

ORDINANCE NO. 20-006

AN ORDINANCE AUTHORIZING THE AWARD, EXECUTION, AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT BY THE CITY OF MULLINS, SOUTH CAROLINA, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$420,115.00, RELATING TO THE ACQUISITION OF CERTAIN EQUIPMENT; AUTHORIZING THE EXECUTION OF OTHER NECESSARY DOCUMENTS AND PAPERS; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED by the City Council of the City of Mullins, South Carolina, in meeting duly assembled:

**ARTICLE I**  
**FINDINGS OF FACT**

The City Council of the City of Mullins, the governing body of the City of Mullins, South Carolina, has made the following findings of fact:

Section 1.01 Need for and Description of Equipment.

The City Council has determined that a very real need exists for and that it is necessary for the City to acquire two garbage trucks (herein, the "Equipment"). The total cost of the Equipment is presently estimated to \$420,115.

Section 1.02 Financing Agreement; Selection of Lender.

The City Council has determined, after due investigation, that it is in the best interests of the City to finance the purchase of the Equipment through an Equipment Lease/Purchase Agreement, and hereby enacts this Ordinance to authorize the acquisition of the Equipment and the entry by the City into an agreement relating to the Lease/Purchase financing of the Equipment (the "Financing Agreement"). Heretofore, the Interim City Administrator of the City (the "Interim Administrator") has requested a proposal from Anderson Brothers Bank (the "Lessor"), which has offered to enter into the Financing Agreement upon terms that the City Council finds acceptable. The form of the Financing Agreement is attached hereto as Exhibit A.

**ARTICLE II**  
**AUTHORIZATION**

Section 2.01 Approval of the Acquisition and Financing.

(a) The City Council hereby approves the acquisition of the Equipment.

(b) The City Council hereby approves the entry by the City into a Financing Agreement with Lessor in the principal amount of not exceeding \$420,115.00 to finance the purchase of the Equipment. The Financing Agreement will bear interest at a rate of Two and fifty hundredths per centum (2.50%) per annum, will be payable over a term which shall extend no later than that date which is fifth anniversary of the date of the Financing Agreement and will be payable at such times and in such amounts as set forth in the Financing Agreement. A proposed payment schedule pursuant to the Financing Agreement is included in Exhibit A. The Council understands and agrees, however, that this schedule is subject to reduction as to principal amount and final approval by the Lessor. All prior actions of City officials in furtherance of the purposes of this Ordinance are hereby ratified, approved, and confirmed.

The Financing Agreement shall not constitute a debt of the City, and the full faith, credit, and taxing power of the City shall not be pledged to secure payment of rental payments or other sums due pursuant to the Financing Agreement.

Section 2.02    Authorization to Contract.

The Mayor of the City, the Interim Administrator, and the City Clerk are hereby authorized, empowered, and directed, either singly or collectively, to execute, acknowledge, and deliver the Financing Agreement and all necessary or associated documents to Lessor and other appropriate parties.

The Financing Agreement shall be in form substantially similar to that attached hereto as Exhibit A, together with such changes as may be approved by the Mayor or the Interim Administrator in consultation with bond counsel. The principal amount to be advanced under the Financing Agreement shall not exceed \$420,115.00. The execution of the Financing Agreement by the Mayor or the Interim Administrator shall constitute conclusive evidence of approval of the terms and conditions of the Financing Agreement, the principal amount thereof, and the schedule of rental payments due pursuant to the Financing Agreement.

Section 2.03    Other Documents.

The Mayor, the Interim Administrator, and the City Clerk are hereby authorized to take such actions and to execute any and all other documents, instruments, certificates, or other papers, each consistent with the terms of this Ordinance, as they deem necessary and appropriate, with the advice of counsel, to accomplish the transactions contemplated by this Ordinance.

Section 2.04    Repealer.

All prior resolutions and ordinances of the City and any portions thereof conflicting with the terms of this Ordinance are hereby repealed.

Section 2.05    Effective Date of Ordinance.

This Ordinance shall become effective upon the adoption thereof.

**ARTICLE III**  
**CERTAIN MATTERS PERTAINING TO**  
**THE INTERNAL REVENUE CODE**

Section 3.01    General Tax Covenants.

The City will comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Code"), in order to preserve the tax-exempt status of the Financing Agreement including without limitation the requirement to file the information report pertaining to the Financing Agreement with the Internal Revenue Service.

