

ORDINANCE NO. 3281

AN ORDINANCE AUTHORIZING THE EXECUTION OF A LEASE PURCHASE AGREEMENT BY THE CITY OF ABILENE, KANSAS, FOR THE ACQUISITION AND FINANCING OF A BALER FOR THE RECYCLING CENTER

WHEREAS, the Governing Body of the City of Abilene, Kansas (the "City"), according to K.S.A. 12-101 *et seq.* and K.S.A. 10-1116, has found it necessary to enter into a Lease Purchase Agreement (the "Agreement"), attached hereto as **Exhibit A**, and supplementary Addendum, attached hereto as **Exhibit B**, to pay a portion of the costs of acquiring a Baler for City (the "Equipment"), as more fully described in the Lease Purchase Agreement authorized by this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS, AS FOLLOWS:

SECTION ONE: Lease Purchase Agreement, Authorized. The Agreement between the City and Astra Bank (the "Bank"), and providing for the financing of a portion of the cost of certain Equipment, in substantially the form presented to the Governing Body on this date, is authorized and approved with such additions, revisions, or corrections as may be approved by the Mayor and City Clerk. Their approval of any such changes shall be evidenced by their execution of the Agreement.

SECTION TWO: Lease Purchase Agreement, Execution. The Mayor and the City Clerk are authorized and directed to execute the Agreement on behalf of the City and to execute any ancillary certificates or documents necessary to accomplish the purposes of this Ordinance and the Agreement.

SECTION THREE: Rental Payments. The Rental Payments (the "Payments") required by the Agreement shall be made from funds budgeted and appropriated for that purpose during the City's current budget year and other funds lawfully available to the City for such purpose, in accordance with the Agreement, and as provided by law, and shall not be paid from any other moneys or sources (except to the extent paid from moneys attributable to proceeds from insurance policies, condemnation awards or awards resulting from defaults under certain circumstances).

SECTION FOUR: Non-Arbitrage Covenant. The City hereby covenants that so long as any of the Payments remain outstanding and unpaid under the Agreement, it would not make or permit use made of the proceeds from the Agreement which, if such use had been reasonably expected on the date of execution and delivery, would have caused the Payments to constitute "arbitrage bonds" within the meaning of Section 103(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code"); and that it will comply with all applicable requirements of Section 148 of the Code and the applicable rules and regulations of the United States Treasury Department for so long as any Payments under the Agreement remain outstanding and unpaid. The City hereby further covenants to take all such action in its power as may be required from time to time in order to assure the continued exclusion from gross income for the purpose of Federal income taxation of the interest component on the Payments, and to comply with all provisions of the Code, as the same be amended, and any applicable rules and regulations of the United States Treasury Department under the Code.

SECTION FIVE: Designation as Qualified Tax-Exempt Obligations. The Governing Body of the City designates the Lease as a “qualified tax-exempt obligation” as defined in Section 265(b)(3) of the Code.

SECTION SIX: Effective Date. This Ordinance shall be in full force and take effect from and after its adoption and approval and its publication one time in the City’s official newspaper.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 24th day of August, 2015.



CITY OF ABILENE, KANSAS

By: *Dennis P. Weishaar*
Dennis P. Weishaar, Mayor

ATTEST

Penny Soukup CMC
Penny Soukup, CMC
City Clerk

APPROVED AS TO FORM:

A.O. Martin
Aaron O. Martin
Interim City Attorney

EXHIBIT A

Lease Purchase Agreement for Baler

August 24, 2015

Lease Purchase Agreement

This Lease Purchase Agreement is dated and effective as of August 24th 2015. This Lease Purchase Agreement ("Agreement") is entered into between The City of Abilene, Abilene, Kansas 67410 ("Lessee") and Astra Bank, 418 NW 3rd, Abilene, Kansas, 67410 ("Lessor").

This Lease Purchase Agreement between Lessee and Lessor is an agreement to purchase ("Equipment") described as a cardboard baler with a model number of HE-60-M and a serial number of BH4850-01 purchased from JV Mfg/CRAM-A-LOT.

The Commencement Date of this Lease Purchase Agreement shall be August 24, 2015, and the Termination Date shall be September 1, 2020. (See Attached Payment Schedule {"Exhibit A"}).

