

AN ORDINANCE AUTHORIZING THE CITY OF KEARNEY, MISSOURI EQUIPMENT LEASE PURCHASE AGREEMENT AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION WITH THE DELIVERY OF THE LEASE.

WHEREAS, City of Kearney, Missouri (the "City"), desires to acquire and install certain equipment (the "Equipment") for the City; and

WHEREAS, the Board of Aldermen finds and determines that it is advantageous and in the best interests of the City that the City enter into certain transactions with the Pony Express Bank (the "Bank") relating to the delivery of the City of Kearney, Missouri Equipment Lease Purchase Agreement (the "Lease") for the purpose of (1) paying the costs necessary to acquire, construct and install the Equipment and (2) paying the costs of delivering the Lease; and

WHEREAS, the Board of Aldermen of the City further finds and determines that it is necessary and desirable in connection with the lease of the Equipment that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF CITY OF KEARNEY, MISSOURI, AS FOLLOWS:

SECTION 1. The City is hereby authorized to enter into the Equipment Lease Purchase Agreement between the Bank and the City (the "Lease") in substantially the form filed in the records of the City, with such changes therein as shall be approved by the officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof.

SECTION 2. The Lease and the interest with respect thereto shall be limited obligations, payable solely out of the rents, revenues and receipts received by the Bank from the City pursuant to the Lease. The Lease and the interest with respect thereto shall not constitute a debt or liability of the City, the State of Missouri or of any political subdivision thereof, and the Lease shall not constitute indebtedness, within the meaning of any constitutional or statutory debt limitation or restriction.

SECTION 3. The City is hereby authorized to enter into, and the Mayor of the City and the City Clerk are hereby authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the City, the Lease and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 4. The City shall, and the officials and agents of the City, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance, and to carry out, comply with and perform the duties of the City with respect to the Lease, to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed that they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

SECTION 5. This Ordinance shall take effect and be in full force from and after its passage by the Board of Aldermen and approval by the Mayor.

PASSED BY THE BOARD OF ALDERMEN AND APPROVED BY THE MAYOR OF THE CITY OF KEARNEY,
MISSOURI, THIS 20TH DAY OF MAY, 2024.

Attest:

Sheila Ernzen
Sheila Ernzen, City Clerk

ATTEST A TRUE AND CERTIFIED COPY:

Sheila Ernzen
Sheila Ernzen, City Administrator/Clerk



APPROVED:

Randy Pogue
Randy Pogue, Mayor

EQUIPMENT LEASE PURCHASE AGREEMENT

BETWEEN

**PONY EXPRESS BANK,
as Lessor**

AND

**CITY OF KEARNEY, MISSOURI,
as Lessee**

Dated as of May 30, 2024

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EQUIPMENT LEASE PURCHASE AGREEMENT

THIS EQUIPMENT LEASE PURCHASE AGREEMENT (the “Agreement”), dated as of May 30, 2024, is entered into between **PONY EXPRESS BANK**, a state banking corporation organized and existing under the laws of the State of Missouri, as Lessor (“Lessor”), and **CITY OF KEARNEY, MISSOURI**, a fourth-class city and political subdivision existing under the laws of the State of Missouri, as Lessee (“Lessee”).

WITNESSETH:

WHEREAS, Lessor desires to lease the Equipment, as hereinafter described, to Lessee, and Lessee desires to lease the Equipment from Lessor subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the constitution and laws of the State of Missouri to enter into this Agreement for the purposes set forth herein; and

WHEREAS, Lessor will provide funds in the amount of \$4,900,000 as listed on **Exhibit A**, to pay the costs of the Equipment, as further described in **Exhibit A**, and Lessee will repay such funds subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

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

“**Agreement**” means this Equipment Lease Purchase Agreement and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, together with any amendments to the Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Commencement Date**” is the date when the term of this Agreement and Lessee’s obligation to pay rent commences, which date will be the date on which the principal is advanced for deposit in the Project Fund to pay the costs of the Equipment.

“**Contract**” means any contract or contract with the Contractors for the acquisition, delivery and installation of the Equipment.

“**Contractors**” means manufacturers of the Equipment, as well as the agents or dealers of the manufacturer from whom Lessee purchased or is purchasing the Equipment, and parties retained to install and deliver the Equipment.

