

## REAL PROPERTY PURCHASE AND SALE AGREEMENT

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT (the "**Agreement**") is made and entered into this \_\_\_\_ day of October, 2021 (the "**Effective Date**"), by and between Dow Excavating, Inc., a Washington corporation ("**Buyer**") and the City of Cheney, a Washington State Code City ("**Seller**"), jointly referred to as the "**Parties**".

WHEREAS, Seller owns a fee simple interest in the following (collectively, the "**Property**");

The real property legally described on **Exhibit A** consisting of approximately 6.53 acres;

WHEREAS, on or about September 29, 2016, Seller granted Buyer an option to purchase the Property pursuant to an Option Agreement to Purchase Real Property, attached hereto as **Exhibit B**, which was recorded on October 24, 2016 under Spokane County Auditor's File No. 6546936 (the "**Option Agreement**");

WHEREAS, Buyer desires to exercise its option to purchase the Property in accordance with the terms of the Option Agreement; and

WHEREAS, Buyer desires to purchase the Property and Seller agrees to sell the Property upon the following terms and conditions.

NOW, THEREFORE, the Parties agree as follows:

1. **Exercise of Option.** Buyer hereby exercises its option to purchase the Property in accordance with Paragraph 4 of the Option Agreement.

2. **Sale of Property.** Subject to and upon all of the terms, conditions and provisions of this Agreement, Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase and accept the Property from Seller.

3. **Assignment and Assumption of Lease Agreement.** A portion of the Property is subject to a Lease Agreement to The Lamar Companies, dated March 27, 2018, attached hereto as **Exhibit C** (the "**Lease Agreement**"). Subject to and upon all the terms, conditions and provisions of this Agreement, Seller agrees to assign all of Seller's right, title and interest in the Lease Agreement to Buyer and Buyer agrees to assume, be bound by, and faithfully keep, perform and fulfill all of the terms, covenants, duties and obligations required by Lessor pursuant to the Lease Agreement.

4. **Option Money.** In accordance with Paragraph 2 of the Option Agreement, Buyer has paid to Seller the sum of One Thousand Dollars (\$1,000) in consideration for Seller granting the option to purchase the Property. The aforementioned sum is referred to in this Agreement as the "**Option Money**."

5. **Purchase Price.** The total purchase price (the "**Purchase Price**") for the Property is Three Hundred Fifty Thousand Dollars (\$350,000). The Parties acknowledge that the

consideration represents the fair market value of the Property. Upon the closing of the transactions contemplated herein, the Option Money will be credited to the Purchase Price, and the remainder of the Purchase Price (after the Option Money is applied), together with any fees, and closing costs which Buyer is obligated to pay pursuant to this Agreement, shall be paid at Closing in Current Funds. The term "**Current Funds**" means wire transfers, certified funds, or a cashier's check that would permit immediate disbursement of such funds.

**6. Condition of Property.** Buyer acknowledges that it or its representatives have inspected the Property, or that they will be provided with an adequate opportunity to do so, are or will be familiar with the physical (including, without limitation, environmental) condition thereof, and that, except as expressly stated in this Agreement, Buyer is purchasing the Property AS IS, WHERE IS, AND WITH ALL FAULTS and without any other representations or warranties of any kind whatsoever, express or implied, by Seller or any employee or agent of Seller. Buyer is relying solely upon the representations contained herein and upon Buyer's own independent inspection, investigation and analysis of the Property as Buyer deems necessary or appropriate in so acquiring the Property from Seller. Except as specifically provided otherwise within this Agreement, Buyer is not relying in any way upon any other representations, statements, agreements, warranties, studies, plans, reports, descriptions, guidelines or other information or material furnished by Seller or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

**7. Representations of Seller.** Seller hereby represents it has good and marketable title in fee simple to the Property, which is not subject to any liens, encumbrances, restrictions, or easements of any kind except for the Option Agreement, Lease Agreement and those which have been disclosed on the Commitment for Title Insurance received by the Buyer.