Section 3.02    General Tax Representations and Covenants.

The City hereby represents and covenants that it will not take any action which will, or fail to take any action which failure will, cause the interest component of rental payments made pursuant to the Financing Agreement to become includable in the gross income of the Holder thereof for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the

date of original execution of the Financing Agreement. Without limiting the generality of the foregoing, the City represents and covenants that:

(a) All property provided by the net proceeds of the Financing Agreement will be owned by the City in accordance with the rules governing the ownership of property for federal income tax purposes.

(b) The City shall not permit the proceeds of the Financing Agreement or any facility financed with the proceeds of the Financing Agreement to be used in any manner that would result in (a) ten percent (10%) or more of such proceeds being considered as having been used directly or indirectly in any trade or business carried on by any natural person or in any activity carried on by a person other than a natural person other than a governmental unit as provided in Section 141(b) of the Code, or (b) five percent (5%) or more of such proceeds being considered as having been used directly or indirectly to make or finance loans to any person other than a governmental unit as provided in Section 141(c) of the Code.

(c) The City is not a party to nor will it enter into any contracts with any person for the use or management of any facility provided with the proceeds of the Financing Agreement that do not conform to the guidelines set forth in Revenue Procedure 2017-13, as may be modified by subsequent pronouncements of the United States Treasury Department applicable thereto.

(d) The City will not sell or lease the Equipment or any property provided by the Financing Agreement to any person unless it obtains the opinion of nationally recognized bond counsel that such lease or sale will not affect the tax exemption of the Financing Agreement.

(e) The Financing Agreement will not be federally guaranteed within the meaning of Section 149(b) of the Code. The City has not entered into any leases or sales or service contract with any federal government agency and will not enter into any such leases or contracts unless it obtains the opinion of nationally recognized bond counsel that such action will not affect the tax exemption of the Financing Agreement.

(f) No portion of the proceeds of the Financing Agreement will be used as a substitute for other funds which were otherwise to be used to pay the costs of the Equipment. The City Council has determined, based on its own investigations and reasonable expectations, that the weighted average maturity of the Financing Agreement does not exceed 120% of the reasonably expected economic life of the Equipment.

### Section 3.03 Qualified Tax-Exempt Obligations.

The City expects that it and all entities subordinate thereto will issue no additional tax-exempt obligations (other than private activity bonds) in calendar year 2021 that, along with the Financing Agreement, would aggregate more than \$10,000,000. Accordingly, the Financing Agreement is hereby designated as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Code.

**DONE IN MEETING ASSEMBLED** on the 21<sup>st</sup> day of December, 2020.

(SEAL)

\_\_\_\_\_  
Mayor, City of Mullins

Attest:

\_\_\_\_\_  
Council Member

\_\_\_\_\_  
Clerk, City of Mullins

\_\_\_\_\_  
Council Member

\_\_\_\_\_  
Council Member

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Council Member

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Council Member

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Council Member

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

First Reading: December 11, 2020

Second Reading: December 21, 2020

**LEASE FINANCING AGREEMENT**

THIS LEASE FINANCING AGREEMENT, dated as of January 10, 2022 (the "Financing Agreement"), by and between ANDERSON BROTHERS BANK (the "Bank") and the City of Mullins, South Carolina (the "Borrower"), a body politic and corporate of the State of South Carolina (the "State").

**WITNESSETH:**

WHEREAS, the Borrower is a duly and validly created, organized and existing public body politic, duly created and existing under and by virtue of the Constitution and laws of the State; and

WHEREAS, the Borrower has the power to finance the acquisition of personal property by contracts that create in some or all of the property acquired a security interest to secure repayment of the financing; and

WHEREAS, the Borrower has determined it is in the best interest of the Borrower to lease the Equipment (as hereinafter defined) and has requested the Bank advance funds for the acquisition of the Equipment; and

WHEREAS, the Bank has agreed to advance or make available funds for the lease of the Equipment and has further agreed to make the Equipment available for use by the Borrower; and

WHEREAS, the Borrower will make Payments (as hereinafter defined) to the Bank for the lease and use of the Equipment from the Bank during the Term (as hereinafter defined); and

WHEREAS, in order to secure the obligations of the Borrower hereunder, the Borrower has agreed to grant the Bank a security interest in the Equipment.

