

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MAY 1, 2012 AGENDA**

Subject:	Type:	Submitted By:
GOLF CAR LEASE	◆ RESOLUTION ORDINANCE RECEIVE/FILE	SCOTT STOPAK RECREATION DIRECTOR

SYNOPSIS

A resolution has been prepared to approve a lease-to-own agreement between the City and Exchange Bank for five (5) 2012 Club Car Electric Golf Cars in an amount not to exceed \$17,520.00 over 42 months.

FISCAL IMPACT

The FY 11/12 Golf Fund budget includes \$4,380.00 for the proposed lease agreement. In future fiscal years, funds will need to be budgeted for the remaining lease-to-own payments.

RECOMMENDATION

Approval.

BACKGROUND

The new cars will be replacing five (5) 2004 Club Car Electric Golf Cars that will be traded in. There are nineteen (19) cars in our fleet.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE LEASE-TO-OWN OF FIVE ELECTRIC CLUB CAR GOLF CARS FOR LA VISTA FALLS GOLF COURSE FROM EXCHANGE BANK, KEARNEY, NEBRASKA, IN AN AMOUNT NOT TO EXCEED \$17,520.00 OVER 42 MONTHS.

WHEREAS, the City Council has deemed that a need exists to purchase additional golf cars for La Vista Falls Golf Course; and

WHEREAS, the City did appropriate funds in the FY 11/12 Golf Fund budget for said lease-to-own; and

WHEREAS, the Finance Director and Golf Course Manager have obtained suitable financing for this lease through Exchange Bank, Kearney, Nebraska; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secure Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby authorize the lease-to-own agreement for nine Electric Club Car Golf Cars for La Vista Falls Golf Course from Exchange Bank, Kearney, Nebraska, in an amount not to exceed \$17,520.00 and in form and content satisfactory to the City Administrator.

PASSED AND APPROVED THIS 1ST DAY OF MAY, 2012.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pam Buethe, CMC
City Clerk

Commercial Lease

Lessor: Exchange Bank
3110 Second Avenue
Kearney, NE 68847
(308) 237-7711
Fax: (308) 237-0178

Lessee: City of La Vista
Address: 8116 Parkview Blvd
La Vista, NE 68128
Phone : 402-331-4343
Fax : 402-331-4375

Lessee (which means and includes the undersigned Lessee and any co-Lessee(s) jointly and severally) hereby leases from the Lessor the equipment described below (hereinafter referred to as Equipment) for a term of **42** months from the effective date of this Lease, subject to the terms and conditions set forth below, delivery and acceptance of said Equipment being acknowledged, Lessee agrees Lessor owns said equipment and agrees to execute any financing statement required to perfect and protect the security interest of Lessor until all obligations of the Lessee shall have been fulfilled.

Equipment:

<u>Quantity</u>	<u>Description</u>	<u>Model</u>	<u>Serial Number</u>
5	2012 Club Car 48v Electric Golf Cars (Beige)		*TBD*

Rental Payments : For value received, Lessee agrees to pay to the Lessor or its Assignee, a total rental payment in the sum of **\$17,520.00**, in U.S. dollars, according to the payment schedule as set forth below. Lessee agrees to pay any personal property, sales or use taxes that may be applicable. **Seasonal** payments due as follows:

24 Seasonal payments of \$730.00 each over a 42 month period, with payments due on the fifteenth day of months, (April, May, June, July, August and September). In years of (2012, 2013, 2014, and 2015).

Lessee shall have the right but not the obligation to purchase the equipment from Lessor for a buyout of \$1.00 at the end of lease term. You do not have the option to purchase upon default of early termination. In the event of default, the Lessee understands its responsibility to return all above stated equipment and its accessions, at its own cost, to the Lessor.

Insurance

Liability insurance for bodily injury and property damage is the responsibility of the Lessee. Physical damage and liability insurance is required by the Lessor in connection with this lease. Lessor reserves the right to reject any insurer offered by the Lessee for any reasonable cause. The Lessee is required to furnish Lessor insurance coverage for liability purposes in the minimum amount of **\$500,000** for a combined single limit for bodily injury and property damage. The Lessee agrees to have Lessor named as an additional insured with respect to liability coverage. Physical damage insurance in the amount of the cash value of the Equipment is to be provided by the Lessee. A minimum of thirty days written notice of cancellations is to be given to Lessor. Violation of the above insurance requirements may be cause for cancellation of the Lease.

Restricted Use

Lessee shall keep the equipment in the county of its residence, or in the counties in which it normally operates unless Lessor, in writing, permits its removal.

Warranty

Lessor makes no representations or warranties with respect to the Equipment in this Lease. Any warranties provided by Lessor on the Equipment shall be given to Lessee under separate agreement, the receipt whereof is hereby acknowledged by Lessee. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED BY LESSOR.

