

**RESOLUTION NO. 21-19**

**RESOLUTION OF SOUTH OGDEN CITY AUTHORIZING AN AGREEMENT WITH GARFF ENTERPRISES FOR LEASE AND PURCHASE OF VEHICLES, AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AND FINAL PASSAGE.**

**SECTION I - RECITALS**

**WHEREAS**, the City Council finds that the City of South Ogden ("City") is a municipal corporation duly organized and existing under the laws of Utah; and,

**WHEREAS**, the City Council finds that in conformance with Utah Code ("UC") § 10-3-717 the governing body of the city may exercise all administrative powers by resolution including, but not limited to regulating the use and operation of municipal property and programs; and,

**WHEREAS**, the City Council finds it necessary to address certain Vehicle Lease needs within the city; and,

**WHEREAS**, the City Council finds that the city staff has reviewed and studied this matter and recommends that the city council authorize the agreement with Garff Enterprises for the provision of vehicle leasing, purchasing, and financing; and,

**WHEREAS**, the City Council finds that Garff Enterprises has demonstrated the professional ability to provide for these services to meet the city's Vehicle Lease needs; and,

**WHEREAS**, the City Council finds that City now desires to approve these ends by authorizing an agreement with Garff Enterprises; and,

**WHEREAS**, the City Council finds that the public convenience and necessity requires the actions contemplated,

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SOUTH OGDEN AS FOLLOWS:**

## **SECTION II - CONTRACT AUTHORIZED**

That The "Agreement" For The Lease of Vehicles, Attached Hereto As **Attachment "A"** And By This Reference Fully Incorporated Herein, Is Hereby Approved And Adopted For The Provision Of Financing and Other Services From Horsepower; And That The City Manager Is Authorized To More Fully Negotiate Any Remaining Details Under The Agreement On Behalf Of The City And Then To Sign, And The City Recorder Authorized To Attest This Authorization And Approval Any And All Documents Necessary To Effect

That the foregoing recitals are incorporated herein.

## **SECTION III - PRIOR ORDINANCES AND RESOLUTIONS**

The body and substance of all prior Resolutions, with their provisions, where not otherwise in conflict with this Resolution, are reaffirmed and readopted.

## **SECTION IV - REPEALER OF CONFLICTING ENACTMENTS**

All orders, and Resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which conflict with this Resolution, are, for such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part repealed.

## **SECTION V - SAVINGS CLAUSE**

If any provision of this Resolution shall be held or deemed or shall be invalid, inoperative or unenforceable such shall not render any other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Resolution being deemed the separate independent and severable act of the City Council of South Ogden City.

## **SECTION VI - DATE OF EFFECT**

This Resolution shall be effective on the 18<sup>th</sup> day of May 2021, and after publication or posting as required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY, STATE OF UTAH**, on this 18<sup>th</sup> day of May 2021.

**SOUTH OGDEN CITY**, a municipal corporation

by: \_\_\_\_\_  
Russell Porter, Mayor

Attested and recorded

\_\_\_\_\_  
Leesa Kapetanov, CMC  
City Recorder

## **ATTACHMENT "A"**

### **Resolution No. 21-19**

Resolution Of South Ogden City Authorizing An Agreement With Garff Enterprises For Lease And Purchase Of Vehicles, And Providing That This Resolution Shall Become Effective Immediately Upon Posting And Final Passage.

18 May 21

# Vehicle Repurchase Option Agreement

**THIS VEHICLE REPURCHASE OPTION AGREEMENT** (this "*Agreement*") is made effective May 04, 2021 between **City of South Ogden**, a Utah municipality whose address is 3950 Adams Ave Ste. 1, South Ogden City, UT 84403 ("*City*"), and **GARFF ENTERPRISES, INC.**, a Utah corporation whose address is 111 E. B roadway, Salt Lake City, UT 84111 ("*Garff*").

## RECITALS:

A. *City* is in the process of re-outfitting its department with approximately 5 motor vehicles for use by officers and employees, which vehicles are particularly described on the attached exhibit. The vehicles so described, together with any other mutually-agreed additions to such list, are called the "*Vehicles*" in this Agreement.

