

CONTRACT (LEASE) NO. 67793

FIRST NATIONAL BANK DBA FIRST NATIONAL BANK LEASING
3801 FAIRWAY BLVD.
WICHITA FALLS, TEXAS 76310

EQUIPMENT LEASE BY COUNTY

PARTIES:

Lessor: FIRST NATIONAL BANK DBA FIRST NATIONAL BANK LEASING
3801 FAIRWAY BLVD.
WICHITA FALLS, TEXAS 76310

Lessee: CLAY COUNTY
214 N. MAIN ST.
HENRIETTA, TX. 76365
TAX ID # 75-6000861

TERMS AND CONDITIONS:

1.) **LEASE:** Lessor leases to Lessee, and Lessee leases from Lessor the Equipment listed in "Equipment Information" (the "Equipment"). Said Equipment will be located inside CLAY County and will not be moved to another location without written permission first given by Lessor. Lessor acknowledges receipt of the first Lease payment referred to on Exhibit 1 from Lessee. Any amounts received by the Lessor from Lessee, at or prior to the date of this Lease, in excess of the first Lease payment as shown on Exhibit 1, shall be held as security for the performance of the terms of this Lease. If Lessee is not in default hereunder, or under any other lease between the parties hereto, said security shall be applied toward the payment of Lease at the end of the term of this Lease, or (at Lessor's option) returned to Lessee.

2.) **ACCEPTANCE; DELIVERY:** Lessee agrees that it has selected the Equipment, and the Lessor shall not be liable for specific performance or for damages, if any, if for any reason the vendor delays or fails to fill the Equipment order. Lessee shall accept such Equipment as delivered by Lessor and authorizes Lessor to insert the serial number and any additional descriptive matter in "Equipment Information" in connection with the Equipment. Lessee represents that it has acquired the Equipment in accordance with applicable Texas bid or procurement law.

3.) **WARRANTIES AND REPRESENTATIONS:** Lessee agrees that all maintenance, service, and Equipment warranties, are the sole obligation of the vendor or supplier of the Equipment and not Lessor. Lessor authorizes the Lessee to enforce in Lessee's own name any warranty, agreement or representation, if any, which may be made regarding the Equipment by the vendor or supplier BUT LESSOR ITSELF MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE EQUIPMENT AT TIME OF LEASE. Lessor specifically disclaims any representation or warrant with regard to merchantability or fitness for a particular use or purpose. Lessee has inspected the Equipment and has selected the Equipment to be financed by this Lease. Lessor is merely providing financing for such Equipment. Lessor is not the vendor of the Equipment, and Lessor makes no warranties in regard to the Equipment. All warranties regarding the Equipment, including but not limited to the warranties of MERCHANTABILITY and FITNESS FOR A PARTICULAR USE OR PURPOSE are expressly disclaimed by Lessor.

The disclaimers or limitations in this Section 3 do not apply to any warranties made by the vendor or supplier of the Equipment, all of which may be enforced by Lessee. Lessor retains all rights to make warranty claims and settle all warranty disputes on the Equipment in either Lessor's or Lessee's name and for Lessor's benefit without notice to, or consent from, Lessee.

4.) **LEASE PAYMENTS:** The total Lease payments for lease of the Equipment are shown on Exhibit 2. Lessee promises and agrees to pay all specified Lease payments in advance on or before the date designated for the payments in Exhibit 2

without demand. Said Lease payments shall be payable at the office of Lessor, or to such other person and/or at such other place as Lessor may from time to time designate to Lessee in writing.

In the event this Lease is not "bank qualified" under Section 265(b)(3) of the Internal Revenue Code or if the interest portion of the Lease payments is not excluded from federal income taxation, the Lease payments shall be recalculated using a "Gross Up Rate" (meaning a new interest rate on the amount funded by Lessor) of the *Wall Street Journal* Prime Rate +4% per annum, as in effect for the entire period of non-bank qualified status, or taxability.

5.) **LEASE TERM:** This Lease shall have a term commencing on the Date of Acceptance by Lessee (shown in the "Lessee's Acceptance") until the Lease End Date as set forth on Exhibit 1.