Delinquency Charges & Late Fees

Lessee hereby agrees to pay a late fee of the greater of \$10.00 or interest on the late payment amount computed at a 16 % rate on all payments past due more than 10 days.

Additional Terms and Conditions

The additional terms and conditions set forth in this Agreement are a part of this Lease and are incorporated herein by this reference.

Lessee Responsibility :

- a) Lessee assumes all risks, and will pay all costs and expenses of any character, arising from the use, possession, or maintenance of said equipment.
- b) Lessee shall be responsible for and pay the cost of all necessary repairs, maintenance, and replacements, and Lessor shall not be obligated to, nor called upon by Lessee to furnish, to make or pay for any repairs to or upon the Equipment (except under the provisions of the manufacturers warranty), and all replacement parts, additions, and accessories incorporated in or affixed to any of the Equipment shall become a part thereof, and title thereto shall vest in the Lessor.
- c) If any Equipment hereby leased is destroyed, lost, or stolen, Lessee shall not be relieved of its obligation to pay the full rental herein provided for the full term of this Lease. If Equipment is damaged, there shall be no reduction in the amount payable hereunder, and Lessee shall immediately have such damage repaired at its cost and expense, in which event Lessor, upon completion of such repairs, shall pay to Lessee such sum as shall be paid to Lessor from insurance on account of such damage.
- d) Lessee shall keep the Equipment free of all liens, taxes including personal property taxes, encumbrances and seizure or levy; shall not use same illegally, shall not damage, abuse, misuse, abandon or lose said Equipment; shall not part with possession thereof, whether voluntarily or involuntarily or transfer any interest therein; shall keep said Equipment insured in such amounts and with such insurer as may be acceptable to Lessor with any loss payable to Lessor as its interest in the Equipment may appear.

Lessee Default : Time is of the essence of this Lease and if Lessee fails to comply with any terms and conditions hereof or defaults in the payment of any payment hereunder or under any renewal or renewals hereof, or in the payment of interest or defaults in the payment of any payment due under any other indebtedness or contract held by the Lessor or Assignee, or if proceedings are instituted against Lessee under any bankruptcy or insolvency law or Lessee makes an assignment for the benefit of creditors or if for any reason the Lessor deems itself insecure, and so declares, all payments heretofore made by the Lessee shall be retained by the Lessor and all indebtedness hereunder shall become immediately due and payable, with or without notice, together with all expenses of collection by suit or otherwise, and Lessor may, without notice or demand, take possession of the Equipment set forth and described in this Lease or any additions to, replacements of, or any proceeds from said Equipment or may render the property unusable or Lessor may require Lessee to assemble the Equipment and make it available at a place designated by Lessor. Lessor may sell the retaken Equipment at public or private Sale in accordance with Uniform Commercial Code or applicable state or provincial law. After deducting reasonable expenses for retaking, repairing, holding, preparing for sale, other selling expenses including attorney fees and legal expenses, the remaining proceeds of Sale shall be credited upon the amount of indebtedness remaining unpaid hereunder, and Lessee agrees to pay any deficiency upon demand by Lessor, any surplus however, shall be paid to Lessee. Said retaking or repossession shall not be deemed a rescission of the Lease. Lessor may exercise any other rights and remedies provided by applicable law.

Failure to Return as Extension of Lease : If upon expiration of the Lease term the Lessee does not return the Equipment to the Lessor, at its place of business or other designated place, the Lessee shall pay a pro rata amount of the rental stated herein until the Equipment is returned. The unauthorized holding of the Equipment shall not be considered as an extension of the Lease term.

Expiration of Lease : This Lease shall expire on the date shown herein unless otherwise renewed or extended by the parties to this Lease. The time of expiration shall be deemed to be 12:01 AM on the date referenced herein.

Assignment by Lessee : Lessee shall not assign, transfer, sublet or lease all or any portion of the Equipment or its rights under this Lease, and will not pledge, mortgage or otherwise encumber the Equipment, without the prior written consent of Lessor.

Right of Lessor to Pay : If Lessee fails or refuses to pay any charges, costs or expenses required hereunder, including the cost or premium for insurance coverage, Lessor may at its option, pay the same and thereafter, Lessee shall be obligated to Lessor for the amount thereof, and shall pay the same to Lessor, immediately upon demand.

Indemnification of Lessor : Lessee hereby assumes liability for and agrees to indemnify and hold harmless, Lessor and its employees, agents and assignees, from any and all liabilities, obligations, losses, damages, injuries, claims, penalties, actions, suits, costs, demands and expenses, including legal expenses and attorney's fees of every kind and nature, related to or arising out of or in connection with this Lease or the enforcement thereof, or related to or arising out of the use, maintenance, condition or operation of the Equipment during the term of this Lease. Said assumption and indemnification shall continue in full force and effect not withstanding the termination of this Lease whether by expiration of the Lease term, operation of law or otherwise.

