

# **City of Seward, NE**

**Tuesday, March 15, 2016**

**Regular Session**

## **Item G7**

### **CONSIDERATION OF APPROVING A GOLF CART LEASE AGREEMENT WITH BRUNING STATE BANK AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT AND RELATED DOCUMENTS - Bruce Smith**

**Administrative Report:** Council approved a lease arrangement with Nebraska Golf & Turf, Inc on 1-5-16 for the golf carts. It was determined to add windshields and ball washers to the carts after the original approval from the council. That increased the monthly payment from \$104.63 per cart for 6 months (\$2,092.60) to \$110 per cart (\$2,200). For this little bit, it really adds a lot of value to the golfer. While the arrangement was made with Nebraska Golf & Turf, the actual lease agreement is through Bruning State Bank.

Following review and discussion, a motion to approve the agreement and authorize Mayor Eickmeier to execute the documents would be in order.

**Staff Contact:**

## MUNICIPAL LEASE PURCHASE AGREEMENT (#615126)

This Equipment Lease Purchase Agreement ("Lease") dated this \_\_\_\_ day of \_\_\_\_, 2016, entered into between **BRUNING STATE BANK** (as "Lessor"), and the City of Seward, Nebraska, ("City") a municipal corporation and political subdivision duly organized under the laws of the State of Nebraska, (as "Lessee").

### WITNESSETH:

WHEREAS, upon Acceptance (as defined below), the City desires to lease from the Lessor certain equipment described in Exhibit A, subject to the terms and conditions of and for the purposes set forth in this Lease; and

WHEREAS, the City and the Lessor are each authorized to enter into this Lease for the purposes set forth herein;

NOW, THEREFORE, for, and in consideration of the premises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lessor and the City hereby agree as follows:

### ARTICLE I

**Section 1.01. Definitions.** The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Acceptance" means the City Representative (Mayor) has certified, pursuant to the Acceptance Certificate, that the Equipment ordered is the Equipment received, that the Equipment has been installed, tested, and found acceptable for the purposes for which it was ordered, and that the Lessor is thereby directed to pay the Vendor pursuant to the Related Vendor's Contract or Proposal, all as further set forth in Section 5.01.

"Acceptance Certificate" means a certificate that is substantially the form set forth as Appendix A addressed to the Escrow Agent (if one is utilized for this Lease) which may be executed by the City Representative (Mayor) and delivered to the Lessor.

"Acceptance Date" means the date on which the Lessor received the Acceptance Certificate and pays the Vendor as directed in the Acceptance Certificate, which date shall not be later than the first Rental Payment Date as set forth in Exhibit C hereto.

"Agent" means any agent for the Registered Owners, if any, to which all or a portion of the Lessor's right, title, and interest in, to and under this Lease and the Equipment may be assigned for the benefit of such Registered Owners; provided that the Mayor or City Manager has received notice of such assignment and such assignment has been granted, all in accordance with Section 11.01.

"Appropriation" means the collective procedure by which the City Council specifically appropriates funds for this purpose and the City thereby affects an Encumbrance for such purpose.

"City" means the City of Seward, Nebraska, only in its capacity as the lessee under this Lease and not in respect to its police powers or any other capacity, power or function of the City.

"City Attorney" means the City Attorney or any attorney duly appointed or engaged or otherwise designated by the City.

"City Representative" means the City Mayor or a designee of such a representative by the City.

"Code" means the Internal Revenue Code of 1986, as amended and rulings and regulations issued or promulgated thereunder.

"Encumbrance" means (a) the act of submitting a written request of the City to the City Mayor or

Manager of Finance of the City and (b) the certification in writing by the City Mayor or Manager of Finance for the City for the applicable Fiscal Year that (1) there is an unencumbered balance in the appropriation and the appropriate fund chargeable therefore sufficient to provide for the Rental Payments and any other amounts to be paid hereunder, as the case may be, for this Lease and for the period specified in this Lease and (2) such amounts have been set aside for such purpose.

"Equipment" means the property as described in Exhibit A hereto and all replacements, repairs, restorations, modifications and improvements of or to such Equipment.

"Event of Default" means an event of default described in Section 12.01.

"Event of Non-appropriation" means an Event of Non-Appropriation described in Section 3.03.

"Fiscal Year" means the City's fiscal year which begins October 1 and ends on September 30.

"*Force Majeure*" means, without limitations, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; or any other cause or not within the control of the Lessor or the City in the City's capacity as the Lessee hereunder.

"Lease" means this Equipment Lease Purchase Agreement, including all Exhibits hereto, together with all amendments and modifications to this Lease pursuant to Section 13.05.

"Lease Term" means the Original Term and any Renewal Terms as to which the City may exercise its option to renew this Lease by effecting Appropriations of funds for the Rental Payments and other obligations hereunder, as provided in and subject to the provisions of this Lease.