1. Transfer of Equipment Ownership

UCC filing listing Astra Bank as Equipment owner shall be released upon the earliest of any of the following dates:

- (A) The Termination Date;
- (B) The exercise of the Lessee of the option to purchase the Equipment (see Exhibit A) pursuant to the Lease Purchase Agreement;
- (C) A default by Lessee and Lessor's election to terminate this Lease Purchase Agreement;
- (D) The payment by Lessee of all Base Rental Payments and Additional Rental Payments due and the payment of the Purchase Option Price;
- (E) The next Base Rental Payment date after non-renewal of this Lease for non-appropriation of funds.

2. Rental Payments

The Lessee shall pay the Base Rental Payments and any Additional Rental Payments to the Lessor pursuant to the payment schedule outlined in Exhibit A.

In addition to the Base Rental Payments, the Lessee shall pay all taxes and assessments of any kind in relation to the equipment being purchased. If the Lessee obtains an exemption from any taxation, a copy of that exemption shall be provided to Lessor. The Lessee shall also pay all necessary expenses incurred by Lessor attendant to this Lease Purchase Agreement.

Lessee shall pay additional Rental Payments within thirty (30) days of payment due date as outlined in Exhibit A.

3. Consideration

The Rental Payments as outlined in Attached Rental Payments ("Exhibit A") and Section Two (2) of this Agreement shall constitute the total payments for each fiscal year and shall be paid by Lessee each Fiscal Year and shall be paid by the Lessee for its use and possession of the leased equipment during the Lease Term. The parties agree that the total of the Rental Payments constitutes the Fair Market Value of the Project.

4. Rental Payments as Expense to Lessee

The Lessor and Lessee understand and intend that the Rental Payments shall constitute a current expense to Lessee and shall not be construed as a debt of the Lessee in contravention of applicable statutes or constitutional provisions.

5. Lawfully Made Rental Payments

The Lessor and Lessee also understand and intend that the Lessee is obligated to make Rental Payments on the Equipment as may be lawfully made from (a) funds budgeted and appropriated for that purpose during the Lessee's current budget year; or (b) funds made available from lawfully operated revenue producing sources as provided by K.S.A. 10-1116(b).

6. Seller's Warranties

Lessor hereby irrevocably appoints Lessee as its Agent and Attorney In Fact during the Lease Term to assert any rights, including warranties, which the Lessor may have against the Seller of the Equipment provided that Lessee is not in default. The Lessee's sole remedy for any breach of warranty shall be against the Seller of the Equipment. Any breach of any such warranty shall in no way affect the terms of this Lease Purchase Agreement. The Lessee expressly acknowledges that Lessor has made no representations of any kind relating to the Equipment or warranties from the Seller of the Equipment.

7. Security Interest

Lessee grants Lessor a security interest in the Equipment. Lessor's security interest shall constitute a first lien and shall have priority, provided that Lessor files all appropriate documents to cause the lien to have priority.

8. Use, Maintenance and Operation

Lessee shall not use the Equipment (see Exhibit A) in an improper, careless or unlawful manner. Any permits and licenses necessary to operate the Equipment shall be obtained by Lessee. Lessee shall also, at its own expense, maintain the Equipment. Lessee shall also have the right to alter, modify or add to the Equipment for the purpose contemplated by this Lease Purchase Agreement. Any alterations, changes, modifications or additions to the Equipment which is purchased or otherwise acquired by Lessee which cannot be removed without damage to the Equipment shall immediately become a part of the Equipment and shall be subject to the terms of this lease.

9. Insurance

Lessee shall at all times maintain insurance on the Equipment for damage to the Equipment in an amount acceptable to Lessor. All insurance premiums shall be paid by Lessee as Additional Rental Payments. In the event that Lessee fails to maintain insurance, Lessor has the right to procure insurance and charge the costs of that insurance to Lessee.

10. Casualty Loss

In the event of damage to the Equipment so that it becomes wholly or partly unusable, Lessor may replace or repair the Equipment so that it can be returned to use. Should Lessor repair the Equipment this Lease Purchase Agreement shall remain in full force and effect. Lessee shall have no right to abate rent while the Equipment is being repaired.

