

AGENDA ITEM
August 19, 2013

Subject: Lease/Purchase of Jetter-Vac

Department: Sewer Collection

The Sewer Distribution Department is in need of a functional jetter-vac for the purpose of systematically cleaning out sewer mains. This is a 2001 Vac-Con V390/1000 LHA Combination Sewer Cleaner, at a cost of \$85,000.

Bids were solicited for three year lease financing and were received as follows:

Arvest Bank	2.80%
First National Bank	no submission
Great Southern Bank	2.74%
Heritage State Bank	no submission
Metz Banking Company	no submission
TCF Equipment Finance	3.32%
U.S. Bancorp Equipment Finance, Inc.	2.40%

The submission from U.S. Bankcorp Equipment Finance, Inc. is the lowest rate and meets the specifications of our request. The amount to be financed is \$85,000 with an, with an annual payment of \$29,719.38. The first payment is due one year from the date of execution.

Budget Codes: 500-4-6500 and 500-5-4201-320

BILL NO. 2013-045

ORDINANCE NO.

A SPECIAL ORDINANCE AUTHORIZING THE CITY OF NEVADA, MISSOURI, TO ENTER INTO A LEASE/PURCHASE AGREEMENT WITH U.S. BANCORP EQUIPMENT FINANCE, INC. FOR THE ACQUISITION OF A VAC-CON V390/1000 LHA COMBINATION SEWER CLEANER FOR THE SEWER COLLECTION DEPARTMENT

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEVADA, MISSOURI, THAT:

Section 1. The City Council hereby authorizes the City of Nevada to enter into a lease/purchase agreement with U.S. Bancorp Equipment Finance, Inc. for the purchase of a 2001 Vac-Con V390/1000 LHA Combination Sewer Cleaner for a cost of \$85,000.00

Section 2. The sum of \$85,000 from the Water and Sewer Fund is hereby budgeted to record the proceeds and expenditure for the lease/purchase of the above mentioned equipment.

Section 3. The City Manager is hereby authorized and directed to execute any and all documents associated with the lease/purchase of a Vac-Con Combination Sewer Cleaner on behalf of the City of Nevada, Missouri.

Section 4. The form of the documentation will be substantially as submitted to and reviewed by the City Council subject however to such improvements and clarifications as are agreed to between the city administration and City Attorney on behalf of the city and U.S. Bancorp Equipment Finance, Inc. and its legal advisors.

Section 5. This Ordinance shall be in full force and effect from and after its final passage.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Nevada, Missouri on this _____ day of September, 2013.

Seth Barrett, Mayor

(seal)
ATTEST:

Bev Baker, City Clerk

LEASE/PURCHASE AGREEMENT

U.S. Bancorp Equipment Finance, Inc.
Tax-Financing

LESSEE

LESSOR

City of Nevada
110 S. Ash
Nevada, MO 64772
417-448-2700

U.S. Bankcorp Equipment Finance, Inc.
200 E Cherry
Nevada, MO 64772
417-667-7777

Federal Tax ID #44-6000232

Federal Tax ID #

DESCRIPTION OF EQUIPMENT

Quantity	(Type, Model and Serial Number)	Unit Price	Amount
1	2001 Vac-Con Model V390/1000 LHA Combination Sewer Cleaner Serial No. 11012967 Vin No. 1HTGBADR62H534263		
	Finance Amount		\$85,000

Type of Entity (County, City School District, etc.): City

Full Lease Term	Rent Payable	Annual Percentage Rate	Rental Payment Schedule

EQUIPMENT LEASE/PURCHASE AGREEMENT

In consideration of the mutual covenants hereinafter contained, the parties agree that Lessee shall lease from the Lessor the property described above (the "Equipment"), subject to the terms and conditions set forth herein. The agreement is made upon the following terms and conditions:

- 1. RENTAL.** Lessor and Lessee understand and intend that the obligation of Lessee to pay rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

