

RESOLUTION NO. 032717-2

**A RESOLUTION APPROVING A LEASE PURCHASE AGREEMENT WITH FIRST BANK KANSAS CONCERNING THE LEASE PURCHASE OF A 2017 DUMP TRUCK WITH PLOW AND SPREADER**

WHEREAS, the City Commission desires to enter into a Lease Purchase Agreement "(Agreement)" with First Bank Kansas for the purpose of financing the acquisition of 2017 dump truck with plow and spreader for the Public Works Department.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

Section 1. Agreement. That a Lease Purchase Agreement is hereby adopted as attached hereto as **Exhibit A**.

Section 2. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

Section 3. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 27<sup>th</sup> day of March, 2017.



CITY OF ABILENE, KANSAS

By: Dee Marshall  
Dee Marshall, Mayor

Penny Soukup, CMC  
Penny Soukup, CMC  
City Clerk

**EXHIBIT A**

**Lease Purchase Agreement**

**City of Abilene, Kansas**

**and**

**First Bank Kansas**

**March 27, 2017**

## LEASE-PURCHASE AGREEMENT

**THIS LEASE-PURCHASE AGREEMENT** is made and entered into by and between the Lessor and Lessee, with the Effective Date set forth below.

1. **Definitions.** For purposes of this Lease-Purchase Agreement, the following terms shall have the respective meanings set forth below:

**LEASE:** This Lease-Purchase Agreement dated as of the Effective Date, by and between the Lessor and Lessee.

**EFFECTIVE DATE:** 5/1/17.

**TERMINATION DATE:** 5/1/22.

**LESSOR:** First Bank Kansas, a Kansas state-chartered bank.

**LESSEE:** City of Abilene, KS.

**PROPERTY:** The property that is the subject of this Lease and that is described on Exhibit "A" which is attached hereto and by reference made a part hereof.

**LEASE TERM:** The period beginning on the Effective Date and ending on the Termination Date, unless earlier terminated pursuant to the terms of the Lease.

**RENTAL PAYMENTS:** The payments due in the amounts and upon the dates set forth on Exhibit "B" which is attached hereto and by reference made a part hereof.

**OPTION PRICE:** One Dollar (\$1.00), which is payable upon the Lessee exercising its Purchase Option pursuant to the terms of the Lease.

**PURCHASE PRICE:** The sum of the Option Price plus all remaining Rental Payments due to be paid on the date that Lessee exercises its option to purchase the Property.

**INTEREST RATE:** 3.00 % per annum, which shall be the interest rate component of the Rental Payments and the interest rate assessed on any unpaid Rental Payments or other or additional advances made by Lessor and owed by Lessee.

**PROPERTY INSURANCE DEDUCTIBLE:** \$5,000.

**PUBLIC LIABILITY COVERAGE:** \$1,000,000.

**PUBLIC LIABILITY DEDUCTIBLE:** \$1,000.

2. **Lease.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Property for the Lease Term in exchange for the Rental Payments.

3. **Rental Payments.** A portion of each Rental Payment is paid as and represents payment of interest, and the balance of each Rental Payment is paid as and represents payment of principal, as set forth on Exhibit "B". Each Rental Payment and any additional amounts for which Lessee becomes obligated hereunder, which are not paid when due, shall bear interest at the Interest Rate from the date on which the Rental Payment or additional other payment becomes due until the same is paid. Lessee may prepay the Rental Payments or any portion thereof at any time, and any such prepayment shall be credited against the next Rental Payment.

4. **Rent as Current Expense.** Lessee's obligation to pay the Rental Payments in the amounts and on the due dates set forth on Exhibit "B" shall constitute a current expense of Lessee and shall not be construed to be a debt of Lessee in violation of any constitutional or statutory limitations concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

5. **Purchase Option.** Lessee shall have the option to purchase the Property, but only if Lessee is not in default under the Lease. Lessee may exercise its option to purchase the Property on any Rental Payment due date by paying the Purchase Price, provided that Lessee shall give Lessor not less than thirty (30) days advance written notice of its intention to exercise its option to purchase.

6. **Transfer of Title.** During the Lease Term, title to the Property shall be vested in Lessor. Upon Lessee's exercise of the option to purchase and the payment of the Purchase Price, title to the Property shall be conveyed to and vested directly in Lessee, and Lessor shall execute and deliver to Lessee a Bill of Sale for the Property and such other and further instruments and assurances as may be reasonably necessary to transfer the Property to Lessee.

7. **Maintenance and Operation:** During the Lease Term, Lessee shall, at its own expense, maintain or cause to be maintained the Property in good order, condition and repair, and Lessor shall have no obligation to incur any of said expenses; provided, however, that if Lessee fails to keep the Property in good repair and operating condition, Lessor may, but shall be under no obligation to, make such repairs as are necessary and to provide for the payment thereof, and all such amounts so advanced by Lessor shall be repaid by Lessee as an additional amount for which Lessee becomes obligated hereunder, and Lessee hereby agrees to pay any such additional amount, plus interest at the Interest Rate, for which it may become obligated hereunder.

