

## AGREEMENT

This **AGREEMENT** by and between **KACo Leasing Trust** located at 400 Englewood Drive, Frankfort, Kentucky, its successors, assigns and/or nominees (hereafter call "LESSOR"), and the undersigned LESSEE, the **Ohio County Fiscal Court** (hereinafter call "LESSEE").

1. DESCRIPTION OF EQUIPMENT.

LESSOR has purchased the equipment described below (hereinafter referred to as "Equipment") from the manufacturer and simultaneously LESSEE hereby leased the Equipment from the LESSOR subject to the terms and conditions set forth below:

**One Mack Truck - VIN# 1M2AX09C7HM034856**

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2. TERMS OF AGREEMENT.

The Term of this Agreement shall be Eighteen (18) months, at the interest rate of 3.25%, said lease beginning on \_\_\_\_\_ and ending on \_\_\_\_\_.

3. PAYMENT.

LESSEE agrees to pay LESSOR payments as listed on Exhibit B.

4. LESSEE'S OPTION TO PURCHASE.

LESSOR hereby grants to LESSEE the option to purchase the Equipment, provided that LESSEE gives notice to LESSOR, in writing, of his intention to exercise the option at least sixty (60) days prior to the expiration of this Agreement, and provided further that LESSEE'S right to so purchase the Equipment is conditioned on LESSEE'S complete performance of all the terms and provisions of this Agreement on its part to be performed, including full compliance with the payment as specified herein.

Should LESSEE exercise the option to purchase, 100% of the portion of each payment applied to principal paid hereunder shall be applied to the purchase price of the Equipment. On receipt of the balance of the purchase price by LESSOR, together with a sum equal to any new or applicable unpaid sales and use taxes, LESSOR will transfer title of the Equipment to LESSEE, and will deliver, on written request, written evidence of the transfer of such title.

The Purchase Price of the MACK Truck applicable to this option to purchase is the sum of **\$147,305**.

5. LOCATION OF EQUIPMENT

LESSEE shall not, without the prior written consent of LESSOR, permit the Equipment to be sold.

At the request of LESSOR, LESSEE will join LESSOR, in executing one or more Financing Statements, pursuant to the Uniform Commercial Code or other registration law applicable to the location of the Equipment and/or the LESSEE, in form satisfactory to LESSOR: LESSEE will pay the cost of filing the Financing Statement(s) in all public offices wherever filing is deemed by LESSOR to be necessary or desirable.

6. WARRANTY.

LESSOR makes no representations or warranties with respect to the Equipment set forth herein. Any warranties provided by LESSOR of the Equipment set forth herein shall be given to LESSEE under separate agreement provided by manufacturer of the Equipment, the receipt whereof is hereby acknowledged by LESSEE.

7. LOCAL GOVERNMENT RESPONSIBILITIES.

LESSEE assumes and will pay all costs and expenses of any character, arising from the use, possession, or maintenance of said Equipment.

LESSEE shall keep the Equipment free of all liens, 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.

LESSEE at its own cost and expense shall maintain property damage insurance against "all-risk of physical damage" in such amounts as LESSOR may reasonably require. Such insurance shall be in a form and with companies as LESSOR shall approve, which approval shall not be unreasonably withheld, shall name LESSOR as an additional insured and shall provide that such insurance may not be canceled or altered as to LESSOR without at least ten (10) days prior written notice to LESSOR. LESSEE shall deliver to LESSOR on or before the date on which the Equipment is delivered evidence satisfactory to LESSOR of such insurance.

8. LESSORS RIGHT OF INSPECTION.

LESSOR shall have the right at any time for the purpose of inspection.

9. NON-APPROPRIATION.

If funds are not allotted by the LESSEE for the next fiscal period sufficient to continue making payments set forth in Section "3" hereof, LESSEE may terminate this Agreement upon the expiration of the then current fiscal year. LESSEE agrees to provide LESSOR immediate notice of its intention to terminate.

10. NON-SUBSTITUTION.

The LESSEE covenants that, to the extent then permitted by law, if this Lease is terminated by reason of an Event of Nonappropriation or an Event of Default, it will not purchase, lease or rent property performing functions similar to those performed by the Equipment or any portion thereof or permit functions similar to those performed through the use of the Equipment or any portion thereof to be performed

by its own employees or by any agency affiliated with or hired by the LESSEE, but this restriction will not apply if the Equipment or any portion thereof is sold, re-leased or otherwise disposed of by the LESSOR and the amount received (less costs of such disposition) is sufficient to pay the then applicable Purchase Price.

11. EXPIRATION OF AGREEMENT.

At the expiration of the term of this Agreement as set forth in Section “2” and if LESSEE has elected not to exercise an option to purchase described in Section “4”, LESSEE shall be responsible for the delivery of the Equipment to a place designated by LESSOR.

At its option, LESSOR may enter the premises of LESSEE for the purpose of effecting the removal of the Equipment to the location designated by LESSOR. If LESSOR exercised this option, LESSEE shall be responsible for the costs associated with the removal of the Equipment to the location designated by LESSOR.

12. EVENTS CONSTITUTING LESSEE DEFAULT.

LESSOR may terminate this Agreement immediately upon the occurrence of any of the following events:

LESSEE fails to pay when due any of the payments, or to perform, or rectify breach of, any obligation assumed by LESSEE in this Agreement.

LESSEE makes an assignment for benefit of creditors, or is subject to any receivership, insolvency or bankruptcy proceedings.

Any other event which causes LESSOR, in good faith, to deem itself insecure.