Lessee shall pay rent exclusively from legally available funds, in the amounts set forth both above and on the rent due dates set forth in the Schedule of Payment (Exhibit C) attached to the Certificate of Acceptance (Exhibit D), executed by Lessee, by mailing the same to Lessor at the address specified in Section 14(a). For purposes of making computations under applicable regulations and rulings under federal income tax law, and as set forth in the Schedule of Payments, a portion of each rent payment is paid as, and represents payment of, interest, and the balance of each rent payment is paid as, and represents payment of, principal. Each year's rental payment is for the consideration actually furnished that year and each rental payment is supported by the use of the equipment in each year. The obligation of Lessee to make payment of rent, and to perform and observe the agreements contained in the Agreement, shall be absolute and unconditional in all events, except as expressly provided herein. Notwithstanding any dispute between Lessee, Lessor, and any other person, Lessee shall make all rent payments when due and shall not withhold any rent payments pending final resolution of such dispute, nor shall Lessee assert any right of set off or counterclaim against its obligation to make such payments required under this Agreement, Lessee's obligation to pay rent shall not be abated through accident or unforeseen circumstances.

2. LEASE TERM. (a) Commencement of Lease Term. The lease terms shall commence on the date on which the Equipment is accepted by Lessee as indicated on the Certificate of Acceptance (the Commencement Date), and shall terminate on the last business day of Lessee's then current fiscal budget period (such period being hereinafter referred to as the ("Original Term)): provided, however that this Agreement shall be effective from and after the date of execution hereof.

(b) Renewal of Lease Term. Upon expiration of the Original Term, this Lease shall automatically renew on a year-to-year basis for the number budget periods necessary to comprise the Full Lease Term as set forth in Exhibit C attached hereto and made a part hereof, unless Lessee gives written notice to Lessor not less than 40 days prior to the end of the then current term pursuant to subpart (e) of this section of Section 10, as the case may be. Each renewal periods in hereinafter referred to as a "Renewal Term", and all Renewal Terms, together with the Original Term, shall comprise the "Full Lease Term". The terms applicable to any Renewal Term shall be the same as the terms applicable to the Original Term, except that the rent shall be as provided in the Schedule of Payments in Exhibit C.

(c) Termination of Lease Term. The Lease Term will terminate upon the earliest to occur of any of the following events: (1) the expiration of the Original Term or any Renewal Term and the non renewal thereof in accordance with the terms hereof; (2) the purchase of the Equipment by Lessee pursuant to Section 8 or 10; (3) a default by Lessee or Lessor's election to terminate this Agreement under Section 12; or (4) the payment by Lessee of all rentals authorized or required to the padre by Lessee hereunder.

(d) Continuation of Lease Term by Lessee. Lessee intends, subject to the provisions of subpart (e) of this section, to continue the Lease Term through the Original Term and all Renewal Terms of the Full Lease Term and to pay the rent hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all rent for the Full Lease Term can be obtained. Lessee further intends and covenants to do all things lawfully within its power to obtain and maintain funds from which the rent may be paid, including making provision for such rent to the extent necessary in each budget submitted and adopted in accordance with law, to use its bona fide best efforts to have such portion of the budget approved, and to exhaust all available reviews and appeals in the event such portion of the budget is not approved.

(e) Non-appropriation. In the event sufficient funds are not appropriated for the payment of the rent required to be paid in the next succeeding Renewal Term, and Lessee has no funds legally available for rent from other sources, then Lessee may terminate this Agreement at the end of the Original Term or the then current Renewal Term, as the

case may be, and the Lessee shall not be obligated to make payment of the rent beyond the then current term except for any deferred interest that may have accrued for the then current period and is considered part of the next rental payment. Lessee agrees to deliver notice to Lessor of such termination at least 40 days prior to the end of the then current term. If this Agreement is terminated under this sub-part, Lessee agrees, at Lessee's cost and expense, peaceably to deliver the Equipment to Lessor. In addition, Lessee agrees, at Lessee's cost and expense, to incur the necessary costs and expenses to bring the returned backhoe to factory remarketing standards, if funds therefore are appropriated. To the extent lawful, Lessee covenants that it will not, until the date on which the next succeeding Renewal Term would have ended, expend or commit any funds for the purchase or use of equipment to be used for the same purpose as, or a purpose functionally equivalent to, the Equipment. Notwithstanding anything in this Agreement to the contrary, the provisions of this sub-part shall survive termination of this Agreement.