“**Equipment**” means the property described on the Equipment Schedule attached hereto as **Exhibit A**, and all replacements, repairs, restorations, modifications and improvements thereof or thereto.

“**Event of Default**” means an Event of Default described in **Section 12.01**.

“**Fiscal Year**” means the fiscal year adopted by the Lessee for accounting purposes, which as of the execution of this Agreement commences on April 1 of each year and ends on March 31 of the following year.

“**Issuance Year**” is the calendar year in which the Commencement Date occurs.

“**Lease Term**” means the Original Term and all Renewal Terms, but ending on the occurrence of the earliest event specified in **Section 3.03**.

“**Lessee**” means the City of Kearney, Missouri, its successors and its assigns.

“**Lessor**” means Pony Express Bank, its successors and its assigns.

“**Maximum Lease Term**” means the Original Term and all Renewal Terms through the Renewal Term including the last Rental Payment Date set forth on the Payment Schedule.

“**Net Proceeds**” when used with respect to any insurance proceeds or any condemnation award or amounts received from the sale of property under the threat of condemnation, means the amount remaining after deducting all expenses (including attorneys’ fees and any expenses of Lessee and Lessor) incurred in the collection of such proceeds or award from the gross proceeds thereof.

“**Original Term**” means the period from the Commencement Date until the end of the Fiscal Year in effect at the Commencement Date.

“**Payment Schedule**” means the schedule of Rental Payments set forth on **Exhibit B**.

“**Purchase Price**” means the amount that Lessee may, at its option, pay to Lessor to purchase the Equipment, as set forth in **Section 10.01**.

“**Renewal Terms**” means the optional renewal terms of this Agreement, each having a duration of one year and a term co-extensive with Lessee’s Fiscal Year.

“**Rental Payment Date**” means the dates on which Rental Payments are payable by Lessee under the schedule set forth on **Exhibit B**.

“**Rental Payments**” means the basic rental payments payable by Lessee pursuant to **Section 4.01**.

“**State**” means the State of Missouri.

ARTICLE II

REPRESENTATIONS AND COVENANTS OF LESSEE

Section 2.01. Representations and Covenants of Lessee. Lessee represents, warrants and covenants for the benefit of Lessor:

(a) Lessee is a fourth-class city and political subdivision duly organized and existing under the constitution and laws of the State. Lessee is a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code").

(b) Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

(c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.

(d) This Agreement constitutes the legal, valid and binding obligation of the Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) 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 Commencement Date.

(f) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current Fiscal Year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes.

(g) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

(h) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder.

(i) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting the Lessee, nor to the best knowledge of the Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate that is used or contemplated for use in the consummation of the transactions contemplated by this Agreement.

(j) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by the Lessee of this Agreement or in connection with the carrying out by the Lessee of its obligations hereunder have been obtained.

(k) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which the Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of the Lessee or the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it or its assets may be bound, except as herein provided.

(l) The Lessee has an immediate need for, and expects to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the

foreseeable future. The Equipment will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority.

(m) Neither the payment of the Rental Payments hereunder nor any portion thereof is (i) secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments in respect of such property or (ii) derived from payments in respect of property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code). No portion of the Equipment will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code).

(n) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, 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.

(o) Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purpose for which the Agreement has been entered into. No part of the proceeds of the Agreement shall be invested in any securities, obligations or other investments or used, at any time, directly or indirectly, in a manner that, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Agreement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the applicable regulations of the Treasury Department.

(p) Lessee hereby designates the Agreement as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. The aggregate face amount of all tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by Lessee and all subordinate entities thereof during the Issuance Year is not reasonably expected to exceed \$10,000,000. Lessee and all subordinate entities thereof will not issue in excess of \$10,000,000 of qualified tax-exempt obligations (including the Agreement but excluding private activity bonds other than qualified 501(c)(3) bonds) during the Issuance Year without first obtaining an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations acceptable to Lessor that the designation of the Agreement as a "qualified tax-exempt obligation" will not be adversely affected.