B. *City* desires to purchase the Vehicles with a repurchase Agreement allowing the option to rotate the Vehicles every 2 years to better assure dependability and reduced maintenance costs.

C. Garff Enterprises, Inc. has proposed to repurchase the Vehicles from *City* after a 2 year period following the purchase. Contracts to be dated on or about May 19, 2021 between *Garff*, and *City*. *Garff's* Repurchase of the Vehicles will likely take place between May 4, 2023 - June 4, 2023 (the "*Repurchase Date*").

D. *Garff* owns one or more new motor vehicle dealerships and desires to supply the Vehicles to Lessor for *City's* ultimate use.

E. *City* is willing to enter into the Repurchase Agreement only if, inter alia, (1) *City* irrevocably agrees to initially purchase the Vehicles from *Garff*, and (2) *Garff* irrevocably agrees to repurchase from *City*, such of the Vehicles as *City* designates, at *City's* option, for the Repurchase Price (defined below) on the Repurchase Date.

F. To induce *City* to enter into the Repurchase Agreement with *Garff*, and to induce *Garff* to thereupon purchase the Vehicles from *City*, *Garff* desires to irrevocably agree to repurchase such of the Vehicles as *City* designates, at *City's* option, for the Repurchase Price on the Repurchase Date as specified in this Agreement.

G. The parties desire to set forth herein their entire agreement concerning the repurchase of the Vehicles and all related dealings between *City* and *Garff*. This Agreement shall supersede all prior negotiations or agreements between the parties, oral and/or written, concerning the subject matter of this Agreement.

## AGREEMENT:

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Vehicles.** *City* hereby irrevocably agrees (a) to purchase from *Garff* or its affiliated dealership(s) the Vehicles specified on the attached exhibit (as the same may be amended from time to time)

Section 2. **Duty to Repurchase.** To induce *City* to act as provided in section 1 above, *Garff* hereby irrevocably agrees to repurchase from, *City* or any other seller Vehicles purchased as *City* designates, at *City's* option, on or after (as designated by *City*) the *Repurchase Date*, subject to the following requirements:

(a) **Vehicles Repurchased.** The Vehicles to be repurchased to *Garff* hereunder shall be those Vehicles designated by *City*, at *City's* option, from time to time, which may include none, some or all of the Vehicles identified on the attached exhibit.

(b) **Purchase Price.** The Repurchase Price to be paid by *Garff* for all of the Vehicles totals \$196,500.00 If *City* elects to require *Garff* to repurchase less than all of the Vehicles, then the total Repurchase Price to be paid by *Garff* shall be appropriately reduced by agreement of *City* and *Garff* in connection with closing of *Garff's* repurchase from *City* of the balance of the Vehicles.

(c) **Mileage.** If a Vehicle has over the agreed upon odometer miles as described on the attached exhibit, the Repurchase Price for that Vehicle shall be reduced by a charge of fifteen cents (\$.15) per excess mile.

(d) **Condition.** Each Vehicle shall be in condition to pass standard Utah State motor vehicle safety and emissions inspections of the type that were previously required annually for each registered motor vehicle. *City* may, at its option and cost, obtain and supply such current inspections to *Garff* on the Repurchase Date. *City* shall be responsible for repairing, at *City's* cost, any defects caused by *City's* use of a Vehicle which prevent the Vehicle from passing such inspections.

(e) **Equipment.** Each Vehicle is equipped with manufacturer-installed, "factory" equipment ("Factory Equipment"); additional equipment installed After Market (such as police emergency lighting, sirens, prisoner cages, computer mounting equipment, K-9 cages, weapons storage vaults) ("After Market Equipment"); and other equipment and items, such as decals ("Other Items"). Each Vehicle shall be surrendered by *City* with all Factory Equipment attached and in good working condition. The following After Market Equipment and Other Items may be removed from the Vehicles prior to their surrender at *City's* cost, for re-use on *City's* future vehicles: radios and antennas; wireless modems and antennas; security weapons boxes; power inverters. No Other Items shall be removed from the Vehicles prior to their surrender.