- 3. REPRESENTATIONS AND COVENANTS OF LESSEE.** Lessee represents, covenants and warrants to Lessor as follows: **(a)** Lessee is an entity described in Section 103 (a) of the Internal Revenue Code of 1986, as amended; and will do or cause to be done all things necessary to preserve and keep in full force and affect its existence as such an entity. **(b)** Based upon the representations, covenants and warranties of Lessor, the execution, and delivery of this Agreement by Lessee and performance of this obligations hereunder is not prohibited by the constitution and laws of the state specified not the Certificate of Acceptance (the State), and has been duly authorized by resolution of the governing body of Lessee (a certified copy of which shall be attached to the opinion of Lessee's counsel); and Lessee has obtained such other approvals as are necessary to consummate this Agreement. All requirements have been met, and procedures have occurred, necessary to ensure the enforceability of this agreement against Lessee, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement the acquisition by Lessee of the Equipment hereunder. **(c)** Lessee has determined that a present need exists for the Equipment which need is not temporary or purpose of performing one or more governmental 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. **(d)** Lessee will annually, upon request, provide Lessor with a letter from the City's accountant stating that funds have been appropriated in the City's annual budget to continue this lease for the next renewal term. **(e)** The Equipment is, and shall remain personal property and when subject to use by Lessee under this Agreement will not be or become fixtures.

The Lessee further warrants that this lease will not constitute a "private activity bond" within the meaning of Section 141 of the Internal Revenue Code in that Lessee will not sublease the Equipment, nor will Lessee enter any management, output, or similar types of contracts where more than 10 percent of the proceeds of the lease purchase agreement will be of the proceeds of this Lease will be made, either directly or indirectly by payments, property, or monies borrowed by private business users. (The term "private business use" means any direct or indirect use in a trade or business carried on by an individual or entity other than a state or local governmental unit, including use by the Federal Government or any agency thereof. A special exemption is provided for "exempt facility bonds and 501 © (3) "tax exempt organization bonds".

- 4. TITLE TO EQUIPMENT; SECURITY INTEREST.** During the Full Lease Term, the Lessee shall be listed as the Owner on the Equipment Title with Lessor listed as 1st Lienholder. Upon exercise by Lessee of the purchase option granted in Section 10 of this Lease, Lessor shall deliver to Lessee by appropriate documents title to the Equipment, free and clear of all liens and encumbrances. In the event of a default as set forth in Section 12 or non appropriation as set forth in Section 2 (e), Lessee will surrender possession of the Equipment to Lessor as required by Section 2(e) and release all claim or right to said Equipment accordingly.

To secure the prompt payment and performance as and when due of all of Lessee's obligations hereunder, and all other obligations of Lessee to Lessor, both now in existence and hereafter

created, Lessee hereby grants to Lessor a first security interest in the Equipment, and all replacements, substitutions and alternatives therefore and thereof and accessions thereto and all proceeds (cash and non-cash), including the proceeds of all insurance policies, thereof. Lessee agrees that with respect to the Equipment Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State. Lessee may not dispose of any of the Equipment without the prior written consent of Lessor, notwithstanding the fact that proceeds constitute part of the Equipment.