(q) Lessee represents and warrants that it is a governmental unit under the laws of the State with general taxing powers; the Agreement is not a private activity bond as defined in Section 141 of the Code; 95% or more of the net proceeds of the Agreement will be used for local governmental activities of Lessee; and the aggregate face amount of all tax-exempt obligations (other than private activity bonds) issued or to be issued by the Lessee and all subordinate entities thereof during the Issuance Year is not reasonably expected to exceed \$5,000,000. Lessee and all subordinate entities thereof will not issue in excess of \$5,000,000 of tax-exempt bonds (including the Agreement but excluding private activity bonds) during the Issuance Year without first obtaining an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations acceptable to Lessor that the excludability of the interest on the Agreement from gross income for federal tax purposes will not be adversely affected.

ARTICLE III

LEASE OF EQUIPMENT

Section 3.01. Lease of Equipment. Lessor hereby demises, leases and lets the Equipment to Lessee, and Lessee rents, leases and hires the Equipment from Lessor, in accordance with the provisions of this Agreement, for the Lease Term.

Section 3.02. Lease Term. The Original Term of this Agreement shall commence on the Commencement Date and shall terminate on the last day of Lessee's current Fiscal Year. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for an additional Renewal Term up to the Maximum Lease Term. At the end of the Original Term and at the end of each Renewal Term until the Maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee shall have terminated this Agreement pursuant to **Section 3.03** or **Section 10.01**. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Payment Schedule.

Section 3.03. Termination of Lease Term. The Lease Term shall terminate upon the earliest of any of the following events:

- (a) the expiration of the Original Term or any Renewal Term of this Agreement and the nonrenewal of this Agreement in the event of nonappropriation of funds pursuant to **Section 3.05**;
- (b) a default by Lessee and Lessor's election to terminate this Agreement under **Article XII**;
- (c) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Maximum Lease Term; or
- (d) the exercise by the Lessee of the option to purchase the Equipment granted under the provisions of **Article X** and payment of the Purchase Price.

Section 3.04. Continuation of Lease Term. Lessee currently intends, subject to the provisions of **Section 3.05** and **Section 4.04**, to continue the Lease Term through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. The responsible financial officer of Lessee shall do all things lawfully within their power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such Rental Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Agreement for any Renewal Term is solely within the discretion of the then-current governing body of Lessee.

Section 3.05. Nonappropriation. Lessee is obligated only to pay such Rental Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then-current Fiscal Year. In the event sufficient funds shall not be appropriated or are not otherwise legally available to pay the Rental Payments required to be paid in the next occurring Renewal Term, as set forth in the Payment Schedule, this Agreement shall be deemed to be terminated at the end of

the then-current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then-current Original Term or Renewal Term, but failure to give such notice shall not extend the Lease Term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees, at Lessee's cost and expense, to peaceably deliver the Equipment to Lessor at the location or locations specified by Lessor.

ARTICLE IV

RENTAL PAYMENTS

Section 4.01. Rental Payments.

(a) Lessee shall pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor in the amounts and on the dates set forth on the Payment Schedule. Rental Payments shall be in consideration for Lessee's use of the Equipment during the Fiscal Year in which such payments are due. Any payment not received on or before its due date shall bear interest at the rate of 8.00% per annum or the maximum amount permitted by law, whichever is less, from its due date. Lessor shall provide Lessee timely notice of the amount and due date of each Rental Payment due, whether through monthly statements, a payment book, or some other reasonable method.

(b) On the Commencement Date, Lessor will advance to the Lessee an amount equal to \$4,900,000, for deposit in the Project Fund as described in **Section 5.01**.

(c) The principal portion of Rental Payments may be prepaid in part by Lessee at any time. Amounts received will first be applied to the interest portion of Rental Payments due hereunder, and then to reduce the principal portion of Rental Payments, applied in inverse order of payments due.

Section 4.02. Interest Component. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest. Such interest portions of each Rental Payment has been calculated using a per annum interest rate equal to 5.5% computed on the basis of actual number of days in a month and a 360-day year.