6.) **OWNERSHIP; RETURN; PERSONAL PROPERTY:** Subject to all rights granted to or retained by Lessor under this Agreement (including Lessee's unconditional obligation to return possession and title to the Equipment to Lessor at the end of the term of this Lease regardless of the reason for termination unless Lessee pays the Purchase Option Price in full) title to the Equipment shall be in the name of the Lessee. Upon the termination of this Lease for any reason, Lessee will immediately return said Equipment and all additions to the Equipment to Lessor in as good condition as received, normal wear and tear excepted, or Lessee may purchase the Equipment for the Purchase Option Price then in effect. Any profit or loss from disposition of the Equipment after it is returned to Lessor will be the sole property of Lessor. The Equipment shall always remain and be deemed personal property even though attached to realty. All replacements, Equipment repairs or accessories made to or placed in or upon said Equipment shall become a component part thereof; and title thereto shall be immediately vested in Lessor; and shall be included under the terms hereof. All advances made by Lessor to preserve said Equipment or to pay insurance premiums for insurance thereon or to discharge and pay any taxes, liens or encumbrances thereon shall be added to the unpaid balance of Lease Payments due hereunder and shall be repayable by Lessee to Lessor immediately together with interest thereon at the rate of the maximum rate allowed by law.

Lessee hereby grants to Lessor and Lessor's assigns a consensual security interest in and lien against the equipment as fully described in Exhibit 1 attachment. If ownership of the Equipment is evidenced by a certificate of title (for example, a motor vehicle), such title shall be endorsed to show Lessor or Lessor's assigns as a lienholder. Lessee further consents to Lessor filing a UCC-1 Financing Statement to reflect Lessor's security interest in the Equipment. Lessee shall return the title, endorsed to Lessor or Lessor's assigns, at the same time Lessee returns the Equipment. Should Lessee fail to return the title endorsed to Lessor, Lessee hereby designates Lessor or Lessor's assigns as having full legal power and authority (including a limited irrevocable power of attorney coupled with an interest) either to apply for a new title in Lessor's name, or to endorse the current title to Lessor's name. At the end of the Term or other termination of this Agreement, if Lessee has not exercised its rights to purchase the Equipment, and paid the Purchase Option Price in full, the Equipment shall be returned to Lessor as provided above, and such return shall not be deemed a forced sale under Texas law.

7.) **PURCHASE OPTION:** If no Event of Default has occurred and is continuing, Lessee shall have the option at any time to purchase all (but not less than all) the Equipment at the price stated in Exhibit 1, plus any applicable sales taxes and fees (all being the "Purchase Option Price"), it being understood no taxes are due under current Texas law. Lessee must give Lessor irrevocable written notice at least 30 days before the purchase date that it will purchase the Equipment unless the purchase is being made at the end of the term of this Agreement and the Purchase Option Price is \$1.00. The Purchase Option Price as defined in Exhibit 1 shall be used for any purchase of the Equipment by the Lessee prior to the end of the scheduled term. Upon payment by Lessee of the Purchase Option Price, Lessor shall transfer all of Lessor's rights in the Equipment to Lessee AS-IS, WHERE-IS AND WITH ALL FAULTS without any representation or warranty whatsoever.

Lessee may also buy the Equipment at any time prior to the end of the full stated Lease term by paying to Lessor:

- (a) the remaining unpaid balance of the principal payments due for the entire stated term of the Lease shown on Exhibit 2 (the Lease payments have both a principal and interest component like any loan); plus
- (b) accrued but unpaid interest on such principal amount as of such purchase date.

The Lessor will calculate such payments and furnish them to Lessee as requested.

8.) **ASSIGNMENT:** Lessor may assign this Lease and its assignee may reassign the same, without the consent of Lessee. All rights of Lessor hereunder shall be succeeded to by any assignee hereof and said assignee's title to this Lease, to the Lease payments or other amounts due hereunder, and in and to the Equipment shall be free from all defenses, setoffs or counterclaims of any kind or character which Lessee may be entitled to assert against the original Lessor; it being understood and agreed that any assignee of Lessor does not assume any obligations of the original Lessor herein named.

Neither this Lease nor any interest herein is assignable or transferable by operation of law, or otherwise, by Lessee.

9.) **LOSS; DAMAGE; INSURANCE:** As between Lessor and Lessee, Lessee assumes the entire risk of loss from all use and operation of the Equipment and no such loss shall relieve Lessee of its obligations hereunder. To the full extent permitted by law, Lessee agrees to and does hereby release, indemnify and hold Lessor harmless, from and against all claims, costs, expenses, damages and liabilities, court costs including reasonable attorney fees resulting from or pertaining to the ownership, use or operation of the Equipment during the term of this Agreement subsequent to the termination or expiration of this Agreement or while said Equipment is otherwise in possession of the Lessee. Lessee agrees to keep the Equipment insured (i.e., property insurance) to protect all interests of Lessee and Lessor, at Lessee's expense, against all risks of loss or damage from every cause, whatsoever for not less than the unpaid balance of the Lease payments due hereunder to maturity or 80% of the then current value of said Equipment, whichever is higher. Lessee shall further maintain commercial general liability insurance regarding injury, damage to the Equipment, injury or damages to third parties or death resulting out of the operation of the Equipment during the term hereof or while the Equipment is in the possession of Lessee, and including any liability of Lessor for public liability and property damage. Lessor may, but shall not be obligated to, insure said Equipment at the expense of Lessee for any purpose for which insurance may be purchased. The proceeds from such insurance policies shall be paid to Lessor as its interests may appear and Lessor shall be named as lien holder and loss payee in all said policies. The proceeds of such insurance, whether resulting from loss or damage or return premium or otherwise, shall be applied toward the replacement or repair of the said Equipment or the payment of obligations of Lessee hereunder, at the option of Lessor or Lessor's assigns. Lessee hereby appoints Lessor and Lessor's assigns as Lessee's attorney-in-fact to make claims for, compromise and settle, receive payment of and execute or endorse all documents, checks or drafts for loss or damage or return premium under any insurance policy issued in regard to said Equipment.