- 5. USE AND MAINTENANCE.** Lessee shall use the Equipment in a manner consistent with the requirements of all applicable insurance policies, and will not change the location of any Equipment as specific in the Acceptance Certificate without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee shall not attach the equipment to any other item of equipment in such a manner the the Equipment may be deemed to become an accession to or a part of such other item of equipment. Lessee, at its own expense, will maintain the Equipment in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear resulting from proper use thereof alone accepted, and will make all repairs reasonable necessary for such purpose. In addition, if any component of the equipment shall become damaged beyond repair, Lessee at its own expense, will within a reasonable time replace such component, with replacement components which are free and clear of all liens or right of together and have a value and utility at least equal to the components replace. All component which are attached to the Equipment which are essential to the operation of the Equipment or which cannot be detached from the Equipment without materially interfering with the operation of the Equipment or adversely affecting the value and utility which the Equipment would have had without the addition thereof, shall immediately be deemed incorporated in the Equipment and subject to the terms hereof as if originally leased hereunder, and subject to he security interest of Lessor in the Equipment. Lessee shall not make any material alterations to the Equipment without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Upon reasonable advance notice, Lessor shall have the right to inspect the Equipment and all maintenance records with respect thereto, if any, at any reasonable time during normal business hours.
- 6. FEES; TAXES; OTHER GOVERNMENTAL AND UTILITY CHARGES.** Lessee agrees to indemnify Lessor against all titling, recordation, documentary stamp and other fees, arising at any time prior to or during the Lease Term, upon or relating to the Equipment or this Agreement. The parites contemplate that he Equipment will be used for a governmental purpose of Lessee and that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of ht equipment is found to be subject to taxation in any form (except for net income taxes of Lessor), Lessee will pay as they come due all taxes and governmental charges of any kind that may be assessed or levied against the Equipment, as well as all utility and another charges incurred in the operation, maintenance and use of the Equipment.
- 7. INSURANCE.** At its own expense, Lessee shall keep the Equipment covered against loss due to fire and the risks normally included in extended coverage, malicious mischief and vandalism, for not less than the Full Insurable Value of the Equipment; and Lessee shall also carry property damage liability with a single limit of not less than \$1,000,000 per occurrence, or such greater or lesser amount as Lessor may from time to time require on notice to Lessee. As used herein, "Full Insurable Value" means the full replacement value of the Equipment or the then applicable Purchase Price designated as such on the Schedule of Payments, whichever is greater. All insurance shall be in form and amount and with companies reasonably satisfactory to Lessor. All insurance for loss or damage shall provide that losses shall be payable to Lessor and Lessee, as their interest may appear, and addition insured with respect to such liability insurance. Lessee shall pay the premiums and deliver to Lessor evidence satisfactory to Lessor of such insurance coverage. Each insurer shall agree, by endorsement furnished to Lessor, that (a) it will give Lessor 30 days prior written notice of the effective date of any material alteration or cancellation of such policy; and (b) insurance as to the interest of any named additional insured or loss payee

other than Lessee shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee with respect to such policy. If Lessee insures similar properties against casualty loss by self-insurance, Lessee may satisfy its obligations with respect to casualty insurance hereunder by providing self-insurance with respect to the Full Insurable Value of the Equipment by means of an adequate insurance fund. Lessee shall carry workmen's compensation insurance covering all employees working on, in, near or about the Equipment, or demonstrate to the satisfaction of Lessor that adequate self-insurance is provided, and shall require any other person or entity working on, in, or near or about the Equipment to carry such coverage, and will furnish to Lessor certificates evidencing such coverage throughout the Lease Term. The Net Proceeds of the insurance required hereby shall be applied as provided in Section 8. As used herein "Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deduction of all expenses (including attorney's fees) incurred in the collection of such claim or award.

If Lessee is a governmental entity and does not maintain liability insurance as described above, Lessee agrees that it will maintain a program of self insurance, either alone, or in cooperation with other governmental entities, that provides coverage to Lessee in the form and amount stated above, but in any event, not less than the maximum exposure to Lessee under any applicable governmental immunity rule, regulation, statute or law. Lessee shall deliver to Lessor evidence satisfactory to Lessor of such self-insurance coverage.

- 8. DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS.** IF PRIOR TO THE TERMINATION OF THE Lease Term **(a)** the Equipment is damaged in whole or in part by causality; or **(b)** title to, or the temporary use of, the Equipment or the estate of Lessee or Lessor in the Equipment shall be taken under the exercise of the power of eminent domain by any governmental body or by any person acting under governmental authority; Lessee and Lessor will cause the Net Proceeds of any insurance claims or condemnation award to be applied to Lessee's obligations by this section. If the Equipment is not deemed to be a total loss, Lessee shall, at its expense (after the application of the Net Proceeds of any insurance claims or condemnation award), cause the repair or replacement of the Equipment. In the event of total destruction of the Equipment, Lessee shall pay to Lessor on the next rent due date (as set forth on the Schedule of Payments) which succeeds the date of such loss, and amount equal to the purchase price of the equipment less the total amount of all rents which represented equity in the equipment previously paid under this Agreement, plus rent due on such date, plus any other amounts then payable by Lessee hereunder. Upon such payment, the Lease Term shall terminate, any security interest of Lessor in the Equipment shall terminate, and lessee will acquire unencumbered title to the Equipment as provided in Section 10. If Lessee is not then in default hereunder, any portion of the Net Proceeds in excess of the amount required to pay in full Lessee's obligations as set forth in this Section shall be for the account of the Lessee. Lessee agrees that if the Net Proceeds are insufficient to pay in full Lessee's obligations as set forth in this Section, Lessee shall make such payments to the extent of any deficiency.
- 9. PURCHASE OF EQUIPMENT BY LESSEE.** The Lessee will have an option to purchase and can exercise that option to acquire title free and clean of all liens, and this Agreement will terminate provided Lessee is not then in default upon the occurrence of either of the following events: (a) the end of the Full Lease Term, upon payment in full of all rent and other amounts payable by Lessee hereunder for the Full Lease Term; or (b) at the end of the Original Term or any Renewal Term, or any month within such Original Term or any Renewal Term, as set forth in the column entitled "Principal Balance" within Exhibit C incorporated herein by this reference, upon payment by Lessee of the then applicable Purchase Price plus all other sums then due by Lessee hereunder. The above notwithstanding, in no event will the city be required to pay more than the rentals due under this agreement and the sum of \$1.00.
- 10. ASSIGNMENT: INDEMNIFICATION. (a) Assignment.** This Agreement and the interest of Lessee in the Equipment may not be sold, assigned, sublet or encumbered by Lessee without prior written consent of Lessor. This Agreement, and the obligations of Lessee to pay rent

