a political subdivision duly organized and existing under the laws of the State of South Dakota ("Lessee"), and Wells Fargo Brokerage Services, LLC, with its principal office, domicile and post office address located in Minneapolis, Minnesota, acting as escrow agent (the "Escrow Agent").

WHEREAS, Lessee and Wells Fargo Brokerage Services, LLC acting as lessor ("Lessor") have entered into a Governmental Lease-Purchase Agreement dated \_\_\_\_\_, 2009 and Supplement thereto dated as of \_\_\_\_\_, 2009 (collectively, the "Lease"), and the Lease provides for the lease by Lessor to Lessee of certain property described in the Supplement to the Lease (the "Equipment"); and

WHEREAS, Lessor will provide for the acquisition of the Equipment, the sum of \$\_\_\_\_\_, to be available in periodic draws for the payment of the costs of such acquisition; and

WHEREAS, Lessor and Lessee now desire to provide for the safekeeping, investment and disbursement of such monies advanced by Lessor;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein set forth, the parties hereto agree as follows:

1. There is hereby created and established with Escrow Agent an irrevocable escrow fund designated for Lessee (the "Escrow Fund") to be held in the custody of Escrow Agent separate and apart from other funds of Escrow Agent or Lessee.

2. Lessor, as of \_\_\_\_\_, 2009 deposits into the Escrow Fund the sum of \$\_\_\_\_\_, representing the principal amount of the obligation of Lessee under the Lease less any payments made to vendors on the date of funding.

3. Monies held in the Escrow Fund shall be promptly invested and reinvested by the Escrow Agent, subject to Lessee's approval, in any security or deposit account authorized by law. No investment shall be made in a security maturing later than the date on which Lessee reasonably anticipates needing such funds for the payment of the costs of the Equipment. Lessee shall notify the Escrow Agent as to the dates on which funds are needed for disbursement and the estimated amount of each such disbursement and the Escrow Agent may rely upon this information in connection with all investment or reinvestment of funds.

All interest earnings from such investment shall be remitted to Lessee periodically, as mutually agreed upon by Lessee and the Escrow Agent. Unless otherwise agreed by Lessee and Escrow Agent, the Escrow Fund shall be held in a Wells Fargo Advantage Government Money Market Fund at Wells Fargo Brokerage Services, LLC, and it shall earn interest at the daily rate established by Wells Fargo Funds.

4. The Escrow Agent shall disburse funds from the Escrow Fund upon receipt of a written request and certification from Lessee, approved by Lessor, setting forth the following: (1) the amount to be disbursed, (2) the address to which such funds are to be forwarded, (3) a brief description of the purpose of the payment, and (4) a statement that the expenditure for which funds are requested was properly incurred in connection with the acquisition of the Equipment and that the amounts being paid pursuant to that

disbursement were not subject to a previous draw. The request shall contain as attachments the bills, receipts, invoices, or other documents acceptable to Escrow Agent evidencing the amount and purposes for which the disbursement is requested. Lessee agrees to submit to the Escrow Agent such disbursement request in form and substance satisfactory to the Escrow Agent and such other documents and certificates as the Escrow Agent may reasonably request to evidence the proper expenditure of the monies in the Escrow Fund for the purposes of acquiring the Equipment. The Escrow Agent has no duty to ascertain the correctness of any documents submitted in connection with any direction to disburse funds.

5. Upon making the disbursements as provided in Section 4 of this Agreement the Escrow Agent shall pay to Lessee any balance on deposit in the Escrow Fund.

6. In the event that an Event of Default occurs under the Lease or the Lease is terminated by Lessee pursuant to Section 5 thereof, the Escrow Agent shall forthwith disburse all monies on deposit in the Escrow Fund to Lessor. Lessee agrees that in the event such transfer to Lessor is to be made, it shall pay immediately and directly to the Lessor an amount equal to all expenses, legal fees and other costs incurred by Lessor in connection with the enforcement of this Escrow Agreement.

7. This Agreement may be modified or amended only with the written consent of all parties hereto.

8. In the event of the Escrow Agent's failure to account for any of the funds received by it, said funds shall be and remain the property of Lessee in trust for the purposes set forth in this Agreement. Such funds shall be impressed with a trust for the amount thereof and Lessee shall be entitled to a preferred claim upon such assets until such identification is made.