**8. Escrow and Title Insurance.**

**8.1 Escrow.** The purchase and sale and transfer of title of the Property shall be accomplished through an escrow (the "**Escrow**") established at Witherspoon Kelley, 422 W. Riverside Avenue, Suite 1100, Spokane, Washington ((509) 624-5265), or other entity jointly selected by the Parties (the "**Escrow Holder**"). Upon the request of the Escrow Holder, the Parties shall execute any supplemental escrow instructions required by Escrow Holder for the purpose of implementing and carrying out the terms of this Agreement.

Seller acknowledges that the firm Witherspoon Kelley is general counsel to the Seller and through its Licensed Practice Officer will conduct a closing using forms and documents which have been approved by the State and the Parties. Buyer is free to consult with its own counsel in order to review all documents to be used to close this transaction. Buyer acknowledges that Witherspoon Kelley is not acting as counsel to Buyer but is performing the duties set forth in this Agreement to include the Escrow.

Acknowledged by Buyer \_\_\_\_\_

**8.2 Close of Escrow.** The escrow instructions shall provide for Escrow to close (the "**Closing** ") on \_\_\_\_\_, 2021 ("**Closing Date**") after satisfaction, in Buyer's reasonable discretion, of the matters set forth in Section 8.3. The Closing Date may be

mutually extended for up to sixty (60) days to review or complete matters contained in this Agreement.

**8.3 Title Insurance.** Buyer may obtain a preliminary commitment for title insurance ("**Title Report**") from a title company (the "**Title Company**"), which shall also provide a copy thereof to Seller. Buyer, at least twenty (20) days prior to the Closing Date, shall provide the Seller with a copy of the Title Report. Buyer shall identify in writing provided to Seller within ten (10) days of its receipt of the Title Report, those liens, encumbrances or other matters which are deemed objectionable in its reasonable discretion. If objections to title are made, Seller shall either cure or obtain title insurance coverage for said objections prior to Closing, and provide notice thereof in writing within ten (10) days of its receipt of Buyer's letter setting forth its objections to title. If Seller is unable or unwilling to cure or insure the objections, Buyer shall, thereafter, have five (5) business days to notify Seller of its election to either terminate this Agreement by written notice whereupon all obligations of the Parties shall cease and the Option Money shall be refunded to Buyer, or waive its objections to title and proceed to close the transaction. Exceptions approved or waived by Buyer under this paragraph shall be deemed "Permitted Exceptions". Seller's failure to cure or insure Buyer's title objections at Closing shall extend the Closing Date for ten (10) business days unless otherwise mutually agreed.

**8.4 Actions of Escrow Holder.** On the Closing Date, Escrow Holder shall perform the following:

**8.4.1 Recordation.** Cause the Deed (as defined in Paragraph 8.5.1) with accompanying excise tax affidavit, and any other applicable documents, to be recorded in the Official Records of the County where the Property is located, and obtain conformed copies thereof for distribution to Buyer and Seller.

**8.4.2 Disbursement of Funds.** Disburse all funds deposited with Escrow Holder as follows (and in the following order):

(1) Pay all closing costs to be paid through Escrow (including, without limitation, recording fees, property and excise taxes, if any, premiums for the Title Policies, and escrow fees).

(2) Pay, or cause to be removed from title, all mortgages, deeds of trust and other monetary liens (except liens created or incurred by Buyer) for the account of Buyer.

(3) Disburse any remaining funds to Seller in accordance with payment instructions to be delivered to Escrow Holder by the Parties.

**8.4.3 Delivery of Documents.** Escrow Holder shall:

(1) Direct the Title Company to issue the Title Policy to Buyer in accordance with this Agreement.

(2) Deliver to Buyer: (i) conformed copies of the Deed and other recorded documents; (ii) originals of the other Closing Documents; and (iii) Buyer's closing statement.

(3) Deliver to Seller: (i) conformed copies of the Deed and other recorded documents; (ii) copies of the other Closing Documents; and (iii) Seller's closing statement.