(f) **Body/Glass Damage.** Body damage to a Vehicle (except for reasonable wear), excessive holes not attributable to equipment installations previously agreed to by *Garff*, and broken or chipped glass shall be repaired at *City's* cost.

(g) Closing. Closing of Garff's repurchase of Vehicles hereunder shall be at such time, on such date, and at such place in City, as City may specify upon at least five business days' prior notice to Garff City agrees at such time to provide Garff with "Clean Titles" for each and every repurchased vehicle.

Section 3. **Possible Future Lease.** Upon termination and satisfaction of this Agreement, *Garff* and *City* may elect to enter into a new lease/re-purchase transaction to provide a new pool of vehicles for the *City* on such terms and conditions as may be mutually agreed by such parties at that time, the parties acknowledging that pricing may be affected by factors such as then-current interest rates and intervening variances in the cost of vehicles and equipment.

Section 4. **Condition Precedent.** The performance of each party's obligations hereunder is conditioned on full execution and delivery of the Repurchase Agreement by *City* and *Garff* effective contemporaneously herewith.

Section 5. **City's Representations and Warranties.** *City* hereby represents and warrants to *Garff* as follows, and covenants that the same are true and accurate as of the date hereof:

(a) **Status.** *City* is a Utah municipality that is duly organized, validly existing and in good standing. *City* is empowered by applicable law, and by resolution of its council, to enter into and perform under this Agreement.

(b) **Binding Agreement.** Upon its full execution and delivery, this Agreement and the obligations contemplated herein shall be legal, valid and binding obligations of *City* and shall be enforceable against *City* in accordance with their respective terms.

(c) **Other Agreements.** The execution and delivery of this Agreement and the consummation of the transactions provided for herein will not result in a breach of or constitute a default under any agreement or instrument to which *City* is a party or by which *City* is bound, in a manner which would impair the consummation of this Agreement or the performance of *City's* obligations hereunder.

(d) **Suits and Proceedings.** There are no suits or proceedings pending or threatened in any court or before any administrative board, commission, or by any federal, state or other governmental department or agency, which directly or indirectly affect or involve *City* and which, if determined adversely, would have an adverse effect on the transactions contemplated by this Agreement.

(e) **Third Party Approvals.** Except as otherwise specified herein, no consents or approvals of any third party or parties are required prior to the execution, delivery and performance by *City* of this Agreement and any other documents contemplated hereby.

Section 6. **Garffs Representations and Warranties.** Garff hereby represents and warrants to *City* as follows, and covenants that the same are true and accurate as of the date hereof:

(a) **Status.** Garff is a Utah corporation that is duly organized, validly existing and in good standing. Garff is empowered by applicable law and corporate approvals to enter into and perform under this Agreement.

(b) **Binding Agreement.** Upon its full execution and delivery, this Agreement and the obligations contemplated herein shall be legal, valid and binding obligations of Garff and shall be enforceable against Garff in accordance with their respective terms.

(c) **Other Agreements.** The execution and delivery of this Agreement and the consummation of the transactions provided for herein will not result in a breach of or constitute a default under any agreement or instrument to which Garff is a party or by which Garff is bound, in a manner which would impair the consummation of this Agreement or the performance of Garff's obligations hereunder.

(d) **Suits and Proceedings.** There are no suits or proceedings pending or threatened in any court or before any administrative board, commission, or by any federal, state or other governmental department or agency, which directly or indirectly affect or involve Garff and which, if determined adversely, would have an adverse effect on the transactions contemplated by this Agreement.

(e) **Third Party Approvals.** Except as otherwise specified herein, no consents or approvals of any third party or parties are required prior to the execution, delivery and performance by Garff of this Agreement and any other documents contemplated hereby.

Section 7. **Default.** If either party fails to perform any of its obligations hereunder and such condition is not cured within ten days after written notice thereof by the other, such party shall be in default hereunder and the non-defaulting party shall be entitled to proceed at law and in equity to enforce its rights under this Agreement.