9. This Agreement shall terminate when all transfers required to be made with respect to the Escrow Fund by the Escrow Agent under the provisions hereof shall have been made. In the event that all amounts held by the Escrow Agent hereunder shall have not been expended as provided therein by the date that is three years from the date of this Agreement, this Agreement shall terminate and such unexpended amounts shall be remitted to Lessee. In such event, Lessee shall use such amounts to pay rent payments next owing under the Lease.

10. If any one or more of the covenants or agreements provided in this Agreement on the part of the Escrow Agent or Lessee to be performed shall be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

11. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

12. This Agreement shall be construed and enforced in accordance with the laws of the State of South Dakota.

13. Upon execution and delivery of this Agreement, Lessee shall execute and deliver to Lessor an Arbitrage and Tax Certificate of Lessee in the form attached hereto as Exhibit B.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF RAPID CITY**  
RAPID CITY, SOUTH DAKOTA  
AS LESSEE

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

Its: Mayor \_\_\_\_\_

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

Its: Finance Officer \_\_\_\_\_

WELLS FARGO BROKERAGE SERVICES, LLC  
AS ESCROW AGENT AND LESSOR

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

Pam Lang

Its: Senior Vice President

**EXHIBIT B**  
**ARBITRAGE AND TAX CERTIFICATE**

I hereby certify that in my official capacity as the officer indicated therein, I am responsible for executing and delivering, on behalf of the City of Rapid City (“Lessee”), the Governmental Lease-Purchase Agreement dated \_\_\_\_\_, 2009 and Supplement thereto (collectively, the “Lease”), by and between Wells Fargo Brokerage Services, LLC (“Lessor”) and Lessee. This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder (the “Regulations”). The following facts, estimates and circumstances are in existence on the date of this Certificate or are reasonably expected to occur hereafter.

1. The Lease provides for the acquisition of certain personal property described therein (the “Equipment”). Pursuant to the Lease, Lessor is leasing with option to purchase the Equipment to Lessee and Lessee is required to make rent payments with respect thereto, comprising principal and interest, on the dates and in the amounts set forth in the Lease.

2. On the date hereof, Lessor will deposit with Wells Fargo Brokerage Services, LLC, as escrow agent (the “Escrow Agent”) the amount of \$\_\_\_\_\_, which, together with interest earned thereon until disbursed, will be used to pay the costs of the Equipment.

3. The Lessee has or expects to enter into contracts for the acquisition of all Equipment within six months of the date hereof.

4. The Equipment will be acquired with due diligence and it is presently expected that the Equipment will be fully acquired by \_\_\_\_\_.

5. In any event all of the spendable proceeds of the Lease will be expended on the Equipment within three (3) years from the date of execution of the Lease. No proceeds of the Lease will be used to reimburse Lessee for expenditures made prior to the date of the issuance of the Lease [except as provided in a resolution of the \_\_\_\_\_ of Lessee adopted \_\_\_\_\_ and entitled “\_\_\_\_\_” and attached hereto.]

6. The original proceeds of the Lease, and the interest to be earned thereon, do not exceed the amount necessary for the governmental purpose for which the Lease is issued.

7. The interest of Lessee in the Equipment has not been, and is not expected during the term of the Lease, to be sold or otherwise disposed of by Lessee.

8. No sinking fund will be maintained by Lessee with respect to the rent payments due under the Lease.

9. The Lease is not a “hedge bond” within the meaning of Section 149(g)(3) of the Code. Lessee expects to spend not less than 85% of the spendable proceeds of the Lease within three years after the date hereof and less than 50% of the proceeds of the Lease is invested in nonpurpose investments having a substantially guaranteed yield for four years or more.

10. In the Lease Lessee has covenanted to take all actions necessary to ensure that the interest paid under the Lease remains excludable from gross income under the Code and Regulations. Lessee understands



and agrees that such covenant includes, without limitation, the requirements to comply with the requirements of the Code and Regulations relating to the rebate of arbitrage profit to the United States Government.

11. To the best of the knowledge and belief of the undersigned, the expectations of Lessee as set forth above, are reasonable; and there are no present facts, estimates and circumstances which would damage the foregoing expectations.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, 2009.

**City of Rapid City**  
**Rapid City, South Dakota**

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

Its: Mayor \_\_\_\_\_

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

Its: Finance Officer \_\_\_\_\_