hereunder, may be assigned and reassigned in whole or in part to one or more assignees by Lessor subject to their terms of this Lease/Purchase Agreement at any time without the necessity of obtaining the consent of Lessee. Lessor agrees to give notice of assignment to Lessee and upon receipt of such notice, Lessee agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense or set off (whether arising from a breach of the Agreement or otherwise) that Lessee may have against Lessor's assignees. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements which may reasonably be requested by lesser or its assignees to protect their interests in the Equipment and in this Agreement.

- (b) Lessee agrees to indemnify and hold harmless Lessor for any damage or injury of any kind, arising out of the negligence or actionable conduct of Lessee, its employees, agents, representatives or contractors, or any person or entity alleged to be an employee, agenda, representative or contractor of Lessee.

11. EVENTS OF DEFAULT AND REMEDIES. (a) Events of Default. The following shall be "events of default" under this agreement and the term "default" shall mean any one or more of the following events: (1) failure by Lessee to pay any rent or other payment required to be paid hereunder at the time specified herein; or (2) failure by Lessee to observe and perform any other agreement on its part to be observed in such time prior to its expiration; (3) any statement contained herein or furnished with respect hereto by or on behalf of Lessee providing to have been false in any material respect at the time that it was made; or (4) the filing by Lessee of any petition or answer seeking reorganization, arrangement composition, readjustment, liquidation, moratorium or similar relief under any existing or future bankruptcy, insolvency, or other similar insolvency or other similar laws shall be filed and not withdrawn or dismissed within 60 days thereafter.

- (b) **Remedies on Default.** Whenever any event of default shall have occurred and be continuing, Lessor shall have the right, at its sole option without any further demand or notice, to exercise any one or more of the following remedies: (1) with or without terminating this Agreement, retake possession of the Equipment and dispose of the Equipment for the account of Lessee, with the net amount off all proceeds received by Lessor to be applied to Lessee's obligations hereunder, holding Lessee liable for the excess (if any) of (i) the rent payable to Lessee hereunder to the end of the Original Term or the current Renewal Term, whichever is applicable, and any other amounts then payable by Lessee hereunder, including but not limited to attorney's fees, expenses and costs of repossession, over (ii) the net proceeds received in connection with the disposition of the Equipment; provided that the excess of the amounts referred to in clause (ii) over the then applicable Purchase Price and amounts referred to in clause (i) shall be paid to Lessor; (2) require Lessee at Lessee's risk and expense promptly to return the Equipment in the manner and in the condition set forth in Sections 2 (e) and 5; (3) if Lessor is unable to repossess the Equipment for any reason, the Equipment shall be deemed a total loss and Lessee shall pay to lessor the amount due pursuant to Section 8; and (4) exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement as to any or all of the Equipment. Nothing contained herein shall be construed to provide any remedy of acceleration of the retail payments. In addition, Lessee will remain liable for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

- (c) **No Remedy Exclusive.** No remedy available to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right accruing upon any default shall impair any such right or

shall be constructed to be a waiver thereof, but any such right might be exercised from time to time and as often as may be deemed expedient.

12. TAX ASSUMPTION; COVENANTS. The parties assume that Lessor can exclude from Federal gross income the interest portion of each Lease Payment set forth in the amortization schedule under the column captioned "Interest Paid".