**8.5 Documents at Closing - Seller.** Seller shall execute and deliver to Escrow Holder the following documents, before the Closing Date and, except as otherwise provided below, Escrow Holder shall deliver to Buyer immediately following the Closing Date, the following documents (the "**Closing Documents**"), all in form and substance reasonably acceptable to Buyer:

**8.5.1** A properly executed Warranty Deed for Seller's interest in the Property, in the form attached hereto as **Exhibit D**, subject only to the Permitted Exceptions, conveying fee simple title to the Property to Buyer ("**Deed**"), which shall be recorded at the time of the Closing Date;

**8.5.2** A properly executed Assignment and Assumption Agreement for the Lease Agreement, in the form attached hereto as **Exhibit E**;

**8.5.3** A non-foreign affidavit for Seller for purposes of compliance with Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder;

**8.5.4** A Real Estate Excise Tax Affidavit; and

**8.5.5** All other documents reasonably necessary to effectuate the transactions contemplated by this Agreement.

**8.6 Documents at Closing - Buyer.** Buyer shall execute and deliver to Escrow Holder the following documents, before the Closing Date and, except as otherwise provided below, Escrow Holder shall deliver to Seller immediately following the Closing Date, the following documents all in form and substance reasonably acceptable to Seller:

**8.6.1** The Warranty Deed identified in Section 8.5.1 above to acknowledge its form and content;

**8.6.2** A properly executed Assignment and Assumption Agreement for the Lease Agreement, in the form attached hereto as **Exhibit E**;

**8.6.3** A non-foreign affidavit for Seller for purposes of compliance with Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder;

**8.6.4** A Real Estate Excise Tax Affidavit; and

**8.6.5** All other documents reasonably necessary to effectuate the transactions contemplated by this Agreement.

**9. Closing Costs and Prorates.**

**9.1** On the Closing Date, Buyer shall pay the Purchase Price and the following costs and expenses in connection with this transaction:

- (A) One-half of the escrow fees;
- (B) All Title insurance fees and premiums for policy coverage;
- (C) Prorated future real property taxes, if any;
- (D) All of Buyer's real estate commissions, if any, earned for this transaction;
- (E) Recording fees;
- (F) Costs of survey; and
- (G) Buyer's attorneys' fees.

**9.2** On the Closing Date, Seller shall pay (or cause to be removed from title to the Property) the following:

- (A) One-half of the escrow fees;
- (C) Real property and personal property taxes through the Closing Date, if any;
- (D) Real estate excise and sales taxes to the extent due;
- (E) All of Seller's real estate commissions, if any, earned for this transaction;
- (F) The costs of the boundary line adjustment or any other type of land division set forth herein that may be required to effectuate the intent of this Agreement; and
- (G) Seller's attorneys' fees.

**9.3 Other Apportionments.** Amounts payable under the Lease Agreement shall be apportioned as of the Closing Date.

**10. Possession.** Seller shall deliver possession of the Property to Buyer on the Closing Date.

11. **Governmental Approval.** Buyer acknowledges that this Agreement does not bind the City of Cheney until the City Council approves this Agreement. The City employee tendering this agreement will exercise best efforts to receive City Council approval.

12. **Seller Disclosure Statement.** If applicable, Seller shall, within five (5) days of accepting this Agreement, deliver to the Buter a completed, signed and dated Real Property Transfer Disclosure Statement substantially in the form set forth in RCW 64.06.020. Buyer shall within three business days, or as otherwise agreed to, after receipt of the Real Property Transfer Disclosure Statement have the right to (1) approve and accept the Real Property Disclosure Statement; or (2) rescind this Agreement pursuant to Buyer's sole discretion. If Buyer elects to rescind the Agreement, Buyer will deliver written notice of recission to the Seller within the above three (3) business day period, or as otherwise agreed. Upon delivery of a recission statement, Buyer shall be entitled to immediate return of all deposits and other consideration paid to Seller. If Buyer does not deliver a written recission notice, the Real Property Transfer Disclosure Statement will be deemed approved.

13. **Default.** If Buyer shall default in the performance of any of the terms and conditions of this Agreement, or if the closing shall not occur due to Buyer's rescission, the Seller may, as its sole remedy, retain the Option Money as liquidated damages, and this Agreement shall be canceled. If the Seller fails or refuses to fully comply with the terms of this Agreement, for any cause other than Buyer's default hereunder, Buyer may, at its option, (a) rescind this Agreement and recover from the Seller the Option Money; (b) proceed with this Agreement and take the Property as is; or (c) pursue a suit for specific performance.

