

Municipal/Governmental Lease Purchase Agreement

LEASE NUMBER

DEALER ACCT. NO.
17-7713

LEASE PURCHASE AGREEMENT ("this Lease") entered into as of the 01 day of August, 2005, between Deere Credit, Inc. ("Lessor") and the City of Lincoln, Water Division a municipal corporation or political subdivision of the State of Nebraska ("Lessee").

1. **TERMS & PAYMENTS** - Lessor leases to Lessee, and Lessee leases from Lessor, the equipment described in one or more Exhibits, attached to and made a part of this lease. The term "Equipment" as used herein shall refer collectively to the equipment described in all Exhibits attached to this Lease. Lessee agrees to pay Lease Payments in advance on the dates shown on various Exhibits which may be attached to this Lease and executed by Lessor and Lessee from time to time (collectively referred to as "Payment Schedule") with a portion of each Lease Payment to represent payment of interest and a portion to represent payment of principal as shown on the Payment Schedule.
2. **PROPERTY TAXES, LICENSE FEES, ETC.** - In addition to the Lease Payments to be made pursuant to Section 1, Lessee agrees to pay, and to indemnify and hold Lessor harmless from all license, sales, use, personal property or other taxes, penalties, fines, interest or charges of any kind that may be assessed or charged against the Equipment or use thereof.
3. **LESSEE'S COVENANTS & REPRESENTATIONS** - Lessee represents and warrants as follows for the benefit of Lessor (all such representations and warranties being continuing), and is delivering an opinion of its counsel dated the date hereof, in form and substance satisfactory to Lessor, confirming that Lessee has the authority to enter into this Lease and make the following Representations and warranties:
- 3.1 Lessee is a public body corporate and politic, or political subdivision thereof, legally existing under the laws of the State of Nebraska.
- 3.2 This lease has been duly authorized, executed and delivered to Lessee;
- 3.3 This lease is a legal, valid and binding obligation of lessee, enforceable in accordance with its terms.
- Lessee further represents and warrants as follows:
- 3.4 Lessee will do all things lawfully within its power to obtain and maintain funds from which the Lessee payments may be made, including making provision for such payments to the extent necessary in each biannual or annual budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available reviews and appeals in the event such portion of the budget is not approved. To the knowledge of Lessee, there are no circumstances affecting the Lessee that could reasonably be expected to alter its foreseeable need for the Equipment or adversely affect its ability or willingness to budget funds for the payment of sums due hereafter.
- 3.5 There are no actions, lawsuits or proceedings pending or, to the knowledge of Lessee, threatened against or affecting Lessee in any court or before any governmental commission, board or authority which, if determined adversely against Lessee, would have a material adverse effect on the ability of Lessee to perform its obligation under this lease.
- 3.6 This lease will not constitute a "private activity bond" within the meaning of Section 141 of the Internal Revenue Code in that Lessee will not sublease the Equipment, nor will Lessee enter into any management, output, or similar types of contracts where more than 10 percent of the proceeds of the lease-purchase agreement will be used for one or more private business uses or where the payment of the principal of, or interest on, more than 10 percent of the proceeds of this Lease will be made, either directly or indirectly, by payments, property, or monies borrowed by private business users. (The term "private business use" means any direct or indirect use in a trade or business carried on by an individual or entity other than a state or local government unit, including use by the Federal Government or any agency thereof. A special exemption is provided for "exempt facility bonds" and "501(c) (3) [tax-exempt organization] bonds")
