

**ATM LEASE AGREEMENT BETWEEN PINNACLE BANK AND  
THE CITY OF GILLETTE, CAMPBELL COUNTY, WYOMING**

1. **Parties.** The parties to this Agreement are Pinnacle Bank ("Company"), whose address is P.O. Box 3577, Gillette, Wyoming 82717; and the City of Gillette, Campbell County, Wyoming, ("City") whose address is 201 East 5th Street, Gillette, WY 82716.
2. **Purpose of Agreement.** The purpose of this Agreement is to delineate the terms to authorize the Company to place a free standing Momimax 5300 SE Cash Dispensing ATM ("ATM") at 201 East 5th Street, Gillette, WY 82716 ("City Hall").
3. **Term of Agreement and Required Approvals.** This Agreement is effective when all parties have executed it and all required approvals have been granted. The term of the Agreement is five (5) years from the date of execution. All services shall be completed during this term. This Agreement may be renewed by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of renewal and any renewal will be determined at the discretion of the City.
4. **Payment.** The Company agrees to pay the City seventy five percent (75%) of all Surcharge Fee Income generated at City Hall for the first year of the Agreement. The Company agrees to pay the City fifty percent (50%) of all Surcharge Fee Income generated at City Hall for the second year through the fifth year of the Agreement. For purposes of this Agreement Surcharge Fee Income is defined as the two-dollar (\$2.00) fee charged to each customer for use of the ATM. The parties understand and agree that Surcharge Fee Income is not applicable to ATM customers with a Company account.
5. **Responsibilities of Company.**
  - A. The Company shall install, maintain, and service the ATM and related signage, at its sole expense. Specifically, the Company shall provide local maintenance to the ATM; and keep the machine serviced and stocked.
  - B. The Company shall insure the ATM for a minimum of one hundred and fifty thousand dollars (\$150,000.00). The Company shall provide proof of insurance prior to installation of the ATM.
  - C. The Company shall be the sole owner of the ATM and is responsible for all liability associated with ownership. The Company understands and agrees that the City remains the owner of City Hall and any associated premises.
6. **Responsibilities of City.**
  - A. The City shall provide the Company access to City Hall necessary for



installation and maintenance of the ATM during regular business hours.

- B. The City shall provide at its expense the necessary electricity, telephone extension and internet access (without static IP) required for the operation of the ATM and related signage.

7. **General Provisions**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- B. **Applicable Law/Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming. The parties intend and agree that the City does not waive governmental immunity by entering into this Agreement and specifically retains governmental immunity and all defenses available to it pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.
- C. **Assignment/Agreement Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Company shall not use this Agreement, or any portion thereof for collateral for any financial obligation without the prior written permission of the City.
- D. **Audit/Access to Records.** The City and any of its representatives shall have access to any books, documents, papers, and records of the Company which are pertinent to this Agreement.
- E. **Compliance with Laws.** The Company shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
- F. **Entirety of Agreement.** This Agreement, consisting of five (5) pages, represent the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- G. **Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and



unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party. The parties intend and agree that the City does not waive governmental immunity by entering into this Agreement and specifically retain immunity and all defenses available to them pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.

- H. **Indemnification.** The Company shall indemnify, defend, and hold harmless the City, and their officers, agents, employees, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of Company's failure to perform any of Company's duties and obligations hereunder or in connection with the negligent performance of Company's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of Company's actions.
- I. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person.
- J. **Notice and Approval of Proposed Sale or Transfer of the Company.** The Company shall provide the City with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Company. Such notice shall be provided in accordance with the notices provision of this Agreement. If the City determines that the proposed merger, consolidation, sale, or transfer of assets is not consistent with the continued satisfactory performance of the Company's obligations under this Agreement, then the City may, at its option, terminate or renegotiate the Agreement.
- K. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- L. **Governmental Immunity.** The City does not waive governmental immunity by entering into this Agreement and specifically retains all immunities and defenses available to it pursuant to Wyo. Stat. §§ 1-39-101-121 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity.

- M. **Termination of Agreement.** This Agreement may be terminated, without cause, by either party upon thirty (30) days written notice. This Agreement may be terminated immediately for cause if the Company fails to perform in accordance with the terms of this Agreement.
- N. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- O. **Titles Not Controlling.** Titles of paragraphs are for reference only and shall not be used to construe the language in this Agreement.
- P. **Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

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8. **Signatures.** The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The effective date of this Agreement is the date of the signature last affixed to this page.

**CITY OF GILLETTE**

\_\_\_\_\_  
Louise Carter-King, Mayor

\_\_\_\_\_  
Date

**COMPANY**

  
\_\_\_\_\_  
Pinnacle Bank

3-20-18  
\_\_\_\_\_  
Date

(S E A L)  
ATTEST:

\_\_\_\_\_  
Karlene Abelseth, City Clerk

**CITY ATTORNEY'S OFFICE APPROVAL AS TO FORM**

\_\_\_\_\_  
Anthony M. Reyes

\_\_\_\_\_  
Date