Section 4.03. Rental Payments To Be Unconditional. *EXCEPT AS PROVIDED IN SECTION 3.05, THE OBLIGATIONS OF LESSEE TO MAKE RENTAL PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION ANY FAILURE OF THE EQUIPMENT TO BE DELIVERED OR INSTALLED, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE EQUIPMENT OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES.*

Section 4.04. Rental Payments to Constitute a Current Expense of Lessee. The obligations of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee, are from year-to-year and do not constitute a mandatory payment obligation of Lessee in any Fiscal Year beyond the then-current Fiscal Year of Lessee. Lessee's obligations hereunder shall not in any way be construed to be an indebtedness of Lessee in contravention of any applicable constitutional or statutory debt limitation or restriction concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

ARTICLE V

EQUIPMENT

Section 5.01. Delivery, Installation and Acceptance of the Equipment. Lessee shall order the Equipment, cause the Equipment to be delivered and installed as specified on **Exhibit A** and pay any and all delivery and installation costs in connection therewith. Lessee will not sell, transfer or otherwise relocate the Property without Lessor's consent, which consent will not be unreasonably withheld.

There is hereby established in the custody of Lessee a project fund (the "Project Fund") to be held and administered by Lessee in accordance with this Agreement. Upon the execution and delivery of this Agreement, the Lessor will advance the amount of \$4,900,000 to or for the benefit of the Lessee for deposit in the Project Fund. Moneys in the Project Fund will be used to pay for the cost of acquisition and installation of the Equipment listed in this Agreement and to pay certain costs of entering into this Agreement.

The Project Fund will terminate upon the occurrence of the earlier of (a) the completion of the acquisition, construction and installation of the Equipment as evidenced by written notification by the Lessee to the Lessor, or (b) the presentation of written notification by Lessor, or, if Lessor has assigned its interest under the Agreement, then the assignees or subassignees of all of Lessor's interest under the Agreement or an agent on their behalf, that the Agreement has been terminated. Upon termination as described in clause (a) of this paragraph, any amount remaining in the Project Fund will be used to pay the Rental Payments unless Lessee determines that payment of such amount be made in such other manner determined by Lessee that, in the opinion of Gilmore & Bell, P.C. or other nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. Upon termination as described in clause (b) of this paragraph, any amount remaining in the Project Fund will immediately be paid to Lessor or to any assignees or subassignees of Lessor's interest in this Agreement.

Section 5.02. Enjoyment of Equipment. Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Equipment during the Lease Term, and Lessee shall peaceably and quietly have and hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.

Section 5.03. Right of Inspection. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

Section 5.04. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided, however, that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under this Agreement.

Section 5.05. Maintenance of Equipment. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition. Lessor shall have no responsibility to maintain, or repair or to make improvements or additions to the Equipment.

ARTICLE VI

TITLE TO EQUIPMENT; SECURITY INTEREST

Section 6.01. Title to the Equipment. During the Lease Term, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title shall thereafter immediately and without any action by Lessee vest in Lessor, and Lessee shall immediately surrender possession of the Equipment to Lessor upon (a) any termination of this Agreement other than termination pursuant to **Section 10.01** or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee shall, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee, irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee's true and lawful attorney (and agent-in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's or such assignee's name, to endorse the name of Lessee upon any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Equipment in order to vest title in Lessor and transfer possession to Lessor.

Section 6.02. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement, Lessor retains a security interest constituting a first lien on (i) the Equipment and on all additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom, and (ii) amounts deposited in the Project Fund. Lessee agrees to execute such additional documents in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest. Lessee agrees that financing statements may be filed with respect to the security interest.

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

To secure the payment of all of the Lessee's obligations under this Agreement, to the extent permitted by law, the Lessor retains a security interest in the Equipment and on all additions, attachments, accessions thereto, substitutions therefor and on any proceeds therefrom. The Lessee shall execute all additional documents (including financing statements, affidavits, notices and similar instruments) and take any action necessary or appropriate to establish and maintain such security interest. The Lessee agrees that financing statements with respect to the Equipment may be filed.

ARTICLE VII

ADDITIONAL COVENANTS

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all property taxes. If the use, possession or acquisition of the Equipment is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments that accrue during the Lease Term.