- 3.7 This Lease will be used for government or 501(c) (3) purposes and, thus, will not constitute an investment. This Lease was not created for the purpose of arbitrage. Nevertheless, should a "Certificate of Arbitrage" be required, this Section is deemed to be such a Certificate, executed and delivered in accordance with the provisions of Section 1.103-13, 1.103-14 and 1.103-15 of the Income Tax Regulations. And by the signature of the Lessee below, the Lessee certifies that the Lessee has not been notified by the Internal Revenue Service of any listing or proposed listing of the Lessee as an issuer whose arbitrage certificate may be relied upon.
- 3.8 Lessee will report this Lease to the Internal Revenue Service by filing form 8038-G or 8038-GC, whichever is appropriate. Lessee understands that failure to do so will cause the Lease to lose its tax-exempt status. Therefore, Lessee agrees that if it fails to file the appropriate form, the interest rate set forth in the Payment Schedule will be adjusted to an equivalent taxable interest rate
4. **NON-APPROPRIATION OF FUNDS**
- 4.1 In the event funds are not budgeted and appropriated in any fiscal year for Lease Payments due under this Lease for the then current or succeeding fiscal year, this Lease shall impose no obligation on the Lessee as to such current or succeeding fiscal year and shall become null and void except as to the Lease Payments herein agreed upon for which funds shall have been appropriated and budgeted, and no right of action or damage shall accrue to the benefit of Lessor, its successors or assigns, for any further payments.
- 4.2 If the provisions of Section 4.1 are utilized by Lessee, Lessee agrees To immediately notify the Lessor or his assignee of the Lease if funds Are not budgeted and appropriated, to peaceably surrender possession Of the Equipment to Lessor or its assignee and that it will not purchase, lease or rent equipment performing functions similar to those performed by the Equipment for a period of (90) days from the date of surrender of the Equipment.
5. **EARLY TERMINATION / PREPAYMENT** - In the event Lessee should desire to terminate this Lease in its entirety or for any piece of equipment described in any Exhibit attached hereto, or prepay its obligation on any Lease Payment due date prior to the end of the Lease Term, for reasons other than non-appropriation of funds as described in Section 4, the following options are available:
- 5.1 Lessee may request Lessor to sell the Equipment for a fair market price, and Lessee shall pay Lessor the Termination Value shown on the Payment Schedule less the net proceeds received from the sale of the Equipment.
- 5.2 Lessee, having complied with the terms and conditions of this Lease, shall have the option to prepay its obligation by paying the Termination Value shown on the Payment Schedule.
6. **NEW EQUIPMENT WARRANTY** - Lessee acknowledges and agrees (a) that the Equipment was selected by Lessee; (b) that Lessee is satisfied that the same is suitable for its purpose; (c) that Lessor is not a manufacturer thereof nor a dealer in property of such kind; and (d) THAT LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION OR WARRANTY OR COVENANT WITH RESPECT TO THE MERCHANTABILITY, AND CONDITION, QUALITY, DESCRIPTION, DURABILITY, OR SUITABILITY OF ANY SUCH UNIT IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE. Lessor hereby assigns to Lessee, to The extent assignable, any warranties, covenants, and representations of the Vendor with respect to the Equipment, provided that any action taken by Lessee by reason thereof shall be at the sole expense of the Lessee and shall be consistent with Lessee's obligations pursuant to the terms of this Agreement.
7. **DEFAULT & LESSOR'S REMEDIES**
- 7.1 The occurrence of one or more of the following events shall constitute an Event of Default, whether occurring voluntarily, by operation of law or pursuant to any order of any court or governmental agency:
- 7.1.1 Failure by Lessee to pay any Lease Payment within thirty (30) days of the time specified;
- 7.1.2 Lessee's failure to comply with any other covenant, condition or agreement of Lessee hereunder for a period of thirty (30) days after notice thereof;
- 7.1.3 Lessee shall make, permit or suffer any unauthorized assignment, transfer or other disposition of this Lease, or any interest herein or of any item(s) of the Equipment or interest therein;
- 7.2 Upon the occurrence of any Event of Default specified herein, Lessor may exercise any or all of the following remedies:
- 7.2.1 Enforce this Lease by appropriate action to collect amounts due or to become due hereunder, by acceleration or otherwise.