Section 8. **Indemnity.** *City* is a governmental entity under the "Governmental Immunity Act of Utah" (UTAH CODE ANN. §63G-7-101, *et seq.*) (as amended from time to time, the "*Immunity Act*"). Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each of the parties is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. Neither party waives any defenses or claims otherwise available under the Immunity Act nor does any party waive any limits of liability now or hereafter provided by the Immunity Act.

Section 9. **Additional Provisions.** The following provisions also are integral to this Agreement:



(a) Survival of Representations and Warranties. The respective obligations of the parties made in this Agreement, all exhibits hereto, and all certificates and documents delivered pursuant hereto, shall survive any closings contemplated by this Agreement.

(b) Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(c) Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(d) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(e) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(f) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(g) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(h) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) Attorneys' Fees. In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) Notice. All notices provided for herein shall be in writing and shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses set forth above or at such other address(es) as may be designated by a party from time to time in writing.

(l) Brokers. Garff represents and warrants to City that no broker or finder acted for it or is entitled to any fee or commission in respect of the transactions contemplated

hereby. *Garff* shall indemnify and hold *City* harmless in respect of any breach of the foregoing representation and warranty. Similarly, *City* represents and warrants to *Garff* that no broker or finder acted for *City* or is entitled to any fee or commission in respect of the transactions contemplated hereby. *City* shall indemnify and hold *Garff* harmless in respect of any breach of the foregoing representation and warranty.

(m) *Time of Essence*. Time is the essence of this Agreement.

(n) *Costs*. All costs and expenses, including attorneys' fees, incurred by each party in conjunction with this Agreement shall be paid by the party that incurred such costs and expenses.

(o) *Assignment*. Neither *Garff* nor *City* may assign its rights, or delegate its duties, under this Agreement to any third party without the prior written consent of *City* or *Garff*, as applicable. Any purported assignment without such consent shall be void from inception. Further, an approved assignment shall not effect any release of the assignor without a specific written acknowledgment of such release signed by the non-assigning party.

**DATED** effective the date first written above.

**CITY:**

**South Ogden City**, a Utah municipality


**ATTEST:**

By: \_\_\_\_\_  
Leesa Kapetanov, Recorder

By: \_\_\_\_\_  
Matthew J. Dixon, City Administrator

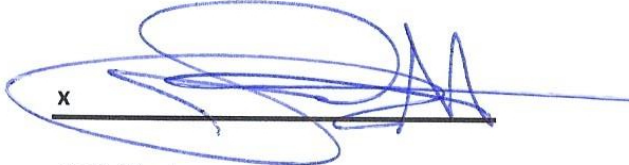
**GARFF:**

**GARFF ENTERPRISES, INC.**,  
a Utah corporation

By:   
Zachary Madsen, Director of Fleet Sales

**EXHIBIT TO VEHICLE REPURCHASE OPTION AGREEMENT DATED 5/19/2021**

YEAR	Make	Model	Body/Trim	VIN	Stock ID	Color	Use	Mileage Allowance	Lease Term	Annual Payments	Repurchase Price
2020	Ford	F-150	Lariat	1FTEW1E42 LKF04659	1FS9768	Black	ADMINISTRATIVE	40,000	2 yrs.	\$5,000.00	\$35,500.00
2020	Ford	F-350	Lariat	1FT8W3BT6LEE86797	1FS9856	White	ADMINISTRATIVE	40,000	2 yrs.	\$4,500.00	\$53,000.00
2020	Ford	F-150	Lariat	1FTEW1E40LKF04644	1FS9743	White	ADMINISTRATIVE	40,000	2 yrs.	\$5,000.00	\$35,500.00
2021	Ford	Explorer	ST	1FM5K8GC4MGA86257	1FS9930	White	ADMINISTRATIVE	40,000	2 yrs.	\$5,500.00	\$42,000.00
2021	Ford	Explorer	XLT	1FMSK8DH3MGA30992	1F10090	White	ADMINISTRATIVE	40,000	2 yrs.	\$5,500.00	\$30,500.00
<b>TOTAL</b>										<b>\$25,500.00</b>	<b>\$196,500.00</b>



**Zach Madsen**  
**Director of Fleet Sales**  
**Ken Garff Ford & Chevrolet**