Section 7.02. Insurance. At its own expense, Lessee shall maintain (a) casualty insurance insuring the Equipment to the extent insurable against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then-in-use in the State and any other risks reasonably required by Lessor in an amount at least equal to the remaining principal portions of Rental Payments through the Maximum Lease Term of the Equipment, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor but in no event more than the sovereign immunity provisions needs to be included, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). All insurance proceeds from casualty losses shall be payable as hereinafter provided. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

All such casualty and liability insurance shall be with insurers that are acceptable to Lessor, shall name Lessee and Lessor as insureds and shall contain a provision to the effect that such insurance shall not be canceled or modified materially without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance shall contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

Section 7.03. Advances. In the event Lessee shall fail to maintain the insurance required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, Lessor may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same and make such repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor shall become additional rent for the then-current Original Term or Renewal Term. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 10% per annum or the maximum permitted by law, whichever is less. In accordance with Section 427.120 of the Revised Statutes of Missouri, unless Lessee provides evidence of the insurance coverage required by this Agreement, Lessor may purchase insurance at Lessee's expense to protect Lessor's interests hereunder. This insurance may, but need not, protect Lessee's interests. The coverage that Lessor may purchase may not pay any claim that Lessee may make or any claim that may be made against Lessee in connection with the Equipment. Lessee may later cancel any insurance purchased by Lessor, but only after providing evidence that Lessee has obtained insurance as required by this Agreement. If Lessor purchases insurance for the Equipment, Lessee will be responsible for the costs of that insurance, including the insurance premium, interest and other reasonable charges directly related to the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added as additional rent. The costs of the insurance may be more than the cost of insurance Lessee may be able to obtain on its own.

Section 7.04. Financial Information. Lessee will annually provide Lessor with current financial statements, budgets, proofs of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Lessee to continue this Agreement as may be requested by Lessor. Lessee shall deliver to Lessor a copy of its annual audit within 270 days after the end of each Fiscal Year, commencing with the fiscal year ending March 31, 2024.

Section 7.05. Release and Indemnification. To the extent permitted by law and without waiving any rights of sovereign immunity, Lessee shall indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement, (b) the ownership of any item of the Equipment, (c) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 7.06. Notification of Event Affecting Lessor's Interest. Lessee will provide Lessor notification, within two (2) business days, of any event or action that may impact the Lessor's interest in the Equipment.

ARTICLE VIII

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 8.01. Risk of Loss. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Equipment from any cause whatsoever. No such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

Section 8.02. 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 or the interest of Lessee or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment, unless Lessee shall have exercised its option to purchase the Equipment pursuant to **Section 10.01(b)**. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

Section 8.03. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in **Section 8.01**, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Lessor's interest in the Equipment pursuant to **Section 10.01(b)**. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any

reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under **Article IV**.

ARTICLE IX

WARRANTIES

Section 9.01. Disclaimer of Warranties. *LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE EQUIPMENT OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OR MAINTENANCE OF ANY EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT.*

Section 9.02. Contractors' Warranties. Lessee may have rights under the contract(s) evidencing the purchase and/or installation of the Equipment; Lessee is advised to contact the Contractors for a description of any such rights. Lessor hereby assigns to Lessee during the Lease Term all warranties running from Contractors to Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Equipment that Lessor may have against the Contractors. Lessee's sole remedy for the breach of any such warranty, indemnification or representation shall be against the Contractors, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely 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 Contractors.

ARTICLE X

OPTION TO PURCHASE

Section 10.01. Purchase Option. Lessee shall have the option to purchase the Equipment, upon giving written notice to Lessor at least 20 days before the date of purchase, at the following times and upon the following terms:

- (a) On the final Rental Payment Date of the Maximum Lease Term, upon payment in full of the Rental Payments and any other amounts then due hereunder; or
- (b) At any time upon payment in full of the Rental Payments and any other amounts then due hereunder at the respective prepayment prices set out below, plus any accrued interest thereon:

<u>Year</u>	<u>Redemption Prices</u>
Prior to September 1, 2025	103%
On or after September 1, 2025 but prior to September 1, 2026	102%
On or after September 1, 2026 but prior to September 1, 2027	101%
On or after September 1, 2028	100%

Upon the exercise of the option to purchase set forth above, including payment of the applicable amounts described above (the "Purchase Price"), title to the Equipment shall be vested in Lessee, free and clear of any claim by or through Lessor.