13. REMEDIES ON DEFAULT.

Whenever any Event of Default referred to in Section “12” has occurred and its continuing, the LESSOR may, without any further demand or notice, take one of any combination of the following remedial steps:

Terminate the Lease Term and give notice to the LESSEE to vacate or surrender the Equipment within seven (7) days from the date of such notice;

Exercise all the rights and remedies of a secured party under the Kentucky Uniform Commercial Code with respect to the Equipment and may otherwise repossess and liquidate or realize or foreclose upon the Equipment in lawful manner; provided,

however, that the LESSOR may not recover from the LESSEE any deficiency which may exist following the liquidation of such property;

Sell or re-lease the Project or any portion thereof;

Recover from the LESSEE:

- (1) the Equipment payments which would otherwise have been payable hereunder during any period in which the LESSEE continues to use, occupy or retain possession of the Equipment; and
- (2) Equipment payments which would otherwise have been payable by the LESSEE hereunder after the LESSEE vacates or surrenders the Equipment during the remainder of the Fiscal Year in which such Event of Default occurs.

14. WAIVER.

Failure of LESSOR to exercise any right or remedy. Included but not limited to, the acceptance of partial or delinquent payments, shall not be a waiver of any obligation of LESSEE or right of LESSOR or constitute a waiver of any other similar default subsequently occurring.

15. ASSIGNMENT.

BY LESSEE: LESSEE may not assign, transfer or delegate its rights or obligations under this Agreement without the consent of LESSOR in writing.

16. ENTIRE AGREEMENT.

This Agreement is and shall be deemed the complete and final expression of the Agreement between the Parties as to matters herein contained and relative thereto, and supercedes all previous agreements between the Parties pertaining to such matters. It is clearly understood that no promise or representation not contained herein was an inducement to either Party or was relied upon by either Party in entering into this Agreement.

17. MODIFICATION.

No letter, or other form of communication, passing between the Parties hereto, covering any matter during the effective period of this Agreement, shall be deemed a part of this Agreement, nor shall it have the effect of amending or modifying this Agreement, unless said communication distinctly states that said communication is to constitute a part of this Agreement and is to be attached as a rider to this Agreement and is signed by the Parties hereto.

18. CAPTIONS.

Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision thereof.

19. NOTICE.

This deposit of written notice in the mails in an envelope certified or registered with postage prepaid and addressed to the LESSEE, at the address shown below, or to LESSOR at the address shown below, shall constitute notice pursuant to this Agreement.

20. AUTHORITY TO CONTRACT.

The execution and delivery of this Agreement will not violate or constitute a breach of any agreement or restriction to which LESSEE is a party or is subject.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

LESSOR:

LESSEE:

KACo LEASING TRUST

OHIO COUNTY FISCAL COURT

BY \_\_\_\_\_

BY: \_\_\_\_\_

LESSOR'S Address for notices  
Under this Agreement

LESSEE'S address for notices  
Under this Agreement

400 Englewood Drive  
Frankfort, KY 40601

Ohio County Fiscal Court  
130 East Washington Street  
Suite 215  
Hartford, KY 42347

## FORM OF RESOLUTION

### RESOLUTION NO.2017-3

#### A RESOLUTION APPROVING A LEASE FOR THE FINANCING OF A PROJECT AND AUTHORIZING THE EXECUTION OF VARIOUS DOCUMENTS RELATED TO SUCH LEASE.

WHEREAS, the governing body of the County of Ohio, Kentucky (the "Lessee") has the power, pursuant to Section 65.940 et seq. of the Kentucky Revised Statutes to enter into lease agreements with or without the option to purchase in order to provide for the use of property for public purposes;

WHEREAS, the governing body of the Lessee (the "Governing Body") has previously determined, and hereby further determines, that the Lessee is in need of the Project, as defined in the Lease hereinafter described;

WHEREAS, the Governing Body has determined and hereby determines that it is in the best interests of the Lessee that the Lessee and the Kentucky Association of Counties Leasing Trust (the "Lessor") enter into a Lease Agreement (the "Lease") for the leasing by the Lessee from the Lessor of the Project;

NOW THEREFORE, BE IT ORDERED AND RESOLVED BY THE FISCAL COURT OF THE COUNTY OF OHIO, KENTUCKY:

Section 1. Recitals and Authorization. The Lessee hereby approves the Lease Agreement (the "Lease") and all Collateral Documents, as defined in the Lease, each in substantially the form presented to this Governing Body. It is hereby found and determined that the Project identified in the Lease is public property to be used for public purposes. It is further determined that it is necessary and desirable and in the best interests of the Lessee to enter into the Lease for the purposes therein specified, and the execution and delivery of the Lease and all representations, certifications and other matters contained in the Closing Memorandum with respect to the Lease, or as may be required by the Lessor prior to delivery of the Lease, are hereby approved, ratified and confirmed. The County Judge Executive and Fiscal Court Clerk of the Lessee are hereby authorized to execute the Lease, together with such other agreements or certifications which may be necessary to accomplish the transaction contemplated by the Lease.

Section 2. Severability. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

Section 3. Sunshine Law. This Governing Body hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Governing Body, and that all deliberations of this governing Body and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 4. Conflicts. All resolutions, orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed and the provisions of this Resolution shall prevail and be given effect.

Section 5. Effective Date. This Resolution shall take effect from and after its passage, as provided by law.

INTRODUCED, SECONDED AND ADOPTED, at a duly convened meeting of the Governing Body, held on \_\_\_\_\_, signed by the County Judge Executive of the Lessee, attested by the Fiscal Court Clerk, filed and indexed as provided by law.

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

Title: \_\_\_\_\_  
County Judge Executive

Attest:

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

Title: \_\_\_\_\_  
Fiscal Court Clerk