ADDITIONAL PROVISIONS CONCERNING RIGHTS OF THE PARTIES ON THE REVERSE SIDE ARE PART OF THIS AGREEMENT

LESSOR: DEERE CREDIT, INC

By: Thomas R. DowdTitle Manager, Lease AdminDate accepted 6/30/05

LESSEE: CITY OF LINCOLN, WATER DIVISION

By: Print Name/Title: Date:

ADDITIONAL PROVISIONS CONCERNING RIGHTS OF THE PARTIES

- 7.2.2 Terminate this Agreement and repossess the Equipment, in which event Lessee shall be liable for any amounts payable hereunder through the date of such termination and all costs and expenses (including, but not limited to reasonable attorney's fees) incurred by Lessor in connection therewith.
- 7.2.3 Sell the Equipment at public or private sale or enter into a lease or rental of the Equipment. In the event the proceeds of such sale, lease or rental, less the costs of repossession (including reasonable attorney's fees and the costs of sale) and less any past due Lease Payments or interest owing by Lessee (the "disposition credit"), do not equal the applicable Termination Value on the current Lease Payment date, then Lessee shall be liable for the difference between said disposition credit and such Termination Value.
- 7.2.4 Pursue and exercise any other remedy available at law or in equity, in which event Lessee shall be liable for any and all costs and expenses (including but not limited to reasonable attorney's fees) incurred by Lessor in connection therewith.
8. **INTEREST ON DEFAULT-** If Lessee fails to pay any Lease Payment(s) specified in Section 1 within ten (10) days after the date due, Lessee shall pay Lessor interest on such delinquent Lease Payment(s) from the due date until paid at the lower of twelve percent (12%) per annum or the highest rate permitted by law.
9. **ASSIGNMENT & SUBLEASE**
LESSEE SHALL NOT SELL, ASSIGN, TRANSFER, PLEDGE OR HYPOTHECATE THIS LEASE, THE EQUIPMENT OR ANY PART THEREOF, OR ANY INTEREST THEREIN, OR PERMIT THE EQUIPMENT OR ANY PART THEREOF TO BE USED BY ANYONE OTHER THAN LESSEE OR ITS EMPLOYEES. EXCEPT TO ITS CORPORATE AFFILIATES, LESSOR SHALL NOT SELL, ASSIGN, TRANSFER, PLEDGE OR HYPOTHECATE THIS LEASE TO ANYONE.
10. **TITLE-** Title to the Equipment shall pass to Lessee immediately upon acceptance of the Equipment by Lessee, subject to Lessor's security interest. Upon termination of this Lease under Section 4, Section 5.1 or Section 7, title to the Equipment shall revert to Lessor.
11. **SECURITY INTEREST-** As security for Lessee's covenants and obligations under this Lease, Lessee grants to Lessor and its assignee a security interest in the Equipment and all attachments, additions, accessions and substitutions to or for the Equipment. Lessee authorizes Lessor to file a financing statement in order to perfect Lessor's interest in the Equipment and such statements or their filing shall not be deemed to negate the construction of this Lease as a lease. Lessee agrees to execute any and all additional instruments necessary to perfect Lessor's interest in this Lease, the payments due hereunder and the Equipment.
12. **LOSS OR DAMAGE TO EQUIPMENT-** All risk of loss or damage to the Equipment is assumed by Lessee until it is returned to Lessor. In the event of total loss of the Equipment, Lessee shall pay Lessor the Termination Value shown on the Payment Schedule for the current Lease Payment date, less proceeds of insurance and salvage value of the Equipment.
13. **INSURANCE**
- 13.1 Lessee, at its own expense, will either (a) carry public liability insurance having an endorsement for contractual liability on the Equipment with minimum liability limits in the amounts of \$1,000,000 per occurrence for bodily injury, including death, and in the minimum amount of \$250,000 per occurrence for property damage, or (b) indemnify and hold Lessor harmless from and against any and all losses, claims by or against us, liabilities, demands and expenses whatsoever, including reasonable attorneys' fees and costs arising out of or in connection with (i) any death or personal injury caused by the Equipment, and/or (ii) any property damage caused by the Equipment.
- 13.2 Lessee, at its own expense, shall either (a) self-insure against all risks of physical loss or damage to the Equipment for its actual cash value, or (b) keep the Equipment insured against all risk of physical loss or damage for no less than its actual cash value. Such insurance shall include a loss payable clause made out in favor of Lessor.
- 13.3 Lessee shall deliver to Lessor certificates or other evidence satisfactory to Lessor that insurance is maintained as required under Section 13.1 and 13.2. If Lessee fails to deliver such certificates or other evidence of insurance to Lessor upon request, Lessor shall assume that Lessee has elected to self-insure against such risks and indemnify Lessor pursuant to the provisions of Section 13.1 and 13.4.
- 13.4 Lessee agrees to notify Lessor of any event requiring indemnification promptly following the receipt of notice of the commencement of any action or proceeding. Lessee may (but is not obligated) to assume the defense or settlement of any such action or proceeding or to participate in any negotiations to settle or eliminate any claim with counsel of Lessee's choice; provided that such counsel is reasonably satisfactory to Lessor. Upon acceptance of tender, Lessor will cooperate with Lessee with respect to such defense and settlement. If Lessee elects to assume the defense or settlement of any such action or proceeding, Lessor (and Lessor's counsel) may continue to participate at Lessor's own expense in any such action or proceeding. If Lessee does not elect in writing within ten (10) business days of notification to assume the defense, Lessor may engage counsel to defend, settle or otherwise dispose of such action or proceeding, and the reasonable fees of such counsel shall constitute expenses, which are covered by Section 13.1. Lessee agrees to not settle, compromise, decline to appeal or otherwise dispose of any action, proceeding or claim with respect to which consent shall not be unreasonably withheld or delayed. All of the foregoing indemnities and obligations shall survive the expiration or termination of this Lease and shall be payable by Lessee within thirty (30) days of receipt of Lessor's invoice.

To Record Calls: I consent and agree that my phone conversations with you may be monitored and recorded to further improve your customer service.



Lessee's Initials