Right of Inspection : Lessor shall have the right to inspect the Equipment during the term of this Lease at any reasonable time and upon reasonable notice to Lessee.

Intent : This Agreement is, and is intended to be, a Lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in the Equipment or its proceeds except as Lessee.

Assignment by Lessor : Lessor may assign this Lease and in the event of such assignment, Lessee shall perform all promises herein contained to such Assignee as the owner hereof. After Lessee received notice of assignment hereof, Lessee shall make all payments hereunder direct to the holder hereof and Lessor shall not be the agent of the holder for transmission of payments or otherwise.

Waiver, Modification, Etc. :

- a) No waivers or modifications hereof shall be valid unless written upon or attached to this Lease. Waiver or condonation of any breach or default hereunder shall not constitute a waiver of any other or subsequent breach or default. Payments received by Lessor are to be applied first to delinquent interest or fees and then to principal.
- b) The remedies provided for herein are not exclusive and any action to enforce payment shall not waive or affect any of the holder's rights to have recourse to the property.
- c) Any provision of this Lease prohibited by the laws of any state, the United States, any province of Canada shall be ineffective to the extent of such prohibition without invalidating the remaining portion of the Lease.
- d) Each maker, endorser, guarantor and surety hereon severally waives presentment, demand, protest, and notice of non-payment and all defenses of want of diligence in collection and bringing suit. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assignees.
- e) Lessee authorizes Lessor to insert the identification and/or model numbers of the Equipment set forth in this Lease for the purposes of identifying said Equipment. The Lessor may correct patent errors herein.

Possession Clause : The Lessee further agrees that upon default or noncompliance with any term or provision of this Agreement that the Lessor shall be entitled to the immediate physical possession of the leased item(s), without notice to Lessee, and by its signature hereon expressly authorizes the Lessor to enter the property or premises of the Lessee to obtain such possession. The Lessee agrees to hold the Lessor harmless from any civil liability which may arise from the Lessor's efforts at repossession of the

leased item(s) and to pay any and all costs or expenses incurred by the Lessor when retaking possession of such items.

Additional Provisions : Any expressed warranties and representations apart from the rental terms set forth are the sole responsibility of the Manufacturer's or the Distributor and are not warranties or representations of the Lessor.

Neither party admits or alleges that this lease is a secured transaction. Both parties intend that it shall be treated and construed as a true lease. But in case a court of competent jurisdiction ever determines that this lease is not a "true lease", then the parties agree that the leased goods shall be and are pledged by the lessee to the lessor as security for the promises of the lessee to make the payments and complete the performance required of lessee pursuant to this lease.

Notice to Lessee

1) Caution - Do not sign this lease before you thoroughly read all terms and conditions including attached exhibits contained in this lease or if this lease contains any blank spaces even if so advised.

2) You are entitled to an exact and completely filled in copy of this lease when you sign it. Keep it to protect your legal rights.

Lessee acknowledges that a fully completed copy of this lease executed by the Lessee and Lessor has been delivered to it at the time of signing.

Dated this _____, 2012

The foregoing Lease is hereby accepted :

Exchange Bank (Lessor)

City of La Vista (Lessee)

by: _____

by: _____

Title

Title

ACCEPTANCE CERTIFICATE

This is an Acceptance Certificate (this "Certificate") dated _____, 2012 by City of La Vista ("Lessee"). This Certificate shall be made a part of the Commercial Lease Agreement #11811.

Lessee states that Lessee has received and read the Lease dated _____, 2012 and all of the schedules and attachments thereto, and understands that the goods are accepted by Lessee pursuant to said lease.

I, Doug Kindig, Mayor, certify that

1). I am a duly authorized and appointed officer, employee or agent of Lessee, and make this Certificate on behalf of Lessee.

2.) The following Items of Equipment have been (a) fully and completely delivered/installed, (b) tested by Lessee (to the extent Lessee deems appropriate in order to make this Certificate), © 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 thereto:

DESCRIPTION OF ITEMS OF EQUIPMENT:

5 – 2012 Club Car 48v Electric Golf Cars (Beige); SN's: TBD

NOTICE: By signing below I am accepting all terms of the "Equipment Lease Agreement: and understand: we, the Lessee is responsible for any personal property, sales/use tax that may be applicable or imposed upon the Lessor on this lease.

*****Lessee states that the goods described in the lease were received on _____, 2012*****

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

Witness: _____

By: _____

Title: _____

Date: _____

Date: _____