

RESOLUTION NO. \_\_\_\_\_

RESOLUTION FOR THE CITY OF TATUM, TEXAS  
TO ENTER INTO A MUNICIPAL LEASE AGREEMENT WITH  
BERRY COMPANIES, INC. FOR PURPOSES OF  
FINANCING THE ACQUISITION OF THE EQUIPMENT  
(BOBCAT E50 MINI EXCAVATOR) ESSENTIAL  
TO THE CITY OF TATUM'S ECONOMIC OPERATION

WHEREAS, the City of Tatum, ("Lessee") is a validly existing political subdivision of the State of Texas, existing as such under and by virtue of the Constitution, statutes and laws of the state.

WHEREAS, the City Council of the City of Tatum has the power under the laws of the State to lease or purchase personal property for use by the Lessee; and the Governing Body has determined, and hereby determines, that it is in the best interests of the Lessee to enter into a Municipal Lease Agreement with Berry Companies, Inc. ("Lessor") which lease will be assigned to General Electric Capital Corporation ("Assignee") pursuant to an assignment by Lessor to Assignee (Such Municipal Lease Agreement and Assignment are herein together referred to as the "Lease") for the purpose of financing the acquisition of the equipment (the "Equipment") described in Exhibit A to the Lease, and that the use of such Equipment is essential to the Lessee's proper, efficient and economic operation;

WHEREAS, the City Council of the City of Tatum has taken the necessary and appropriate steps under applicable law, including, without limitation, any public bidding requirements, to arrange for the acquisition and financing of the Equipment under the Lease;

WHEREAS, the Lease terminates, and the Lessee's obligations thereunder are extinguished, if the City Council fails to appropriate money for the ensuing fiscal year for the payment of the amounts due in such fiscal year;

WHEREAS, there has been presented to the City Council the form of the Lease, including Exhibit A thereto, which the Lessee proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing of the Equipment; and it appears that the Lease and its Exhibit A are in appropriate form and are appropriate instruments for the purposes intended.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF TATUM AS FOLLOWS:

Section 1. That all actions of the Lessee in effectuating the Lease are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Lease.

Section 2. That sums be and herby are allocated from the budget of the City of Tatum for the fiscal year ending on June 30, 2012, sufficient to meet all obligations of the Lessee under the Lease, including without limitation Monthly Rent in the amount of \$1006.49 per month.

Section 3. The City of Tatum hereby approves the acquisition by the Lessee of the Equipment described in Exhibit A to the Lease, such acquisition to be financed by Lessor/Assignee pursuant to and in accordance with the terms of the Lease, which will be a valid, legal and binding obligation of the Lessee enforceable in accordance with its terms. The form and content of the Lease are in all respects authorized, approved and confirmed and the Mayor of the Lessee, or his designee is authorized, empowered and directed to execute and deliver the Lease and the other Documents (as defined in the Lease) for and on behalf of the Lessee in substantially the form attached hereto but with such changes, modifications, additions or deletions therein as shall to him seem necessary, desirable or appropriate.

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BE IT FURTHER RESOLVED THAT this Resolution take effect from and after its passage.

PASSED AND APPROVED this 9<sup>th</sup> day of May, 2011.

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Phil Cory, Mayor

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Shelly Williams  
City Secretary

Lessor BERRY COMPAINES INC

**Texas Agreement Addendum**

Lessee CITY OF TATUM

Agreement No.

8677772-001

Contemporaneously with entering into the Master Lease Agreement referenced above, Lessee and Lessor hereby agree to the following changes to the Agreement:

1. **Section 14. NONAPPROPRIATION:** The title and text of Section 14 are deleted and the following substituted in lieu thereof:

**"TERMINATION.** Lessee may terminate its obligations to pay Lease Payments and any other amounts due relative to a Lease at the end of each fiscal year of Lessee (the "Fiscal Period") effective on the first day of the following Fiscal Period ("Termination Date"). Lessee shall give Lessor written notice at least thirty (30) days before the Termination Date. Upon the occurrence of such termination, Lessee shall not be obligated for payment of any Lease Payments for any subsequent Fiscal Period and Lessee shall deliver the System to Lessor in accordance with Section 12. The collection of any damages, the exercise of any remedies and the enforceability of any indemnity and any requirements of Lessee relative to Termination set forth in this Lease are subject to any limitations imposed by applicable Texas law."

2. All references in a Lease to "nonappropriation" shall mean a Termination pursuant to Section 14 of this Master Lease Agreement.

3. The Master Lease Agreement, as modified by this Addendum, is ratified and affirmed and in full force and effect.

BERRY COMPANIES INC

BY

Authorized Representative

PRINT NAME

TITLE

DATE

CITY OF TATUM

BY

Authorized Representative

PRINT NAME

TITLE

DATE