"Manager of General Services" means the City Mayor duly appointed or elected pursuant the Charter of the City or the designee of the City as set forth in Exhibit E hereof.

"Manager of Finance" means the Manager of Finance or the City Mayor or a designee of the City as set for the in Exhibit E hereof.

"Original Term" means the period that commences with the Commencement Date and terminates on the 30<sup>th</sup> of September of the Fiscal Year in which this Lease commenced.

"Purchase Price" means the amount that the City may pay to the Lessor to purchase such Equipment in accordance with Section 10.01 and as set forth by Exhibit C.

"Registered Owners" means the registered owners of the certificates of participation that may be executed and delivered by an Agent with respect to this Lease.

"Related Vendor Contract" means the contract (if any) entered into with the Vendor for the acquisition, delivery, installation and testing of the Equipment and related to this Lease.

"Renewal Terms" means the renewal terms of this Lease, each having a duration of one year and a term corresponding to the City's Fiscal Year.

"Rental Payments" means the basic rental payments payable by the City under this Lease pursuant to Section 4.01 and as set forth in Exhibit C hereto with respect of each Fiscal Year during the Lease Term.

"State" means the State of Nebraska.

"Vendor" means the supplier or manufacturer of the Equipment as set forth in Exhibit A as well as the agents or dealers of the manufacturer or supplier from whom the Lessor purchased or is to purchase such Equipment as directed by the City Mayor pursuant to the Acceptance Certificate.

## **ARTICLE II**

**Section 2.01. Representation and Agreements of the City.** The City represents and agrees, for the benefit of the Lessor and to the extent allowed by law and subject to renewal of this Lease and Appropriations as set forth herein, as follows:

- a) The City is a municipal corporation and political subdivision duly organized and existing with full power and authority to enter into this Lease and the transactions contemplated hereby and to perform all of its obligations hereunder.
- b) The City is authorized to enter into this Lease and to carry out its obligations hereunder. The City has duly authorized the execution and delivery of this Lease by proper action of its City Council or by other appropriate official approval. The City Council has authorized and directed, and hereby authorizes and directs, the City Mayor to execute the Agreement on behalf of the City.
- c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both, would constitute an Event of Default exists at the date hereof.
- d) The City has complied with applicable procurement requirements, if any, related to this Lease and the acquisition of the Equipment pursuant to the terms of this Lease.
- e) During the Lease Term, the Equipment will be used by the City only for the purpose of performing essential governmental or proprietary functions of the City consistent with the permissible scope of the City's authority.
- f) The Manager of Finance or the City Manager or other designee of the City Council will annually provide the Lessor with current financial statements, budgets, and certificates with respect to Appropriations for the ensuing Fiscal Year as the same may be requested in writing by the Lessor to the City Mayor or the Manager of Finance.
- g) The City has an immediate need for the Equipment and, after the City Representative has delivered the Acceptance Certificate to the Lessor, expects to make immediate use of the Equipment. The City's need for the Equipment is not temporary and the City does not expect the need for the Equipment to diminish in the foreseeable future including the maximum lease term. This statement is subject to and qualified by the provisions of this Lease, including but not limited to the provisions of Section 3.03.
- h) The City will comply with all applicable provisions of the Code and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

**Section 2.02 Representations and Agreements of the Lessor.** The Lessor represents and agrees, for the benefit of the City as follows:

- a) The Lessor is a Nebraska Commercial Bank with full power and authority to enter into this Lease and the transactions contemplated hereby and to perform all of its obligations hereunder. The Lessor is authorized to enter into this Lease and to carry out its obligations hereunder. The Lessor has duly authorized the execution and delivery of this Lease by proper corporate action.
- b) So long as no Event of Default or Event of Non-appropriation has occurred and is then existing, the Lessor shall not pledge, assign, mortgage, encumber or grant a security interest in its right, title and interest in, to, and under this Lease or the Equipment, except as may be permitted under Section 11.01.
- c) The Lessor agrees to make payment on outstanding invoices directly to the vendor, provided that the Lessor has received from the City, on or before the date of this Lease, the following:
  - 1) An opinion of the City Attorney or Attorney designated or appointed by the City with respect to this Lease in substantially the form attached hereto as Exhibit G.
  - 2) All other documentation relating directly to this Lease and the Equipment, as mentally agreed by the Lessor and the City and in form satisfactory to both the Lessor and the City.

**Section 2.03 Nature of this Lease.** The annually renewable obligations of the City under this Lease are payable solely from funds for which an Appropriation has been effected by the City and

shall not constitute or give rise to a general obligation or other indebtedness of the City or a multiple fiscal year direct or indirect or other financial obligation whatsoever of the City, within the meaning of any constitutional, Charter or statutory provision or limitation nor a mandatory charge or requirement against the City in any ensuing Fiscal Year beyond the then current Fiscal Year. This Lease may not be renewed in the event that funds are not specifically budgeted and available from an Appropriation which has been affected by the City to continue making all Rental Payments and other amounts that may be due hereunder during the next occurring Fiscal Year, and that the act of affecting an Appropriation budgeting funds is a governmental act and, as such, is solely within the discretion of the City.