\_\_\_\_\_  
Seller's Initials

\_\_\_\_\_  
Buyer's Initials

14. **Attorneys' Fees.** If any action is brought by either party against the other party for the enforcement of this Agreement or any document or instrument delivered pursuant hereto, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action or any appeal thereof. For purposes of this Agreement, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the Parties hereto, which may include expert witness fees, printing, duplicating and other expenses, delivery charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney. The provisions of this section shall survive Closing or termination of this Agreement.

15. **Governing Law/Venue.** This Agreement will be governed by the substantive laws of the State of Washington without regard to its conflict of law provisions. Any lawsuit to enforce the terms of this Agreement shall lie in any court of competent jurisdiction located in Spokane County, Washington.

**16. Notices.** Any notices required or permitted to be given shall be in writing and delivered either in person or by certified mail, return receipt requested, postage pre-paid, addressed as follows or such other address as may be designated by either party:

If to Seller, to:                      City of Cheney  
Attn: Chris Grover, Mayor  
609 Second Street  
Cheney, WA 99004

With a copy to:                      Witherspoon Kelley  
Attn: Stanley Schwartz  
422 W. Riverside Ave., Suite 1100  
Spokane, WA 99201

If to Seller, to:                      DowRocks LLC.  
Attn: Wayne Dow  
15 Union Street  
Cheney, WA 99004

Any notice given pursuant to this Agreement, shall be deemed effective the day it is personally delivered or three (3) business days after the date it is deposited in the United States mails.

**17. Integration; Modification; Waiver.** This Agreement, exhibits, and closing documents pursuant to this Agreement constitute the complete and final expression of the agreement of the Parties and supersede any prior oral or written agreements between the Parties relating to the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth. This Agreement cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Agreement) and duly executed by the Parties hereto.

**18. Counterpart Execution.** This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which taken together shall constitute one and the same agreement, and either party may execute this Agreement by signing any such counterpart. Signed counterparts executed and delivered by electronic mail or facsimile transmission shall be binding on the Parties and have the same force and effect as an original signed counterpart.

**19. Headings; Constructions.** The headings which have been used throughout this Agreement have been inserted for convenience of reference only and do not constitute matters to be construed in interpreting this Agreement. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder," and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section.

**20. Time of the Essence.** Time is of the essence of this Agreement and of the obligations of the Parties to purchase and sell the Property.

**21. Invalid Provisions.** If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby.

**22. Binding Effect.** All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**23. Further Acts.** In addition to the acts recited in this Agreement to be performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the Effective Date.

**SELLER:**

**BUYER:**

CITY OF CHENEY

DOW EXCAVATING, INC.

By: \_\_\_\_\_  
Chris Grover, Mayor

By: \_\_\_\_\_  
Wayne Dow

Attest: \_\_\_\_\_  
City Clerk



## EXHIBIT A

### Legal Description of Real Property

PARCEL #13144.6001

SUNSET MOBILE HOME PARK 14-23-41 CHENEY TRS PTN OF SE1/4 OF SE1/4 LYG S OF PINE ST & BET THE NP R/W & PERRY RD LESS HWY & EXC BEG AT PT OF INTERSEC OF SELY R/W LN OF PRIM ST HWY 11 & E LN OF SEC 14 SD PT BEING 784.8FT N OF SECOR OF SD SEC14 TH S59DEG 34MIN W ALG SELY R/W 890FT TO TRUE POBTHS30DEG 26 MI N E65FT TO LN DRN PAR WITH SD HWY 11 TH SWLY ALGSD LN 150 FT T H N30DEG 26MIN W A DIST OF 65FT TO SD SELY LNOF PRIM ST HWY 11 TH N59 DEG 34MIN E ALG SD R/W 150FT TO TRUE POB & EXC BEG AT INT OF SELY LN OF ST RD #11 & THE S LN OF SEC 14 TH NELY ALG S ELY LN 180FT TH AT R/A SELY TO THEINTER WITH THE S LN OF SE C14; TH W ALG SD S LN TO POB;