Or, Lessor can pay or direct payment of any monies collected from insurance against damage to the Equipment and any other amounts necessary to provide for payment of the applicable Purchase Option Price.

11. Assignment for Sub-Lease

Lessee shall not transfer, assign, mortgage or pledge this Lease Purchase Agreement or any interest of Lessee without the express written consent of Lessor. The Lessee shall have the right to sub-lease or permit the use of all or any part of the Equipment but such sub-lease shall not relieve Lessee of any obligations pursuant to this Lease Purchase Agreement. And, in no event shall Lessee sub-lease or permit the use of the Equipment so as to subject it to federal income tax.

12. Right of Access

Lessor and its designated representatives shall have the right to inspect the Equipment during reasonable business hours for any purpose directly connected with Lessor's rights and obligations under the Lease Purchase Agreement.

13. Governing Law

The terms of this Lease Purchase agreement shall be governed by Kansas law.

14. Waiver

Lessor's waiver of any breach of any term of this Lease Purchase Agreement shall not operate as a waiver of any subsequent breach.

15. Default by Lessee

If Lessee defaults on any term or condition of this Lease Purchase Agreement for a period of thirty (30) days after being notified by Lessor of such default, and if Lessee should fail to cure the default, Lessor shall have the right without further notice (a) to terminate this Lease Purchase Agreement and repossess the Equipment or (b) to repossess the Equipment without terminating this Lease Purchase Agreement and re-lease the Equipment as agent for Lessee. Any monies received by Lessor from re-leasing the Equipment shall first be applied to the expenses of re-leasing and thereafter to the payment of monies due or monies that become due to Lessor under the terms of this Lease Purchase Agreement. If there is a deficiency owed to Lessor; Lessee shall pay such deficiency.

16. Termination Due to Non-Appropriation of Funds

If this Lease Purchase Agreement terminated due to non-appropriation of funds, Lessee may exercise its option to purchase by tendering to Lessor the applicable Option Purchase Price as of the date of terminations. If Lessee fails to exercise its Option to Purchase upon such terminations, Lessee shall surrender possession of the Equipment to Lessor and this Lease Purchase Agreement shall have no further force or effect.

17. Option to Purchase

Lessee shall have the Option to purchase the Equipment at any time provided that Lessee is not in default. The Lessee may exercise its Option to Purchase the Equipment by paying the Purchase Option Price applicable to the Equipment together with the Rental Payment required to be paid on the purchase date. Lessee shall give notice of its intent to exercise its Option to

Purchase. Upon exercise of its Option to Purchase, all rights, title and interest of Lessor in the Equipment shall be released.

18. Designated Bank Qualified Obligation

The Lessee hereby designates this Lease Purchase Agreement as a "qualified tax exempt obligation" pursuant to Section 265 (b) of the Internal Revenue Code and certifies the following;

(A) This Lease Purchase Agreement is not a "private activity bond" as defined by Section 141 of the IRS code; and

(B) The reasonably anticipated amount of "qualified tax exempt obligations" to be issued by Lessee in the current calendar year does not exceed \$10,000,000.

19. Amendments

This Lease Purchase Agreement may be amended, changed or modified only in writing and only when executed by both parties.

20. Severability

If any one or more terms of this Lease Purchase Agreement is judged invalid, unenforceable, void or avoidable by a court of competent jurisdiction, none of the remaining terms shall be affected by such finding and shall be valid and fully enforceable.

21. Binding Effect of Lease Purchase Agreement

This Lease Purchase Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever this Lease Purchase Agreement refers to a party, such reference shall be deemed to include the successors or assigns of that party.

22. Entire Agreement

This Lease Purchase Agreement constitutes the entire agreement between Lessor and Lessee.

IN WITNESS WHEREOF, the parties by their signatures below cause this Lease Purchase Agreement to be executed.

City of Abilene, as lessee

By Dennis P. Weishaar
Dennis P. Weishaar, Mayor

STATE OF KANSAS, COUNTY OF DICKINSON, SS:
This instrument was acknowledged before me on 8-24-15, 2015.



Darlene K. Provance
Notary Public

My Appointment Expires: 

Penny Soukup
Penny Soukup, City Clerk

STATE OF KANSAS, COUNTY OF DICKINSON, SS:
This instrument was acknowledged before me on August 24, 2015.