**Article III Section 3.01. Lease of Equipment.** The Lessor hereby demises, leases, transfers, and lets to the City, and the City acquires, rents, leases and hires from the Lessor, the Equipment in accordance with the terms hereof.

The Lease term may be continued, solely at the option of the City, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term set forth in greater detail in Exhibit C. At the end of the Original Term and the end of each Renewal Term until the maximum Lease Term has been completed, the City shall be deemed to have exercised its option to continue this Lease for the next Renewal Term unless the City shall have terminated this Lease pursuant to the provisions of this Lease, including but not limited to the provisions of Sections 3.03, 5.01, and 10.01.

The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except the Rental Payments in respect to each Fiscal Year shall be as provided in Exhibit C.

**Section 3.02. Continuation of Lease Term.** As of the date of this Lease, the City currently intends, subject to the provisions of this Lease, including but not limited to the provisions of Section 3.03 and 5.01, to continue the Lease Term of this Lease through the Original Term and all Renewal Terms and to pay the Rental Payments hereunder during the Lease Term. The City Representative or City Manager reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the maximum Lease Term can be obtained by Appropriation. Notwithstanding the foregoing, it is the intention of the City that any decision to effect and Appropriation for the Rental Payments shall be made solely by the City and the actions of the officials of the City as further provided in this Lease, including but not limited to the provisions of Sections 3.03 and 5.01.

**Section 3.03. Non-appropriation.** If sufficient funds are not appropriated by the City for Rental Payments due in any Fiscal Year, then the Event of Non-appropriation shall be deemed to have occurred. The City Representative or City Manager shall deliver notice thereof to the Lessor promptly, but not later than thirty (30) days after the occurrence of an Event of Non-appropriation. Failure to give such notice shall not prevent the Lessor from declaring an Event of Non-appropriation or from taking any remedial action otherwise available to the Lessor.

Upon the occurrence of an Event of Non-appropriation, the City agrees that the Lessor may reclaim possession of the Equipment and make demand upon the City for immediate payment of all other amounts (other than subsequent Rental Payments) then due and outstanding under this Lease, to the extent permitted by law and, if and only if, an Appropriation for the payment of such amounts has been effected by the City for this purpose. The City agrees to peaceably deliver the Equipment in accordance with Section 12.02.

The making of Rental Payments and the payment of any other obligations of the City contained in this Lease are subject to annual Appropriation by the City. In the event that the City does not effect an Appropriation with respect to any Renewal Term, thereby renewing this Lease for the related Fiscal Year and allowing the City to continue paying the related Rental Payments, regardless of the reason therefore or the failure of the City to act, this Lease shall automatically

terminate on the last day of the Fiscal Year with respect to which such an Appropriation to make Rental Payments has been effected, and the Equipment shall be returned to the Lessor without further obligation of the City for any amount, fee, penalty, interest or damage whatsoever.

The exercise of the City's annual option to appropriate Rental Payments shall be conclusively determined by whether or not the City has, on or before the last day of each Fiscal Year, effected an Appropriation to make Rental Payments for the ensuing Fiscal Year. In any Fiscal Year in which this Lease shall be in effect, the City Representative or City Manager or other officer of the City then charged with the responsibility of formulating budget proposals with respect to this Lease is hereby directed to include or cause to be included in the annual budget proposals submitted to the City Council for all payments required for the next subsequent Renewal Term under this Lease. Notwithstanding this directive regarding the formulation of budget proposals, it is the intention of the City that any decision to effect an Appropriation for the Rental Payments shall be made solely by the City and the actions of the officials of the City as provided in this Section.

#### **ARTICLE IV**

**Section 4.01. Rental Payments.** If the City has effected an Appropriation to make Rental Payments in the Original Term and any Renewal Term as provided in Article III, the City shall promptly pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to the Lessor on the dates and in such amounts as provided in this Lease, including but not limited to Exhibit C.

The City shall pay the Lessor a charge on any Rental Payment not paid within five (5) business days after the date the City Mayor shall have received written notice from the Lessor that such Rental Payment is due during the related Renewal Term at the rate of 12% per annum or the maximum amount permitted by law, whichever is less, from such fifth (5<sup>th</sup>) business day, provided such charge shall only be paid from funds for which an Appropriation has been effected by the City. Rental Payments consist of principal and interest components as more fully detailed in Exhibit C, the interest on which begins to accrue as of the Commencement Date.