Section 10.02. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder during the Original Term and each Renewal Term represent the fair value of the use of the Equipment and that the amount required to exercise Lessee's option to purchase the Equipment pursuant to **Section 10.01** represents, as of the end of the Maximum Term, the fair purchase price of the Equipment. Lessee hereby determines that the Rental Payments do not exceed a reasonable amount so as to place Lessee under a practical economic compulsion to renew this Agreement. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Equipment, (b) the uses and purposes for which the Equipment will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Equipment and the use of the Equipment pursuant to the terms and provisions of this Agreement, and (d) Lessee's option to purchase the Equipment. Lessee hereby determines and declares that the acquisition and installation of the Equipment and the leasing of the Equipment pursuant to this Agreement will result in equipment of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Equipment were performed by Lessee other than pursuant to this Agreement. Lessee hereby determines and declares that the Maximum Lease Term does not exceed the useful life of the Equipment.

ARTICLE XI

ASSIGNMENT AND SUBLEASING

Section 11.01. Assignment by Lessor. Lessor's interest in, to and under this Agreement and the Equipment may be assigned and reassigned in whole or in part to one or more assignees by Lessor without the necessity of obtaining the consent of Lessee; provided that (a) any assignment shall not be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interest in the Equipment and in this Agreement and agrees to the filing of financing statements with respect to the Equipment and this Agreement. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor.

Section 11.02. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and in Equipment may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Equipment if Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Equipment shall be subject to this Agreement and the rights of the Lessor in, to and under this Agreement and the Equipment.

ARTICLE XII

EVENTS OF DEFAULT AND REMEDIES

Section 12.01. Events of Default Defined. Subject to the provisions of **Section 3.05**, any of the following shall be "Events of Default" under this Agreement:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein, provided that Lessor has first provided Lessee of timely notice of the amount and due date of such Rental Payment as described in **Section 4.01**;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in **Section 12.01(a)**, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Any provision of this Agreement shall at any time for any reason cease to be valid and binding on Lessee, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee shall deny that it has any further liability or obligation under this Agreement;

(e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(f) 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 Lessee

or of all or a substantial part of the assets of Lessee, 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 30 consecutive days.

Section 12.02. Remedies on Default. Whenever any Event of Default exists, 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 Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating this Agreement, Lessor may enter the premises where the Equipment is located and retake possession of the Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment and the proceeds in the Project Fund to the possession of Lessor at a place specified by Lessor, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all brokerage, auctioneers' and attorneys' fees); and

(c) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment.

In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

Section 12.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to 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 Agreement or 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 and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved 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.

ARTICLE XIII

MISCELLANEOUS

Section 13.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee at its address as it appears on the registration books maintained by Lessee.

Section 13.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.04. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 13.05. Amendments. This Agreement may be amended by Lessor and Lessee.

Section 13.06. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 13.08. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 13.09. Electronic Transaction. The transaction described herein may be conducted and related documents may be received, delivered or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 13.10. Anti-Discrimination Against Israel. Pursuant to Section 34.600 of the Revised Statutes of Missouri, as amended, Lessor hereby certifies to Lessee that it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel, companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or persons or entities doing business in the State of Israel.

[Remainder of page intentionally left blank]

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

PONY EXPRESS BANK

By: _____
Title:

Address: 215 N 291 Highway
 Liberty, MO 64068

CITY OF KEARNEY, MISSOURI

[SEAL]

By: _____

Title: Mayor

Address: 100 E. Washington
Kearney, MO 64060

ATTEST:

Title: City Clerk

EXHIBIT A TO EQUIPMENT LEASE PURCHASE AGREEMENT

EQUIPMENT SCHEDULE

The Equipment will be used for [improvements to the City's water system, including a new elevated water tank and chloramine conversion equipment.]

EXHIBIT B TO EQUIPMENT LEASE PURCHASE AGREEMENT

PAYMENT SCHEDULE

Rental Payments shall be made in accordance with Section 4.01 and this Payment Schedule.