Lessee covenants that it will (i) register this Lease and transfers thereof in accordance with Section 149 (a) of the Code and the regulations thereunder, (ii) timely file a statement with respect to this Lease in the required form in accordance with Section 149 (e) of the Code, (iii) not permit the property financed by this Lease to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code, (iv) not take any action which results, directly or indirectly, in the interest portion of any Lease Payment not being excludable from Federal gross income pursuant to Section 103 of the Code and will take any reasonable action necessary to prevent such result, and (v) not take any action which results in this Lease becoming, and will take any reasonable action to prevent this Lease from becoming (a) an arbitrage obligation within the meaning of Section 148 of the Code or (b) federally guaranteed within the meaning of Section 149 of the Code.

Lessee represents that in accordance with the above, it will report this Lease to the Internal Revenue Service by filing form 8038-G or 8038-GC, whichever is appropriate. Lessee understands that failure to do so will cause the Lease to lose its tax exempt status. Therefore, Lessee agrees that if it fails to file the appropriate form, the interest rate set forth in the payment schedule will be adjusted to an equivalent taxable interest rate. Notwithstanding the earlier termination or expiration of the Lease, the obligations provided for in this Section 13 shall survive such earlier termination or expiration.

13. MISCELLANEOUS. (a) Notices. All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, sent by certified mail, return receipts requested, addressed to the other party at its respective address stated on the first page of this Agreement or at such other address as such party shall from time to time designate in writing to the other party; shall be effective from the date of mailing.

(b) Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

(c) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the County Vernon, State of Missouri.

(d) Entire Agreement Severability. This Agreement constitutes the entire Agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings not specified herein regarding this Agreement or the equipment leased hereunder. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall in invalidate or render enforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(e) Lessor's Right to Perform for Lessee. If Lessee fails to perform or comply with any of its agreements contained herein, Lessor shall have the right, but shall not obligated, to effect such performance or compliance, and the amount of any out of pocket expenses

and other reasonable expenses of Lessor incurred in connection with the performance of or compliance with such Agreement, together with interest thereon at the rate of 2.40 % percent per annum (or such lesser amount as may be permitted by law), shall be payable by Lessee upon demand.

IN WITNESS WHEREOF, Lessee has caused this Lease to be duly executed under seal.

LESSEE: City of Nevada, Missouri

(Seal)
ATTEST:

By: _____
JD Kerman, City Manager

Bev Baker, City Clerk

Accepted this _____ day of _____, 2013.

LESSOR: U.S. Bankcorp Equipment Finance, Inc.

By: _____

LESSOR: U.S. Bankcorp Equipment Finance – 200 E Cherry – Nevada, MO 64772

LESSEE: City of Nevada – 110 South Ash – Nevada, MO 64772

**EXHIBIT A
MUNICIPAL CERTIFICATE**

I, the undersigned, the duly appointed, qualified and acting _____ (Clerk or Secretary) of the above captioned Lessee do hereby certify this _____ day of _____, _____ that Lessee is a public body corporate and politic duly organized and existing under the Constitution and laws of the State of Missouri with full power and authority to enter into, be bound by and perform its obligations under the above captioned equipment lease/purchase agreement (the "Agreement").

I further certify that the Lessee did, at a _____ (regular or special) meeting of the governing body of the Lessee held _____, _____, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution of the Agreement by the following names representative of the Lessee, to wit:

Name	Title	Signature
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I further certify that the above named representative of the Lessee had at the time of such authorization and has at the present full and complete authority to execute the Agreement and that I have full and complete authority to attest the execution of the Agreement and that I have full and complete authority to attest the execution of the Agreement by such representative of the Lessee.

I further certify that the meeting of the governing body of the Lessee at which the Agreement was approved and authorized to be executed was duly called, regularly convened and attended throughout by a majority of the members thereof and that the action approving the Agreement and authorizing the execution thereof has not been altered or rescinded.

I further certify that the Equipment will perform an essential use and public function which the Lessee, its agencies and departments are authorized by law to perform.

I further certify that all insurance required in accordance with the Agreement has been secured by the Lessee and the required coverage will be maintained throughout the term of the Agreement and the renewal, if any, thereof.

I further certify that any notice or demand to be given the Lessee may be given to the Lessee at the above referenced address of the Lessee.