**Section 4.02. Rental Payments to Constitute a Current Expense of the City.** The Lessor and the City acknowledge and agree that the Rental Payments shall constitute currently budgeted expenditures of the City, if an Appropriation has been effected for such purpose. The City's obligation to pay Rental Payments under this Lease shall be from Fiscal Year to Fiscal Year only (as further provided in Section 2.03 and Article III), shall extend only to moneys for which an Appropriation has been effected by the City and shall not constitute a mandatory charge, requirement or liability in any ensuing Fiscal Year beyond the then current Fiscal Year. No provision of this Lease shall be construed or interpreted as a delegation of the governmental powers or as creating a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City or a general obligation or other indebtedness of the City within the meaning of any constitutional, Charter or statutory debt limitation of the Constitution of the State. This Lease shall not directly or indirectly obligate the City to make any payments beyond those for which an Appropriation has been effected by the City for the City's then current Fiscal Year. The City shall be under no obligation whatsoever to exercise its option to purchase the Equipment. No provision of this Lease shall be construed to pledge or to create a lien on any City moneys, nor shall any provision of this Lease restrict the future issuance of any bonds or obligations of the City payable from City moneys.

**Section 4.03. Rental Payments to be Unconditional.** The obligations of the City to make Rental Payments in any Fiscal Year for which an Appropriation has been effected by the City of the payment thereof and to perform and observe the other agreements contained in this Lease shall be absolute and unconditional without abatement, diminution, dedication, deduction, set-off or defense, for any reason, including without limitation any defects, malfunction, breakdowns or infirmities in the Equipment after Acceptance thereof or any accident, condemnation or unforeseen circumstances.

## **ARTICLE V**

### **Section 5.01. Acquisition; Delivery, Installation and Testing of Equipment; Acceptance.**

The City agrees to order the Equipment and cause the Equipment to be delivered, installed, and tested at the location specified in Exhibit A, all pursuant to the Related Vendor Contract (if any). After the Equipment has been delivered, installed and tested, the City agrees to accept the Equipment provided that the Equipment satisfies the requirements of the City as set forth in the Related Vendor Contract (if any). If the Equipment satisfies the requirements of the City therefore, all as set forth in the Related Vendor Contract, the City Mayor shall promptly notify the Lessor of Acceptance of the Equipment and direct Lessor to pay the Vendor pursuant to the agreement by executing and delivering to the Lessor the Acceptance Certificate.

Within three (3) days of the receipt of the Acceptance Certificate, the Lessor shall approve the payment of the invoice of the Vendor for the delivery, installation and testing of the Equipment as such invoice shall be attached to and approved in the Acceptance Certificate.

In the event that the Acceptance Certificate has not been delivered to the Lessor by the first Rental Payment Date set forth in Exhibit C, the City Representative or City Manager may negotiate with the Lessor and agree with the Lessor as to the later Acceptance Date.

**Section 5.02. Enjoyment of Equipment.** After Acceptance, the Lessor shall provide the City with quiet use and enjoyment of the Equipment during the Lease Term, and the City shall peaceably and quietly have, hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from the Lessor, except as otherwise expressly set forth in the Lease. No Registered Owner shall interfere with such quiet use and enjoyment during the Lease Term so long as this Lease has not been terminated as a result of the occurrence of an Event of Non-appropriation or an Event of Default.

**Section 5.03. Location; Inspection.** Once installed, no item of the Equipment will be moved from the location specified for it in Exhibit A without the Lessor's consent, which consent shall not be unreasonably withheld. If the Lessor provides, on any business day, to the City's Representative or City Mayor at least 24 hours' written notice or by e-mail of the Lessor's intent to inspect, the Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the locations of the Equipment for the purpose of inspecting the Equipment.

**Section 5.04. Use and Maintenance of the Equipment.** After Acceptance, the City will not use, operate or maintain the Equipment carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease. The City shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. With respect to the Equipment, the City agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided that the City may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not adversely affect the interest of the Lessor in and to the Equipment or its interest or rights under this Lease.

The City agrees that it will, at the City's own cost and expense, maintain, preserve and keep the Equipment in good repair and working order. The Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment.

## **ARTICLE VI**

**Section 6.01. Title to the Equipment.** During the Lease Term, legal title to the Equipment and any and all repairs, replacements, substitutions and modifications to such Equipment shall be in the Lessor. Such title shall be held by the Lessor subject to this Lease. The City agrees that so long as legal title shall be in the Lessor and the City shall not be considered to hold legal title to the Equipment under Section 10.01, the Lessor shall be entitled to receive (a) any money attached or added to the Equipment at any time, (b) any money or property from the sale of the

Equipment, and ( c ) any money or property from an insurance claim if the Equipment is lost or damaged. Unless an Event of Non-appropriation or an Event of Default has occurred and is continuing, upon acceptance thereof, the City shall have the right to peacefully possess and use the Equipment during the Lease Term. The City will at all times protect and defend, at its own cost and expense, the Lessor's title from and against all claims, liens, and legal processes of the City's creditors, and keep all Equipment free and clear of all such claims, liens and processes.