NOW, THEREFORE, for and in consideration of the premises and of the covenants hereinafter contained, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

For purposes of this Financing Agreement, the following definitions will apply:

1.1 "Acceptance Certificate" means the final Disbursement Request Form executed by the Borrower which certifies that the Borrower has acquired and accepted all of the Equipment.

1.2 "Additional Payments" means all amounts, other than Payments, due from the Borrower to the Bank under this Financing Agreement.

1.3 "Advancement" means the aggregate amount as described on the first page and on Exhibit B of this Financing Agreement, which will be advanced by the Bank to enable the Borrower to lease the Equipment and pay the Closing Costs pursuant to the terms of this Financing Agreement.

1.4 "Borrower Authorized Representative" means the individuals designated to act on behalf of the Borrower in matters relating to this Financing Agreement, as evidenced by a written certificate furnished to the Bank containing the specimen signature of the authorized individuals.

1.5 "Change in Deductibility" means any determination by the Internal Revenue Service or any court of competent jurisdiction that the obligation of the Borrower hereunder is not a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code as a result or as a consequence of (i) an action, or failure to act, by the Borrower or (ii) a breach of any representation or warranty made by the Borrower to the Bank relating to the status of this Financing Agreement as a qualified tax-exempt obligation (including but not limited to the representations and

warranties contained in Section 6.1(j) of this Financing Agreement).

1.6 "Closing Costs" means all items of expense directly or indirectly payable by or reimbursable to the Borrower relating to the financing of the Equipment, including, but not limited to, filing and recording costs, settlement costs, printing costs, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

1.7 [Reserved].

1.8 "Determination of Taxability" shall mean a determination that the interest portion of the Payments is included in gross income of the Bank for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the earlier of the following: (a) the date on which the Bank is advised in writing by the Internal Revenue Service that, as a consequence of an action, or failure to act, by the Borrower, the interest portion of the Payments (hereinafter called "Interest") is included in the gross income of the Bank for federal income tax purposes; (b) the date on which the Borrower receives notice from the Bank that the Bank has been advised (i) in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Bank which asserts, in effect, that Interest received by the Bank is included in the gross income of the Bank for federal income tax purposes, as a result of an action, or failure to act, by the Borrower, or (ii) by an opinion of counsel (approved by the Bank and Borrower) received by the Bank which concludes, in effect, that Interest is included in the gross income of the Bank for federal income tax purposes as a result of an action, or failure to act, by the Borrower; (c) the day on which the Borrower is advised in writing by the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the Interest is included in the gross income of the Bank for federal income tax purposes as a result of an action, or failure to act, by the Borrower; or (d) the day on which the Borrower is advised in writing by counsel to the Bank that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the Interest is included in the gross income of the Bank for federal income tax purposes, as a result of an action, or failure to act, by the Borrower..

1.9 "Disbursement Request Form" means the form attached to this Financing Agreement as Exhibit C pursuant to which the Borrower requests all or a portion of the Advancement for the purchase of the Equipment in accordance with Article 2 hereunder.

1.10 "Equipment" means the personal property described in Exhibit A of this Financing Agreement.

1.11 "Escrow Agent" means Anderson Brothers Bank in its capacity as Escrow Agent.

1.12 "Escrow Fund" means the account created pursuant to Section 2.3 in which all or a portion of the Advancement is deposited by the Bank with the Escrow Agent.

1.13 "Event of Default" has the meaning set forth in Section 12.1.

1.14 "Event of Non-appropriation" has the meaning set forth in Section 5.2(a).

1.15 "Event of Taxability" shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the Borrower, the effect of which is to cause the interest portion of the Payments to be includible in the gross income of the Bank for federal income tax purposes..

1.16 "Net Proceeds," when used with respect to any proceeds from policies of insurance required hereunder or proceeds of any condemnation award arising out of the condemnation of all or any portion of the Equipment, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys' fees and costs) incurred in the collection of such proceeds.

1.17 “[Reserved].

1.18 “Payments” means those payments made by the Borrower to the Bank for the lease of the Equipment as described in Article 4 of this Financing Agreement and in the Payment Schedule.

1.19 “Payment Schedule” means the schedule of Payments attached hereto as Exhibit B and incorporated herein by reference, which describes the Borrower’s Payments due hereunder.

1.20 “Term” means the term of this Financing Agreement, which commences on the date first written above, and terminates, subject to Section 5.2, on the payment by Borrower of all payments due under this Financing Agreement.