Parcel #13231.0029

23-23-41 PTN NE1/4 OF NE1/4 LYG NWLY OF NP RY R/W AND NELY OF LN DAF; BEG AT INTR OF N SEC LN AND SE R/W LN OF STATE RD#11 TH NELY ALG SD R/W LN 180FT TH AT R/A SE TO INTR W/NWLN OF SD RY R/W AND TERM OF LN;

PARCEL 13144.0004

142341 CHENEY TRS; PTN OF SE1/4 OF SE1/4 LYG S OF PINE ST & BET THE NP R/W & PERRY RD; LESS HWY DAF; BEG AT PT OF INTERSEC OF SELY R/W LN OF PRIM ST HWY UU&E LN OF SEC 14 SD PT BEING 784.8FT N OFSECOR OF SD SEC 14; TH S59DEG 34MIN W ALG SELY R/W 890F T TO TRUE POB; TH S30DEG 26MIN E65FT TO LN DRN PAR WITH SD HWY 11; TH SWLY ALG SD LN 150FT; TH N30DEG 26MIN WA DIST OF 65FT TO SD SELY LN OF PRIM ST HWY11; TH N59DEG 34MIN E ALG SD R/W 150FT TO TRUE POB;

PARCEL #13144.2004

CHENEY RANGES 2ND ADD TO TOWN OF PTN LTS 9 THRU 12 BLK 1 LYGSELY OF PRIMARY ST HWY #11;

Assessor's Tax Parcel ID Numbers: 13144.6001; 13231.0029; 13144.0004; 13144.2004

**EXHIBIT D**

**Form of Warranty Deed**

After recording mail to:

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**WARRANTY DEED**

CITY OF CHENEY, a Washington State Code City, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, in hand paid, conveys and warrants to DOW EXCAVATING, INC., a Washington corporation, the following described real estate, situated in the County of Spokane, State of Washington:

PARCEL #13144.6001

SUNSET MOBILE HOME PARK 14-23-41 CHENEY TRS PTN OF SE1/4 OF SE1/4 LYG S OF PINE ST & BET THE NP R/W & PERRY RD LESS HWY & EXC BEG AT PT OF INTERSEC OF SELY R/W LN OF PRIM ST HWY 11 & E LN OF SEC 14 SD PT BEING 784.8FT N OF SECOR OF SD SEC14 TH S59DEG 34MIN W ALG SELY R/W 890FT TO TRUE POBTHS30DEG 26 MI N E65FT TO LN DRN PAR WITH SD HWY 11 TH SWLY ALGSD LN 150 FT T H N30DEG 26MIN W A DIST OF 65FT TO SD SELY LNOF PRIM ST HWY 11 TH N59 DEG 34MIN E ALG SD R/W 150FT TO TRUE POB & EXC BEG AT INT OF SELY LN OF ST RD #11 & THE S LN OF SEC 14 TH NELY ALG S ELY LN 180FT TH AT R/A SELY TO THEINTER WITH THE S LN OF SE C14; TH W ALG SD S LN TO POB;

Parcel #13231.0029

23-23-41 PTN NE1/4 OF NE1/4 LYG NWLY OF NP RY R/W AND NELY OF LN DAF; BEG AT INTR OF N SEC LN AND SE R/W LN OF STATE RD#11 TH NELY ALG SD R/W LN 180FT TH AT R/A SE TO INTR W/NWLN OF SD RY R/W AND TERM OF LN;

PARCEL 13144.0004

142341 CHENEY TRS; PTN OF SE1/4 OF SE1/4 LYG S OF PINE ST & BET THE NP R/W & PERRY RD; LESS HWY DAF; BEG AT PT OF INTERSEC OF SELY R/W LN OF PRIM ST HWY UU&E LN OF SEC 14 SD PT BEING 784.8FT N OF SECOR OF SD SEC 14; TH S59DEG 34MIN W ALG SELY R/W 890F T TO TRUE POB; TH S30DEG 26MIN E65FT TO LN DRN PAR WITH SD HWY 11; TH SWLY ALG SD LN 150FT; TH N30DEG 26MIN WA DIST OF 65FT TO SD SELY LN OF PRIM ST HWY11; TH N59DEG 34MIN E ALG SD R/W 150FT TO TRUE POB;