**Section 6.02. Financing Documents.** Neither the Lessor nor the City will execute or cause to be filed, any financing or security documents with respect to this Lease or the Equipment unless such financing or security documents shall consist of financing statements filed by the Lessor reflecting (a) the Lessor's legal title to the Equipment and designating such financing statement as "filed for notice purposes only" or (b) the Lessor's assignment of its interest in this Lease and the Equipment as provided in Section 11.01.

**Section 6.03. Personal Property.** The Equipment is and will remain personal property and will not be deemed to be affixed to or part of the real estate on which it may be situated, notwithstanding that the Equipment or any part of thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of the Lessor, the City will, at the City's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

## **ARTICLE VII**

**Section 7.01. Liens, Taxes, and Other Governmental Charges and Utility Charges.** The City shall keep the Equipment free of all levies, liens and encumbrances except those created by this Lease. The Lessor and the City contemplate that the Equipment will be used and possessed by the City for a governmental or proprietary purpose of the City and that the Equipment will therefore be exempt from all property taxes. Because of such contemplation, the Lessor agrees that it will not declare the Equipment to the Assessor's office of the City, the State, or any other taxing entity and will not take any other action that may cause an improper tax billing to be prepared with respect to the Equipment. If the use, possession or acquisition of the Equipment is nevertheless determined to be subject to taxation, the City shall pay when due (a) all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment and (b) all utility and other charges incurred in the use and maintenance of the Equipment, provided that the City shall have effected an Appropriation for the payment of any such taxes or charges. The City shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as accrue during the Lease Term.

**Section 7.02. Insurance.** At its own expense, the City shall, during the Lease Term, either (a) maintain casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, in an amount at least equal to the then applicable Purchase Price of the Equipment or (b) self-insure against such risks evidencing such self-insurance by providing a statement of self-insurance coverage in an amount not less than the cost of the Equipment. Upon the Lessor's written request to the City Representative or City Manager from time to time throughout the Lease Term., City Representative or City Manager shall furnish to the Lessor evidence of such insurance or self-insurance coverage. The City shall not materially modify or cancel such insurance or self-insurance coverage without first giving written notice thereof to the Lessor at least ten (10) days in advance of such cancellation or modification. To the extent that the City is not self-insured with respect to the Equipment, the required casualty insurance shall contain a provision making any losses payable to the City and the Lessor as their respective interests may appear.

**Section 7.03. Advances.** In the event the City shall fail to keep the Equipment in good repair and working order, the Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the costs thereof. All amounts so advanced by the Lessor shall constitute additional rent for the then current Original Term or Renewal Term and, only if an Appropriation

has been effected by the City for this purpose, the City agrees to pay such amounts so advanced by the Lessor with interest thereon from the due date until paid at the rate of Twelve (12%) per annum or the maximum amount permitted by law, whichever is less.

#### **ARTICLE VIII**

**Section 8.01. Damage, Destruction and Condemnation.** If (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of power of eminent domain by any governmental authority or by any person, firm or corporation acting pursuant to governmental authority, the City and the Lessor will cause the Net Proceeds to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment to substantially the same condition unless the City shall have exercised its option to purchase the Equipment pursuant to Section 10.01 Any balance of the Net Proceeds remaining after such work has been completed shall be paid to the City.

For purposes of the Article, the term "Net Proceeds" shall mean (a) the amount of insurance proceeds received by the City for rebuilding, repairing, restoring, or replacing the damaged or destroyed Equipment or (b) the amount remaining from the gross proceeds of any condemnation award or sale under threat of condemnation award or sale under threat of condemnation after deducting all expenses, including attorney's fees, incurred in the collection thereof.

**Section 8.02. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement the City shall (a) pay any costs thereof in excess of the amount of the Net Proceeds or (b) pursuant to Section 10.01 purchase the Lessor's interest in all the Equipment. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Lessor's interest in all the Equipment shall be retained by the City. If the City shall make any payments pursuant to this Section, the City shall not be entitled to any reimbursement therefore from the Lessor nor shall the City be entitled to any diminution of the amounts payable under Article IV. If the City does not timely budget and appropriate sufficient funds to proceed under either (a) or (b), available to it following an Event of Non-appropriation.

#### **ARTICLE IX**

**Section 9.01. Disclaimer of Warranties.** The Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Equipment. In no event shall the Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or the City's use of any item, product or service provided for in this Lease. The City may proceed to assert claims and rights relating to the Equipment as provided in Section 9.02 hereof.