Lessor and Lessee acknowledge that Lessor is only leasing the Equipment, and Lessor does not hold title to, use, operate, control or maintain the Equipment, all of which shall be done by Lessee during the term hereof.

10.) **USE; TAXES; INSPECTION AND CONDITION:** Lessee agrees to use, operate and maintain said Equipment in accordance with all applicable laws; to pay all licensing or registrations fees for said Equipment and to keep the same free of levies, liens and encumbrances; to file all personal property tax returns (if any are due on the Equipment), to pay all taxes, assessments, fees and penalties which may be levied or assessed on or in respect to said Equipment or its use or any interest therein, or upon the Lease payments (provided Lessor shall pay its own income taxes on the Lease payments), including but not limited to, all federal, state and local taxes, however designated, levied or assessed upon the Lessee and Lessor or either of them in regard to said Equipment, or upon the use or operation thereof. Lessee shall permit Lessor to inspect said Equipment at any time; and to keep it in first class condition and repair at Lessee's expense and house the same in suitable shelter; and not to sell or otherwise dispose of Lessee's interest therein or in any additions or accessories attached thereto during the term of this Lease.

11.) **EVENTS OF DEFAULT; REMEDIES; LATE CHARGES; EXPENSES OF ENFORCEMENT:**

(a) Events of Default. In the event Lessee shall default in the payment of any Lease payment due, or any other sums due hereunder for a period of fifteen (15) days or more, or in the event of any default or breach of the terms and conditions of this Lease, or any other lease between the parties hereto, or if any execution or other writ or process shall be issued in any action or proceeding, against the Lessee, whereby the said Equipment may be taken or distrained, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted by or against the Lessee or its property, or if the Lessee shall enter into any agreement or composition with its creditors, breach any of the terms of any loan or credit agreement, or default thereunder, or if the condition of the Lessee's affairs shall so change as to, in the Lessor's opinion, impair the Lessor's security or increase the credit risk involved, then and in that event Lessee shall return the Equipment as provided in Section 6 and Section 11(b). If Lessee fails to do so, the Lessor shall have the right to retake immediate possession of the Equipment, and for such purpose, the Lessor may enter upon any premises where said Equipment may be and may remove the same therefrom with or without notice of its intention to do same, without being liable to any suit or action or other proceeding by the Lessee.

(b) Remedies. If this Lease terminates by reason of event of default (Section 11), non-appropriation (Section 14) or otherwise prior to the end of the entire Lease term shown on Exhibit 1, and if Lessee has not paid the applicable Purchase Option Price Lessor's remedies shall be the following:

- (i) Lessee shall return the Equipment to Lessor as provided in Section 6.
- (ii) Lessor may retain all Lease payments previously paid by Lessee.
- (iii) Upon return of the Equipment full legal title thereto shall be automatically vested in Lessor, and Lessee will deliver evidence of title as provided in Section 6.
- (iv) After return of the Equipment, Lessor may, at its option, sell the Equipment at public or private sale for cash or on credit and may become the purchaser at such sale. Any gain or loss on such sale shall accrue and belong to Lessor.
- (v) Lessor may enforce its rights hereunder by writ of mandamus.

(c) Late Charges. Whenever any payment is more than ten (10) days late, the Lessee promises to pay to the Lessor or its assigns, not later than one month thereafter, an amount calculated at the rate of the lesser of (i) five cents per one dollar of each such delayed payment and to make such payments as liquidated damages occasioned by such delay, if allowed by law, or (ii) the maximum rate allowed by law.

(d) Expense of Enforcement. Upon default under any provision of this Lease, the Lessee shall be liable for arrears of lease payments, during any period for which Lessee has made appropriation under Section 14, if any. Further, if Lessee fails to return the Equipment (and title, if any) to Lessor, Lessee shall be liable for (i) the expense of re-taking possession and the removal of the Equipment, (ii) court costs, and (iii) Lessor's reasonable attorney fees.