PARCEL #13144.2004

CHENEY RANGES 2ND ADD TO TOWN OF PTN LTS 9 THRU 12 BLK 1 LYGSELY OF PRIMARY ST HWY #11;

Tax Parcel Nos.: 13144.6001; 13231.0029; 13144.0004; 13144.2004

SUBJECT TO easements, covenants, restrictions and conditions of record [List of Permitted Encumbrances as shown on Title Report].

Dated: \_\_\_\_\_, 20\_\_\_\_.

By EXHIBIT - DO NOT SIGN

[Notary Acknowledgment]

## EXHIBIT E

### Form of Assignment and Assumption Agreement

#### ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE ("**Assignment**") is made and entered into this \_\_\_\_ day of October, 2021 (the "**Effective Date**"), by and between Dow Excavating, Inc., a Washington corporation ("**Assignee**") and the City of Cheney, a Washington State Code City ("**Assignor**"), jointly referred to as the "**Parties**".

#### RECITALS

A. Assignor and The Lamar Companies ("**Lessee**") are Parties to that certain Lease Agreement dated for reference purposes as of March 27, 2018 (the "**Lease**"), pursuant to which Assignor leases to Lessee the real property located at 0 W. 1st Street, Cheney, WA 99201, Parcel No. 13144.2004 (the "**Premises**") for erecting and maintaining a multi-faced outdoor advertising structure during the term and upon the conditions and agreements set forth in the Lease which is attached hereto as **Exhibit 1**.

B. Assignor and Assignee are Parties to that certain Real Property Purchase and Sale Agreement dated for reference purposes October \_\_, 2021 (the "Agreement"), wherein the Parties contemplated the sale of the Premises by the Assignor to the Assignee.

C. Pursuant to the Agreement, Assignor has agreed to assign Assignor's rights and obligations as lessor under the Lease and Assignee has agreed to assume the same.

#### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed that:

1. Assignment. Assignor hereby assigns, conveys, transfers, and sets over unto Assignee, its successors and assigns, as of the Effective Date, all of Assignor's right, title, and interest in and to the Lease, together with all rights, privileges, claims relating to the Lease.

2. Assumption and Hold Harmless. Assignee hereby accepts, as of the Effective Date, the foregoing assignment and expressly assumes the Lease and agrees to pay, perform and/or discharge all covenants and obligations of Assignor which accrue or arise pursuant to the terms of the Lease from and after the Effective Date, to include holding Assignor harmless from all demands, costs, expenses, claims and liability for damages.

3. Third-Party Rights. Assignee's assumption of the Lease from Assignor shall not enlarge the rights of any third-party under the Lease; nor shall it prevent Assignee, with respect to any Party other than Assignor, from contesting or disputing any liability, or the terms and provisions of the Lease.

4. Further Assurances. Each of Assignor and Assignee agree to execute such other documents and take such other actions as may be reasonably necessary or desirable to confirm or effectuate the assignment and assumption contemplated hereby.

5. Binding Effect. This Assignment and the covenants and agreements herein contained shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6. Modification. This Assignment may be modified or supplemented only by written agreement of the Parties hereto.

7. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. This Assignment may be signed and delivered, or a signature may be transmitted or communicated, by means of electronic transmission (such as a Portable Document Format (PDF) copy of an original signature). In that event, this Assignment will be treated for all purposes as an original agreement, and will be considered to have the same binding legal effect as if it were the original signed version delivered in person.

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the Effective Date.

**ASSIGNOR:**

**ASSIGNEE:**

CITY OF CHENEY

DOW EXCAVATING, INC.

By: \_\_\_\_\_  
Chris Grover, Mayor

By: \_\_\_\_\_  
Wayne Dow

Attest: \_\_\_\_\_  
City Clerk