**Section 9.02. Vendor's Warranties.** The Lessor hereby irrevocably appoints the City its agent and attorney-in-fact during the Lease Term, so long as the City shall not be in default under this Lease, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that the Lessor may have against the Vendor or any person other than the Lessor. Any such matter shall not have any effect whatsoever on the rights or obligations of the Lessor with respect to this Lease, including the right to receive full and timely Rental Payments for which an Appropriation has been effected by the City for this purpose.

#### **ARTICLE X**

**Section 10.01. Purchase Option.** The City shall have the option to purchase the Lessor's ownership in all the Equipment, at the following times and upon the following terms:

a) On the date of the last Rental Payment set forth in this Lease (assuming this Lease has been renewed at the end of the Original Term and each Renewal Term), if this Lease is still in effect on such day, upon payment in full of Rental Payments due on this Lease to the Lessor;

b) Upon giving written notice to the Lessor at least sixty (60) days before the date of purchase, on the Rental Payment dates set forth in Exhibit C, upon payment in full of the Rental Payments then due plus the then applicable Purchase Price as set forth in Exhibit C to the Lessor; or

c) In the event of substantial damage to, or the destruction or condemnation of substantially all of the Equipment, then on the day specified in the City's notice to Lessor of its exercise of the Purchase Option upon payment in full to the Lessor of the Rental Payments then due plus the then applicable Purchase Price; provided that (1) such notice shall be given in writing at least sixty (60) days prior to the purchase date and (2) if the purchase date is not a Rental Payment date, the City shall also pay an amount equal to the portion of the interest component of the Rental Payment accrued from the immediately preceding Rental Payment date to such purchase date, computed on the basis of a 365 day year.

**Section 10.02. Manner of Conveyance and Other Agreements Regarding Purchase.** At the closing of the purchase or other conveyance of the Equipment pursuant to Section 10.01, the Lessor shall release and terminate this Lease and deliver to the City Mayor a document in substantially the form set forth as Exhibit D releasing, assigning, transferring and conveying title to, and the Lessor's interest in, the Equipment and this Lease. The Lessor shall also cause a termination statement to be filed if the Lessor has filed any "notice" financing statement as permitted under Section 6.02.

#### **ARTICLE XI**

**Section 11.01. Assignment by Lessor.** The Lessor's right, title, and interest in, and to Rental Payments and any other amounts payable by the City under this Lease and its ownership in the Equipment and all proceeds there from, may be assigned and re-assigned in whole or in part to one or more assignees or sub assignees by the Lessor and, to the extent of its interest, by any Registered Owner, without the necessity of obtaining the consent of the City; provided that (a) any such assignment, other than an assignment by a Registered Owner, shall not be effective until the City Mayor has received written notice, signed by the assignor, of the name and address of the assignee, and (b) any assignment to or by a Registered Owner shall not be effective until it is registered on the registration books kept by the Agent as agent for such. The City hereby agrees that the Lessor may, without notice to the City, sell, dispose or assign this Lease through a pool, trust, limited partnership, or similar entity, whereby one or more interests are created in this Lease, the Equipment or the Rental Payments.

The Lessor and the City agree that any such assignment of this Lease is not intended as the offer or sale of a security, and the Lessor and all assignees hereof understand and agree that (a) the City shall not be responsible for any information provided to any assignee or sub assignee in connection with any such assignment and (b) if any such assignment constitutes the offering of a security under applicable securities laws, the City shall not be responsible for compliance with any such laws, and any offering or other disclosure document delivered by the Lessor in connection with such assignment shall include a statement to the effect that the City has assumed no responsibility for such document and has neither reviewed nor undertaken to verify any information contained therein.

Manager of Finance or City Mayor shall (a) retain all assignment notices as a register of all assignees (other than Registered Owners) and (b) shall be responsible for making all payments during the Lease Term, if an Appropriation has been effected by the City for such purpose, only to the Lessor at the address set forth in Section 13.01, notwithstanding any assignment by the Lessor pursuant to the terms of this section.

Provided that the City shall have accepted the Equipment, the City shall not have the right to and shall not assert against any assignee or Registered Owner any claim, counterclaim or other right the City may have against Vendor.

The option granted in this Section does not permit the assignment of less than all of the Lessor's interests in all the Equipment.

**Section 11.02. Assignment and Subleasing by the City.** None of the City's right, title and interest in, to and under this Lease or any portion of the Equipment may be assigned or encumbered by the City for any reason; except that the City may sublease all or part of such Equipment if (a) such sublease is to an agency or department of, or a political subdivision of, the State or (b) the City obtains the prior written consent of the Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to the Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income purposes. Any such sublease of all or part of any Equipment shall be subject to this Lease and the rights of the Lessor in, to and under this Lease and with respect to the Equipment.