I further certify that the date of this Municipal Certificate shall constitute the Commencement Date of the Agreement in accordance with Section 2 of the Agreement.

I further certify that pursuant to Section 265 (b)(3)(B)(ii) of the Internal Revenue Code of 1986 (the Code), the Issuer hereby specifically designates the Lease as a "qualified tax-exempt obligation" for purposes of Section 265 (b)(3) of the Code. In compliance with Section 265 (b)(3)(D) of the Code, Issuer hereby represents that the Issuer will not designate more than \$10,000,000 of obligations issued by the Issuer in the calendar year during which the Lease is executed and delivered as such "qualified tax-exempt obligations".

I further certify that in compliance with the requirements of Section 265 (b)(3)(C) of the Code, the Issuer hereby represents that the Issuer (including all "subordinate entities" of the Issuer within the meaning of Section 265 (b)(3)(E) of the Code) reasonably anticipated not to issue in the calendar year during which the Lease is executed and delivered, obligations bearing interest exempt from federal income taxation under Section 103 of the Code other than "private activity bonds" as defined in Section 141 of the Code) in an amount greater than \$10,000,000.

IN WITNESS WHEREOF, I hereunto set my hand and the seal of the governing body of the Lessee the day and year first above written.

City of Nevada, Missouri

By: _____

(seal)

(Printed name)

Subscribed to and sworn before me this _____ day of _____, 2013.

Notary Public

My commission expires _____

(seal)

**EXHIBIT B
LEGAL COUNSEL OPINION**

Date: _____

U.S. Bancorp Equipment Finance, Inc.
200 E Cherry
Nevada, MO 64772

RE: Municipal lease/purchase of one (1) Vac-Con V390/1000 LHA Combination Sewer Cleaner

Gentlemen:

As legal counsel to the City of Nevada, (the "Buyer"), I have examined (1) an executed counterpart of a certain Equipment Lease/Purchase Agreement (the "Agreement") dated _____, 2013, by and between, U.S. Bancorp Equipment Finance, Inc., as Financial Institute, and the Buyer, which, inter alia, provides for the sale to purchase by the Buyer of certain property (the "Property"), (2) an executed counterpart of Ordinance No. _____ dated, _____, 2013, of the Buyer which, inter alia, authorizes the Buyer to execute the Agreement and (3) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions.

Based upon the foregoing, it is my opinion that:

- (1) The Buyer is a municipal corporation, duly organized and existing under the laws of the State of Missouri, with the requisite power and authority to incur obligations the interest on which are exempt from taxation by virtue of Section 103 of the Internal Revenue Code of 1954, as amended, to purchase the Property and to execute, deliver and perform its obligations under the Agreement;
- (2) The Agreement and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of the Buyer and the Agreement is a valid and binding obligation of the Buyer enforceable in accordance with its terms;
- (3) The authorization, approval and execution of ht agreement and all other proceedings of the Buyer relating to the transactions, contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws;
- (4) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal which, if adversely determined, would adversely affect the transactions contemplated by the Agreement or the security interest of the Seller or its assigns, as the case may be, in the Property.

Respectfully submitted,

Wm. G. McCaffree, City Attorney

Dated: _____

**EXHIBIT D
CERTIFICATE OF ACCEPTANCE**

U.S. Bancorp Equipment Finance, Inc
200 E Cherry
Nevada, MO 64772

Gentlemen:

In accordance with the terms of the Equipment Lease/Purchase Agreement dated _____, 2013, (the "Lease") between U.S. Bancorp Equipment Finance, Inc. ("Lessor") and the City of Nevada, Missouri ("Lessee"), Lessee hereby certifies and represents to and agrees with Lessor as follows:

1. The Equipment, as such term is defined in the Lease, has been delivered, installed and accepted on the date indicated below.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. No Event of Default, as such term is defined in the Lease, and no event which with notice or lapse of time, or both, would become an Event of Default, has occurred and is continuing at the date hereof.

LESSEE: City of Nevada, Missouri

By: _____

Title: _____

Date: _____

2001 Vac-Con V390/1000 LHA Combination Sewer Cleaner
Serial No. 11012967
Vin No. 1HTGBADR62H534263

Lessee Physical Location: 110 South Ash, Nevada, MO 64772

Lessee's Location Phone No.: 417-448-2700