12.) **NON-WAIVER:** The omission by the Lessor at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants or provisions hereof by the Lessee at any time designated, shall not be a waiver of any such default or right to which the Lessor is entitled, nor shall it in any way affect the right of the Lessor to enforce such provisions thereafter. The Lessor may exercise all remedies simultaneously, pursuant to the terms hereof, and any such action shall not operate to release the Lessee until the full amount of the Lease Payments due and to become due and all other sums to be paid hereunder have been paid in cash.

13.) **SEVERABILITY:** The provisions of this Lease are severable, and if any one of such provisions are determined to be illegal or unenforceable, the same shall not impair the effectiveness of the remaining provisions hereof.

14.) **SPECIAL PROVISIONS: FISCAL FUNDING:** The Lessee warrants that it has funds available to pay the Lease payments payable pursuant to this Agreement until the end of its current appropriation period and warrants that it presently intends to make payments in each appropriation period from now until the end of the Lease term. The officer of the Lessee responsible for preparation of Lessee's annual budget shall request from its legislative body funding to be paid to Lessor under this Agreement. If notwithstanding the making in good faith of such request in accordance with appropriate procedures and with the exercise of reasonable care and diligence, such legislative body over funding authority does not appropriate funds to be paid to Lessor then at the end of the fiscal year for which Lessee has made appropriation, Lessee shall be released of its obligation to make Lease payments to Lessor due after the end of the period for which appropriation was made, provided the Equipment (and any related title documents) are returned to Lessor by Lessee and at Lessee's expense, in good condition, normal wear and tear excepted. In addition to return of the Equipment pursuant to the terms of this Agreement, Lessor shall retain all sums paid by Lessee and for which appropriation was made. All obligations and payments required of Lessee herein shall be subject to appropriation by Lessee of sufficient funds.

To the extent permitted by law, (i) Lessee may not terminate the Lease in order to purchase, rent or lease property performing functions similar to those performed by the Equipment through the stated maturity date of the Lease, and (ii) Lessee agrees not to permit functions similar to those performed through the use of the Equipment to be performed by its own employees or by any agency or entity affiliated with or hired by the Lessee.

THIS LEASE IS SUBJECT TO THE TERMS AND CONDITIONS PRINTED ABOVE WHICH ARE MADE A PART HEREOF AND WHICH LESSEE ACKNOWLEDGES THAT IT HAS READ. LESSEE REPRESENTS THAT ALL ACTION TO AUTHORIZE THE EXECUTION OF THIS AGREEMENT ON BEHALF OF THE LESSEE BY THE FOLLOWING SIGNATORIES HAS BEEN TAKEN.

THERE ARE NO ORAL AGREEMENTS BETWEEN THE LESSOR AND LESSEE.

DATE OF ACCEPTANCE: JULY 13, 2020

LESSOR: FIRST NATIONAL BANK d/b/a FIRST NATIONAL BANK LEASING

By: 
GORDON W. MCCAIN III
ASSISTANT VICE PRESIDENT

LESSEE: CLAY COUNTY
214 N. MAIN ST.
HENRIETTA, TX. 76365
TAX ID # 75-6000861

By: 
MIKE CAMPBELL
COUNTY JUDGE - CLAY COUNTY

LESSEE'S ACCEPTANCE

TO VENDOR: ACCEPTANCE MUST BE SIGNED BY LESSEE AND RETURNED TO US BEFORE YOUR INVOICE CAN BE PROCESSED FOR PAYMENT.

We as Lessee agree the above listed Equipment has been inspected by Lessee, is satisfactory in every way, accepted by Lessee and we as Lessee have approved payment of the Total Capitalized Cost by Lessor to Vendor. We, as Lessee, hereby agree that we have fully inspected the Equipment leased hereunder and acknowledged it to be in good condition to our complete satisfaction. We understand that you, as Lessor, make no warranties, either expressed or implied, as to the condition of the Equipment, or its fitness for any particular purpose. We understand that this installation is not made on a trial basis.

LESSEE: CLAY COUNTY
214 N. MAIN ST.
HENRIETTA, TX. 76365
TAX ID # 75-6000861

By: 
MIKE CAMPBELL
COUNTY JUDGE - CLAY COUNTY

DATE OF ACCEPTANCE: JULY 13, 2020

Exhibit 2

Lease payments:

<u>Payment Date</u>	<u>Lease Payment</u>
07/14/20	\$0.00
02/15/21	\$25,000.00
02/15/22	\$25,000.00
02/15/23	\$25,000.00
02/15/24	\$25,000.00
07/23/24	\$126,129.46