## **ARTICLE XII**

**Section 12.01. Events of Default Defined.** Any of the following events shall constitute an "Event of Default" under this Lease:

- a) Failure by the City to pay Rental Payment or other payment, for which an Appropriation has been effected by the City for such purpose, during the Original Term or any Renewal Term, five (5) Business Days after the date the City Mayor or City Manager shall have received written notice from the Lessor that such payment is due;
- b) Failure by the City to observe and perform any agreement on its part to be performed, other than as provided in (a) above, for a period of forty-five (45) days after written notice specifying such failure and requesting that it be remedied is given to the City by the Lessor, unless the Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected and provided further that, if, by reason of *Force Majeure*, the City shall be unable to carry out such agreement, the City shall not be deemed in default during the continuance of such inability;
- c) Any representation made by the City in this Lease or in any writing by any official of the City specifically related to this Lease or the execution, delivery or performance of this Lease shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- d) The City shall (1) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the City, or of all or a substantial part of the assets of the City, (2) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (3) make a general assignment for the benefit of creditors, (4) have an order for relief entered against it under applicable federal bankruptcy law, or (5) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the City in any bankruptcy, reorganization or insolvency proceeding; or
- e) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of the City or a substantial part of the assets of the City, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) consecutive days.

**Section 12.02. Remedies on Default.** Whenever any Event of Default exists, the Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- a) By written notice to the City, the Lessor may declare all Rental Payments and other amounts for which an Appropriation has been effected by the City, to the end of the then current Original Term or Renewal Term, to be immediately due and payable;

b) With or without terminating the Lease Term, the Lessor (1) (A) at the Lessor's expense, may enter the premises where the Equipment is located and retake possession of the Equipment or (B) may require the City at City's expense to promptly return any and all such Equipment to the possession of the Lessor at such place within the United States as the Lessor shall specify and (2) may sell or lease the Equipment or, for the account of the City, sublease the Equipment, continuing to hold the City liable for the difference between (i) the Rental Payments and other amounts for which an Appropriation has been effected by the City to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of the Lessor in exercising its remedies under this Lease, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all reasonable brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of this Lease, including but not limited to the provisions of Section 3.03 hereof; and provided that an Appropriation has been effected by the City for such purpose; and

c) The Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Lease or as owner of all the Equipment.

**Section 12.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised any remedy to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article.

**Section 12.04. Application of Moneys.** Any net proceeds from the exercise of any remedy under this Lease (after deducting all expenses of the Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all reasonable brokerage, auctioneer's and attorney's fees) shall be applied to the Rental Payments and other amounts due under this Lease to the end of the then Current Original Term or Renewal Term.

### **ARTICLE XIII**

**Section 13.01. Notices; Payments to Lessor.** All notices or other communications under this Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the Lessor and the City at the addresses listed below (or at such other address as either the Lessor or the City shall designate in writing to the other party hereto). Any payments that may be due to the Lessor during the Lease Term shall be mailed to the Lessor by the City with a City warrant therefore enclosed or shall be transferred by the City by electronic transfer.

**a) Notice and Payment to Lessor:** Bruning State Bank  
P. O. Box 2407  
Kearney, NE 68848-2407

Attention: Douglas King  
Phone: (308) 455-3042 or (308) 627-1415  
E-mail: [dking@bruningbank.com](mailto:dking@bruningbank.com)

**b) Notice to the City:** City of Seward, Nebraska  
Attention: Mr. Bruce Smith, City Administrator  
537 Main Street  
Seward, NE 68434  
(402) 762-3356



**Bruning State Bank**

Taxpayer ID # 47-0114250

By: \_\_\_\_\_

Attest: \_\_\_\_\_

Branch President

Title

\_\_\_\_\_  
Title

Counterpart No. \_\_\_ of 2 manually executed and serially numbered counterparts. To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.



**Exhibit A**  
**Description of the Equipment**

**Description and Location of the Equipment:**

Twenty (20) 2016 Club Car Golf Cars, Precedent model, gas powered.

Said equipment to be used on the Seward Golf Club in Seward, Nebraska.

**Representations Regarding the Equipment/Code Section 103 Arbitrage Limitations:** The City hereby represents as follows:

- a) The estimated total costs of the Equipment listed above is not less than the total Principal Portion of the Rental Payments set forth in the Rental Payment Schedule in Exhibit C.
- b) The Equipment has been ordered or is expected to be ordered within thirty (30) days of the Commencement Date and the Equipment is expected to be delivered, installed, and tested and the Vendor fully paid, within six (6) months from the Commencement Date.
- c) The Equipment has not been and is not expected to be sold or otherwise disposed of by the City, either in part or in whole, prior to the last payment date for the principal component of the Rental Payment Schedule in Exhibit C.
- d) To the best of the City Representative's or City Mayor's knowledge, information and belief, the above expectations are reasonable.