8. **Use of the Property.** The parties mutually agree that Lessee, by performing the covenants and agreements herein contained, shall during the Lease Term, peaceably and quietly have, hold and enjoy the Property. Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law, or in any manner contrary to that contemplated by this Lease and the nature of the property. The Property will be used only for governmental or proprietary purposes of Lessee; therefore, the parties contemplate that the Property 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 the Property is found to be

subject to taxation in any form, Lessee will pay during the Lease Term all taxes and governmental charges whatsoever that may be lawfully assessed or levied against or with respect to the Property. Lessee shall keep the Property free and clear of all liens, charges and encumbrances, except as may be approved in advance in writing by Lessor; provided, however, that nothing in this Lease shall preclude Lessee from pledging its full faith and credit to the repayment of any legally authorized general obligation bond issue of Lessee.

9. **Insurance.** During the Lease Term, Lessee shall maintain or cause to be maintained, at its own expense, the following policies of insurance:

(a) Insurance against loss or damage to the Property resulting from fire, lightning, vandalism, malicious mischief and such perils ordinarily defined as "extended coverage" and other perils as Lessor and Lessee may agree. Such insurance shall during the Lease Term be in an amount not less than: (1) the full insurable value (i.e., the actual replacement cost "new") of the Property, or (2) the then current Purchase Price, whichever is more, subject to the Property Insurance Deductible, and shall contain an inflation guard endorsement.

(b) Public liability insurance against claims for bodily injury, death, or damage to property occurring upon, in, or about the Property, such insurance to provide coverage in an amount not less than the Public Liability Coverage, subject to the Public Liability Deductible.

All insurance policies shall be issued by insurers of recognized responsibility, licensed or admitted to do business in the state of Kansas. All policies or certificates of insurance shall name Lessee and Lessor as named insureds. Such policies and certificates shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Lessor, and shall carry loss payable endorsements in favor of Lessor where applicable. Evidence of coverage satisfactory to Lessor shall be deposited with Lessor by Lessee. All premiums and charges shall be paid by Lessee, and evidence of payment of the premiums shall be delivered by Lessee to Lessor. In the event Lessee fails to maintain the insurance required, Lessor shall have the right to procure and maintain such insurance and shall charge Lessee for the cost thereof as an additional amount for which Lessee becomes obligated hereunder. Lessee may provide such insurance as part of "blanket" coverage maintained on all assets of Lessee, and with the written consent of Lessor may be a self-insurer of such risks. If the insurance proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement, Lessee shall complete the work and pay any cost in excess of the insurance proceeds.

10. **Indemnification.** To the fullest extent not prohibited by applicable law, Lessee shall indemnify, protect, and hold harmless Lessor from and against any and all liabilities, obligations, losses, claims, and damages whatsoever, including without limitation, attorney fees and expenses, arising out of or as the result of this Lease, the ownership of the Property, or any accident in connection with the operation, use, condition, possession, storage or return of the Property.

11. **Right of Inspection.** Lessor and its designated representative shall have the right during regular business hours to enter into and upon the premises of Lessee to inspect the Property or for any purpose connected with Lessor's rights under this Lease.

12. **Triple Net Lease.** This Lease shall be deemed and construed to be a "triple net lease" in that Lessee hereby agrees that the Rental Payments provided for herein shall be an absolute net return to Lessor, and that Lessor shall not be responsible for any expenses, charges or set-offs whatsoever related to the operation, maintenance and repair of the Property.

13. **Termination of Lease Term.** The Lease Term will terminate upon the earliest occurrence of any of the following events:

- (a) The expiration of the Lease Term;
- (b) The exercise by Lessee of the option to purchase granted under Paragraph 5;
- (c) A default by Lessee and Lessor's election to terminate this Lease;
- (d) The payment by Lessee of all Rental Payments and all additional amounts for which Lessee may become obligated under this Lease;
- (e) Upon notice of election to terminate the Lease due to an event of taxability pursuant to Paragraph 15 hereof, and the failure of Lessee to exercise its option to purchase at the next regular Rental Payment due date.

14. **Non-appropriation.** Lessee shall use its best efforts to include the Rental Payments for each fiscal year in its budget for such fiscal year and further shall use its best efforts to make the necessary appropriations for all such Rental Payments. In the event sufficient funds are not budgeted and appropriated by Lessee for any fiscal year to provide for the Rental Payments required hereunder or any other obligation of Lessee, then Lessee shall not be obligated to make the Rental Payments beyond the end of the period for which Lessee has budgeted. If Lessee fails to appropriate funds to pay the Rental Payments, Lessee will make all reasonable efforts to promptly provide notice to Lessor of the non-appropriation; provided, however, the effect of Lessee's non-appropriation is not preconditioned upon notice of the non-appropriation by Lessee to Lessor. Lessee shall surrender the Property to Lessor on the last day for which Rental Payments have been made. Upon such early cancellation, Lessee may not thereafter acquire functionally similar property for the full original Lease Term. If funds are made available to Lessee after such early cancellation for property which will perform services and function in full or in part the same as the Property, Lessee agrees to purchase, lease or otherwise acquire such property from Lessor. The non-payment of any Rental Payment pursuant to this paragraph shall not constitute a default under this Lease.