Darlene K. Provance
Notary Public

My Appointment Expires: 

ASTRA BANK, as Lessor

By Drew Snitker
Drew W. Snitker, Ag Loan Officer

Attest:

Kent P. Wyatt
Kent P. Wyatt, Vice President

STATE OF KANSAS, COUNTY OF DICKINSON, SS:

This instrument was acknowledged before me on August 25, 2015, by
Drew W. Snitker Ag Loan officer, Kent P. Wyatt, Vice President, of Astra Bank.

Rhonda Wilson
Notary Public

My Appointment Expires: January 25, 2018



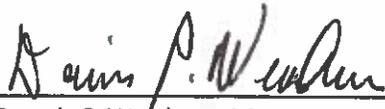
EXHIBIT A

PAYMENT SCHEDULE

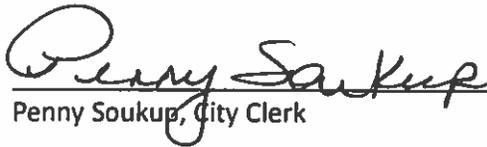
RE: Lease Purchase Agreement dated August 24, 2015 between City of Abilene, Kansas (Lessee) and Astra Bank (Lessor)

Commencement Date: August 24, 2015
Date of First Payment: September 1, 2015
Termination Date: September 1, 2020
Original Balance: \$69,730
Total Number of Payments per Year: One (1)

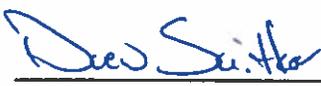
<u>Payment No.</u>	<u>Due Date</u>	<u>Base Rental Payment</u>	<u>Applied to Interest</u>	<u>Applied to Principal</u>	<u>Purchase Option Price</u>
1	September 1, 2015	\$12,458.28	\$43.40	\$12,415.61	\$69,773.40
2	September 1, 2016	\$12,458.28	\$1,632.19	\$10,826.81	\$58,946.58
3	September 1, 2017	\$12,458.28	\$1,320.24	\$11,138.76	\$47,807.82
4	September 1, 2018	\$12,458.28	\$1,003.91	\$11,455.09	\$36,352.73
5	September 1, 2019	\$12,458.28	\$678.58	\$11,780.42	\$24,572.31
6	September 1, 2020	\$12,458.28	\$344.96	\$12,113.32	\$12,458.28



Dennis P. Weishaar, Mayor



Penny Soukup, City Clerk



Drew Snitker, Ag Loan Officer

EXHIBIT B

Addendum Lease Purchase Agreement

August 24, 2015

**ADDENDUM
to Lease-Purchase Agreement**

THIS ADDENDUM, which is entered into as of August 24, 2015 between Astra Bank ("Lessor") and the City of Abilene, Kansas ("Lessee"), is intended to supplement the Lease Purchase Agreement between Lessor and Lessee dated as of August 24, 2015. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Master Agreement.

1. Pursuant to K.S.A. 10-1116c, the parties acknowledge and agree as follows:
 - (a) The capital cost to purchase the Equipment, if paid for by cash, is \$69,730.00
 - (b) The annual average effective interest cost under the Payment Schedule is 2.84 %.
 - (c) The amount included in payments for service, maintenance, insurance or other charges, exclusive of capital cost and interest cost, is as follows:
 - (i) Service: \$ 0
 - (ii) Maintenance: \$ 0
 - (iii) Insurance: \$ 0
 - (iv) Other Charges: \$ 0

2. Lessee shall have the option to prepay any Rental Payment, in whole or in part, at any time and without penalty.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Addendum to be executed in their names by their duly authorized representatives as of the date first above written.

Lessor: ASTRA BANK
By: <u>Drew Switzer</u>
Name: <u>Drew Switzer</u>
Title: <u>As Loan Officer</u>

Lessee: CITY OF ABILENE, KANSAS
By: <u>Dennis P. Weishaar</u>
Name: <u>Dennis P. Weishaar</u>
Title: <u>Mayor</u>

Attest:
By: <u>Penny Soukup</u>
Name: <u>Penny Soukup</u>
Title: <u>City Clerk</u>