By: \_\_\_\_\_

\_\_\_\_\_  
Title

**Exhibit C**  
**Lease Term and Rental Payments/Purchase Price Schedule**

Lease Term

The term of this Lease shall begin April 1, 2016 and shall conclude on April 1, 2022.

Rental Payments: Seasonal monthly payments of \$2,200.00 each, on or before the 1st day of April, May, June, July, August, and September in years 2016, 2017, 2018, 2019, 2020 and 2021. The total rental amount (sum of monthly payments) is \$79,200.00.

Final payment for purchase is \$32,000.00 and is due April 1, 2022.

**Exhibit D**  
**Form of Release and Conveyance**

**Release and Conveyance**

Equipment Lease Purchase Agreement Dated \_\_\_\_\_, \_\_\_\_\_, 2016

**KNOW ALL MEN BY THESE PRESENTS**, that Bruning State Bank ("Lessor"), for good and valuable consideration to it in hand paid, at or before the ensealing or delivery of these presents, by the City of Seward, Nebraska (the "City"), the receipt of which is hereby acknowledged, has released, assigned, transferred, granted and conveyed, and by these presents does release, assign, transfer, grant and convey unto the City, all of its interests, including legal title, in the following property to wit:

*All of the property identified on Appendix I attached hereto and hereby made a part hereof and the related Equipment Lease Purchase Agreement between Bruning State Bank, as Lessor, and the City as Lessee.*

**To Have and To Hold the same unto the City, forever.**

**IN WITNESS WHEREOF**, Bruning State Bank has executed this Release and Conveyance as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

**Bruning State Bank**

By: \_\_\_\_\_  
Authorized Officer

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_ by \_\_\_\_\_, as \_\_\_\_\_ of Bruning State Bank.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

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

**APPENDIX I  
(TO RELEASE AND CONVEYANCE)**

Description of Property Release and Conveyance

None

## **Exhibit E**

### **Certificate of Appointment of City Representative**

(a) The City Mayor of Seward, Nebraska (the "City") hereby certifies, in connection with this Lease and the Equipment, as follows:

(b) The City has complied with all applicable procurement requirements, if any, related to

Proposal and estimate of cost prepared by Nebraska Golf & Turf, Inc. dated \_\_\_\_\_, 2016

( c) The City Council has appointed and designated the City Mayor to execute the documents on behalf of the City of Seward, Nebraska.

**Certificate of  
Appropriation To  
Bruning State Bank**

I, \_\_\_\_\_, Mayor for the City of Seward, Nebraska (Borrower/Lessee) hereby certify that the loan/lease payments due by Borrower to Bruning State Bank (Lender) under the "Municipal Lease Purchase Agreement" dated as of the \_\_\_\_\_ day of March, 2016 between the City of Seward, Nebraska as Borrower/Lessee and Bruning State Bank as Lender/Lessor, for the fiscal year ending \_\_\_\_\_, 2016 are within limits of Borrower's fiscal year budget and thereby constitute an available and unencumbered appropriation for Lender.

In Witness Whereof, I have set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Borrower/Lessee: City of Seward, Nebraska

By: \_\_\_\_\_

Mayor or Authorized Representative for the City of Seward, Nebraska

\_\_\_\_\_

**Acceptance Certificate  
Bruning State Bank Commercial Lease**

This is an Acceptance Certificate ("Certificate") dated \_\_\_\_\_, 2016 by the City of Seward, Nebraska, (Lessee) and is made a part of Municipal Lease Purchase Agreement #616126. Lessee state to the Bruning State Bank ("Lessor") that the Lessee has received and read Municipal Lease Agreement #616126, dated \_\_\_\_\_, 2016 and all the schedules and attachments thereto, and understanding that the goods and equipment described by the Municipal Lease Purchase Agreement are accepted by the Lessee pursuant to said lease.

I, \_\_\_\_\_, certify that:

- 1) I am a duly authorized, appointed, and designated officer, employee or agent of Lessee, and make this Certificate for and on behalf of Lessee.
- 2) The following items of Equipment have been (a) fully and completely delivered and/or installed, (b) tested by Lessee (to the extent Lessee deems appropriate in order to make this Certificate), (c) put into use on or as of the Commencement Date, and (d) accepted by Lessee, and Lessee hereby waives any right to revoke its acceptance with respect hereto:

**Description of Equipment Leased:**

(20) 2016 Club Car Precedent Golf Cars (gas)

Notice: By signing below I am accepting all terms of the "Municipal Lease Purchase Agreement " and understand that as Lessee, am responsible for any personal property, sales/use tax that may be applicable or imposed upon Lessor arising from this Municipal Lease Purchase Agreement.

**IN WITNESS WHEREOF**, Lessee has signed this Certificate as of the date set forth below.

Witness: \_\_\_\_\_

Lessee: City of Seward, Nebraska

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_