15. **Occurrence of an Event of Taxability.** Lessor and Lessee contemplate that the interest component of the Rental Payments paid by Lessee will not be included in Lessor's gross income for purposes of federal income taxation. In the event that Lessee or Lessor are advised that the interest component of the Rental Payments is or has become includable in gross income

for purposes of federal income taxation, Lessor (or its assigns) may elect in writing to terminate this Lease at the next regular Rental Payment due date, subject only to Lessee's option to purchase as granted in Paragraph 5 of this Lease.

16. **Disclaimer of Warranties.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROPERTY. In no event shall Lessor be liable for incidental, indirect, special or consequential damages in connection with or arising out of this Lease or the existence, furnishing, functioning of Lessee's use of any item or products or services provided for in this Lease. Lessor hereby irrevocably appoints Lessee as its agent and attorney-in-fact during the Lease Term, and so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Property, which Lessor may have against the vendor of the Property. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the vendor of the Property, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Lease and its right to receive full and timely Rental Payments hereunder. Lessee expressly acknowledges that Lessor makes and has made no representation or warranties whatsoever as to the existence or availability of such warranties by the vendor of the Property.

17. **Assignment.** Neither this Lease nor any interest of Lessee herein shall be mortgaged, pledged, assigned or transferred by Lessee, without the prior written consent of Lessor. Lessee shall at all times remain liable for the performance of the Lease, notwithstanding any assigning, transferring or subletting which may be made. In no event shall Lessee sublease or permit the use of all or any part of the Property so as to cause the interest component of the Rental Payments to become includable in Lessor's gross income for computation of federal income taxation. Lessor shall have the right to assign its interest in this Lease and the Rental Payments to another party, and Lessee agrees to execute any and all documents necessary and proper in connection therewith.

18. **Default by Lessee.** If: (i) Lessee fails to pay any Rental Payment or other payment within fifteen (15) days from the date it is due and payable, and such default shall continue for twenty (20) days after written notice thereof given by Lessor to Lessee; (ii) Lessee fails to observe and perform any other term, covenant or condition contained herein for a period of thirty (30) days after written notice thereof from Lessor to Lessee; (iii) Lessee abandons the Property; or (iv) Lessee's interest in this Lease or any part thereof is assigned or transferred without the written consent of the Lessor, then Lessee shall be deemed to be in default hereunder. If Lessee is in default, Lessor shall have the right, at its option, and without any further demand or notice:

- (i) to terminate this Lease and to take possession of the Property, using all necessary force to do so, and sell the Property;
- (ii) to take possession of the Property and without terminating this Lease re-let the Property upon such terms and conditions as Lessor may deem advisable, in which event the rents received on such re-letting shall be applied first to the

expense of re-letting and collection, including any necessary renovation and alteration of the Property, reasonable attorney's fees and costs of suit in equity or action at law to enforce the terms and conditions of this Lease, and thereafter toward payment of all sums due or to become due Lessor hereunder. If a sufficient sum shall not be thus realized to pay such sums and other charges, Lessee shall remain liable for and will pay Lessor any cumulative net deficiency.

The foregoing remedies of Lessor are in addition to and not exclusive of any other remedy of Lessor. Any repossession of the Property shall be allowed by Lessee without hindrance.

19. **Miscellaneous.** This Agreement may be amended, modified or supplemented only by the written agreement of all parties hereto. The waiver or failure to insist upon strict compliance with any obligation, representation, warranty, agreement or condition hereunder shall not operate as a waiver of any subsequent non-compliance. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. This Agreement embodies the entire agreement and understanding of the parties. This Agreement supersedes all prior discussions, negotiations, agreements and understandings between the parties. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute one original.

20. **Statutory Disclosures.** 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 \$91,899
- (b) The annual average effective interest cost under the Payment Schedule is 3.00%
- (c) The amount included in payments for service, maintenance, insurance or other charges, exclusive of capital and interest cost, is as follows:
  - (i) Service: \$0.00
  - (ii) Maintenance: \$0.00
  - (iii) Insurance: \$0.00
  - (iv) Other Charges: \$0.00



IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.



“LESSEE”

City of Abilene, KS

BY: [Signature]  
Name: DCC Marshall  
Title: Mayor

ATTEST:

BY: [Signature]  
Name: Shayla L. Mohr  
Title: Deputy City Clerk

“LESSOR”

FIRST BANK KANSAS,  
A Kansas state-chartered bank

BY: [Signature]  
Name: David Walters  
Title: VP

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF DICKINSON )

The foregoing instrument was acknowledged before me on March 27, 2017, by Dee Marshall, Mayor of the City of Abilene, Kansas, on behalf of Lessee.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

  
\_\_\_\_\_  
Notary Public

My Appointment Expires: 12-18-2018



STATE OF KANSAS            )  
  ) ss:  
COUNTY OF DICKINSON )

The foregoing instrument was acknowledged before me on 3-30-2019, 2017, by David Walters, on behalf of Lessor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

  
\_\_\_\_\_  
Notary Public

My Appointment Expires: 11-16-2019