1.21 “Uniform Commercial Code” means the Uniform Commercial Code as adopted and codified in the laws of the State.

## **ARTICLE 2. ADVANCEMENT; ESCROW FUND**

2.1 At closing, the Bank shall (i) advance all or a portion of the Advancement for the purpose of acquiring the Equipment, or paying Closing Costs, if any, pursuant to a Disbursement Request Form delivered by the Borrower to the Bank, and (ii) deposit the remainder of the Advancement, if any, in the Escrow Fund to be disbursed according to Section 2.2.

2.2 Requisition of Advancement Disbursement. If funds are deposited in the Escrow Fund pursuant to Section 2.1, then to receive a disbursement from the Escrow Fund, a Borrower Authorized Representative shall prepare and execute a Disbursement Request Form and deliver to the Bank and Escrow Agent. The Borrower shall attach to the Disbursement Request Form such documents as may be required by the terms of the Disbursement Request Form to support the request of funds from the Escrow Fund.

2.3 Escrow Fund. Prior to a deposit in the Escrow Fund pursuant to Section 2.1, if any, the Escrow Agent shall establish and hold the Escrow Fund separate and apart from all other funds and accounts of the Borrower. The portion of the Advancement, if any, deposited in the Escrow Fund constitutes the principal of the Escrow Fund. The Escrow Agent shall invest and reinvest the Escrow Fund in a Bank depository account and any interest earned on the principal amount on deposit in the Escrow Fund shall be accrued and retained in the Escrow Fund. Amounts on deposit in the Escrow Fund are subject to a lien and charge in favor of the Bank to secure the Borrower’s obligation under this Financing Agreement. The Escrow Fund shall terminate on the earlier of (a) receipt by the Bank and Escrow Agent of an Acceptance Certificate from the Borrower, (b) written notice to the Escrow Agent from the Bank of a default by the Borrower under the Financing Agreement, or (c) termination of the Financing Agreement. Any funds on deposit in the Escrow Fund on termination of the Escrow Fund shall be applied first against the principal portion of the remaining Payments, then accrued but unpaid interest, and last to any other amounts due under this Financing Agreement. Any balance remaining shall be distributed to the Borrower. The Escrow Agent shall not invest any amounts on deposit in the Escrow Fund without the written consent of the Borrower’s Authorized Representative. Investment of funds in the Escrow Fund shall be limited to investments authorized pursuant to S.C. Code Ann. §6-5-10 (1976, as amended).

## **ARTICLE 3. ACQUISITION OF EQUIPMENT**

3.1 Acquisition of Equipment. The Borrower will acquire the Equipment with the Advancement. To the extent that the Advancement is insufficient to complete the acquisition of the Equipment, the Borrower is responsible for the balance of funds required or shall reduce the scope of the Equipment needed.

3.2 Acceptance of Equipment. The Borrower shall accept the Equipment when and if delivered and placed in good repair and working order and hereby authorizes the Bank to add to Exhibit A, the serial number of each item of Equipment so delivered and any other information necessary, in the Bank’s sole determination, to fully describe each item of Equipment. Any delay in delivery of the Equipment does

not affect the validity of this Financing Agreement or the Borrower's obligations hereunder. Borrower shall notify the Bank that all Equipment has been received and accepted by executing the Acceptance Certificate. For purposes of laws governing taxation and conditional sales, title to the Equipment is deemed to be in the Borrower, subject to immediate and automatic reversion to the Bank in accordance with Article 5 on default by the Borrower under this Financing Agreement, or failure to appropriate sufficient funds to make any Payment.

3.3 Equipment as Personal Property. The Equipment is, and shall at all times during the Term be and remain, personal property. No portion of the Equipment will become fixtures within the meaning of Article 9 of the Uniform Commercial Code.

3.4 No Alteration. The Borrower shall not make any alterations, additions, or improvements to the Equipment without the Bank's prior written consent, unless such alterations, additional or improvements may be removed without damage to the Equipment and without diminution of the subsequent value or utility of the Equipment. Any alterations, additions or improvements to the Equipment that the Bank reasonable deems cannot be removed without damage or diminution will be deemed permanently affixed to and for purposes of this Financing Agreement will become part of the Equipment and subject to all rights of the Bank herein.

