

THE CITY OF LINCOLN, NEBRASKA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LINCOLN, NEBRASKA AUTHORIZING AND APPROVING EQUIPMENT LEASE PURCHASE AGREEMENT NO. LIN2012-05E WITH COMMUNITY FIRST NATIONAL BANK FOR PLOW TRUCKS IN THE AMOUNT OF \$575,412.00 AND AN ESCROW AGREEMENT; AND RELATED MATTERS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LINCOLN, NEBRASKA AS FOLLOWS:

Section 1. The Council of The City of Lincoln, Nebraska (the “City”) hereby finds and determines as follows:

(a) It is necessary, desirable, advisable and in the best interests of the City that the City acquire four plow trucks (the “Equipment”) for the use of the City in carrying out its municipal operations for the health, safety and welfare of its residents.

(b) The City has carefully considered the options available to it with respect to financing the acquisition of the Equipment.

(c) In order to facilitate the foregoing and to pay the cost thereof, it is necessary and desirable for the City to enter into (1) Equipment Lease Purchase Agreement No. LIN2012-05E (the “Lease”) with Community First National Bank (the “Lessor”), Manhattan, Kansas, pursuant to which the City, as lessee, will lease the Equipment from the Lessor, as lessor, with an option to purchase the Lessor’s interest in the Equipment, and (2) an Escrow Agreement (the “Escrow Agreement”) among the City, the Lessor, and Deutsche Bank National Trust Company (the “Escrow Agent”), with respect to the proceeds from the Lease, the respective forms of which are attached hereto.

Section 2. The Lease and the Escrow Agreement (collectively, the “Lease Documents”) are hereby approved in substantially the forms submitted to and reviewed by the Council on the date hereof, with such changes therein as are approved by the Finance Director. The Finance Director, after receiving advice from the City Attorney, is hereby authorized to make such changes, additions or deletions with respect to the Lease Documents as may be in the best interests of the City prior to the signing thereof. The Finance Director’s execution of the Lease Documents will be conclusive evidence of such approval. The Clerk is hereby authorized to affix the City’s seal to the Lease Documents, if appropriate, and attest such seal.

Section 3. The Finance Director, Clerk, Deputy Clerk, Treasurer, Deputy Treasurer, City Attorney and any Assistant City Attorney, are hereby authorized to execute and deliver for and on behalf of the City all additional certificates, documents, opinions, or other papers and to perform all other acts as they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

Section 4. The execution and delivery by the Finance Director or by any such other officers, officials, employees or agents of the City of any such documents, instruments, certifications and opinions, or the doing by them of any act in connection with any of the matters that are the subject of this

Ordinance, shall constitute conclusive evidence of both the City's and their approval of the terms, provisions and contents thereof and of all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the actions so taken.

All actions heretofore taken by the Finance Director and all other officers, officials, employees and agents of the City including, without limitation, the expenditure of funds and the selection, appointment and employment of, financial advisors, and other agents in connection with the execution and delivery of the Lease Documents, together with all other actions taken in connection with any of the matters that are the subject hereof, are in all respects hereby authorized, adopted, specified, accepted, ratified, approved and confirmed.

Section 5. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Lease Documents is intended or should be construed to confer upon or give to any person other than the City, the Lessor or the Escrow Agent any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, lease or provision herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Lessor and the Escrow Agent as herein and therein provided.

Section 6. No officer or employee of the City shall be individually or personally liable for the performance of any duties or obligations under the Lease Documents. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

Section 7. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such lease or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Lease, but the Lessor shall retain all the rights and benefits afforded to it hereunder and under the Lease or any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatsoever.

Section 8. This Ordinance shall be construed and interpreted in accordance with the laws of the State of Nebraska. All suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State except to the extent necessary for enforcement, by any trustee or receiver appointed by or pursuant to the provisions of this Ordinance, or remedies under this Ordinance.

Section 9. Any ordinance of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

Section 10. This ordinance shall take effect and be in force from and after its passage and publication according to law.

INTRODUCED BY:

PASSED _____, 2012.

ABSENT OR NOT VOTING:

AYES: _____

NAYS: _____

Approved as to Form:

CONFLICT OF INTEREST:

City Attorney

APPROVED: _____, 2012.

Special Tax Counsel

Mayor