<u>Payment Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Interest Amount</u>	<u>Total Payment</u>	<u>Prepayment Price</u>
09/01/2024	\$40,000	5.500%	\$68,123.61	\$108,123.61	\$4,860,000
03/01/2025			133,650.00	133,650.00	4,860,000
09/01/2025	235,000	5.500	133,650.00	368,650.00	4,625,000
03/01/2026			127,187.50	127,187.50	4,625,000
09/01/2026	250,000	5.500	127,187.50	377,187.50	4,375,000
03/01/2027			120,312.50	120,312.50	4,375,000
09/01/2027	265,000	5.500	120,312.50	385,312.50	4,110,000
03/01/2028			113,025.00	113,025.00	4,110,000
09/01/2028	280,000	5.500	113,025.00	393,025.00	3,830,000
03/01/2029			105,325.00	105,325.00	3,830,000
09/01/2029	295,000	5.500	105,325.00	400,325.00	3,535,000
03/01/2030			97,212.50	97,212.50	3,535,000
09/01/2030	310,000	5.500	97,212.50	407,212.50	3,225,000
03/01/2031			88,687.50	88,687.50	3,225,000
09/01/2031	330,000	5.500	88,687.50	418,687.50	2,895,000
03/01/2032			79,612.50	79,612.50	2,895,000
09/01/2032	350,000	5.500	79,612.50	429,612.50	2,545,000
03/01/2033			69,987.50	69,987.50	2,545,000
09/01/2033	365,000	5.500	69,987.50	434,987.50	2,180,000
03/01/2034			59,950.00	59,950.00	2,180,000
09/01/2034	390,000	5.500	59,950.00	449,950.00	1,790,000
03/01/2035			49,225.00	49,225.00	1,790,000
09/01/2035	410,000	5.500	49,225.00	459,225.00	1,380,000
03/01/2036			37,950.00	37,950.00	1,380,000
09/01/2036	435,000	5.500	37,950.00	472,950.00	945,000
03/01/2037			25,987.50	25,987.50	945,000
09/01/2037	460,000	5.500	25,987.50	485,987.50	485,000
03/01/2038			13,337.50	13,337.50	485,000
09/01/2038	485,000	5.500	13,337.50	498,337.50	1.00

Financial Advisor:
Todd Goffoy
Piper Sandler & Co.
11635 Rosewood St.
Leawood, Kansas 66211
(913) 345-3300

\$4,921,000
City of Kearney, Missouri
Tax-Exempt Lease-Purchase
Bank Qualified
Series 2024

Bank:	Pony Express Bank	Central Trust Bank Option 1	Central Trust Bank Option 2	Central Trust Bank Option 3
Rate Type:	Fixed	5-Year Adjustable	8-Year Adjustable	10-Year Adjustable
Rate:	5.50%	4.83%	5.14%	5.35%
Reprice Rate:	N/A	5-Year UST + 0.35%	7-Year UST + 0.35%	5-Year UST + 0.35%
Reprice Frequency:	N/A	Every 5 Years	Once after 8 Years	Once after 10 Years
Average Annual Debt Service*:	\$506,437.43	\$486,730.18	\$495,848.46	\$502,025.36
Annual Difference between Pony Express Bid*:	N/A	\$19,707.25	\$10,588.97	\$4,412.07
Breakeven Rate*:	N/A	6.08%	6.43%	6.36%
Origination Fees:	\$0	\$2,000	\$2,000	\$2,000
Legal Fees:	\$1,000	\$0	\$0	\$0
Total Fees:	\$1,000	\$2,000	\$2,000	\$2,000

*Based on the Amortization in the Request for Terms

Financial Advisor: Todd Goffoy Piper Sandler & Co. 11635 Rosewood St. Leawood, Kansas 66211 (913) 345-3300	\$4,921,000 City of Kearney, Missouri Tax-Exempt Lease-Purchase Bank Qualified Series 2024	Page 2 of 2
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Bank:	Central Trust Bank Option 4	Southern Bank	
Rate Type:	Fixed	10-Year Adjustable	
Rate:	5.80%	6.00%	
Reprice Rate:	N/A	TBD	
Reprice Frequency:	N/A	Once after 10 Years	
Average Annual Debt Service*:	\$515,261.57	\$521,144.33	
Difference between Pony Express Bid*:	(\$8,824.14)	(\$14,706.90)	
Breakeven Rate*:	N/A	N/A	
Origination Fees:	\$2,000	\$500	
Legal Fees:	\$0	\$8,000	
Total Fees:	\$2,000	\$8,500	

*Based on the Amortization in the Request for Terms