#### **ARTICLE 4. REPAYMENT OF ADVANCEMENT**

4.1 Amounts and Times of Payments. The Borrower shall repay the Advancement as provided in the Payment Schedule. Each Payment as represented on the Payment Schedule includes a principal component and an interest component. Each Payment is payable without notice or demand.

4.2 Lease Payment. Each Payment is a lease payment. On payment of all Payments and any other amounts payable under this Financing Agreement, the Borrower may purchase the Equipment from the Bank for \$1.00.

4.3 Late Payments. On failure by the Borrower to make a timely Payment, interest on the then outstanding principal balance shall continue to accrue at the rate indicated on the Payment Schedule until paid by the Borrower. All payments shall be applied first to any late payment charges or other amounts due hereunder that are neither interest nor principal, then to interest accrued to the date of payment, and thereafter to the unpaid principal balance.

4.4 Place of Payments. All payments required to be made to the Bank hereunder shall be made at the Bank's principal office or as may be otherwise directed by the Bank or its assignee.

4.5 No Abatement of Payments. The obligation of the Borrower to make Payments or Additional Payments is not subject to abatement or reduction of for any reason, including but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or contingent) arising out of or related to the Equipment. The Borrower assumes the entire risk of loss and damage to the Equipment from any cause whatsoever, it being the intention of the parties that the Payments and Additional Payments shall be made in all events unless the obligation to make such Payments and Additional Payments is terminated as otherwise provided herein.

4.6 Optional Prepayment of Installment Payments. If the Borrower is not in default of its obligations under this Financing Agreement, then the Borrower may prepay the outstanding Payments designated as principal, in whole at a prepayment price equal to one hundred percent (100%) of the principal balance thereof, together with accrued interest to the date of prepayment. The Borrower shall provide 30 days' prior written notice to the Bank prior to exercising the option provided under this section. The Bank may in its sole discretion waive any such default and accept prepayment as otherwise provided in this Section 4.6.

4.7 Conveyance of Equipment. On payment by the Borrower of all amounts outstanding under this Financing Agreement, all of the Bank's right, title and interest in and to the



Equipment will be conveyed to the Borrower and, if requested by Borrower, the Bank shall deliver such documents to evidence the transfer of the Bank's interest in the Equipment to Borrower.

#### **ARTICLE 5. EVENT OF NON-APPROPRIATION**

5.1 Limited Obligation of the Borrower. Subject at all times to Section 5.2, it is the Borrower's present intent to make all Payments, and Borrower reasonably believes that funds can be obtained sufficient to make all Payments. The Borrower agrees that funds, if any, which are legally available for Payments and the performance of other obligations set forth in this Financing Agreement, will be applied to Payments and the performance of such obligations. NOTWITHSTANDING THE FOREGOING, THE FULL FAITH, CREDIT AND TAXING POWER OF THE BORROWER ARE NOT PLEDGED FOR THE REPAYMENT OF THE ADVANCEMENT. THE PARTIES AGREE THAT NOTHING CONTAINED IN THIS FINANCING AGREEMENT IS INTENDED TO CREATE, OR DOES CREATE, INDEBTEDNESS OF THE BORROWER WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL OR STATUTORY LIMITATION OR RESTRICTION AND SHALL NOT BE SO CONSTRUED. NO PROVISION OF THIS FINANCING AGREEMENT IS TO BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF BORROWER'S MONEYS [(OTHER THAN THE FUNDS HELD IN THE ESCROW FUND)], NOR SHALL ANY PROVISION OF THIS FINANCING AGREEMENT RESTRICT THE FUTURE ISSUANCE OF ANY OF BORROWER'S BONDS OR OBLIGATIONS PAYABLE FROM ANY CLASS OR SOURCE OF BORROWER'S MONEYS (EXCEPT TO THE EXTENT THIS FINANCING AGREEMENT RESTRICTS THE INCURRENCE OF ADDITIONAL OBLIGATIONS SECURED BY THE EQUIPMENT).

#### 5.2 Non-appropriation.

(a) All payment and performance obligations of the Borrower under this Financing Agreement coming due during the fiscal years that follow the fiscal year in which the Term commences are subject to the availability and appropriation of funds by the governing body of the Borrower. If the governing body of the Borrower, on consideration of the budget submitted for approval by the chief financial officer of the Borrower, which budget shall include the amounts of all Payments and any Additional Payments to become due in the fiscal year in which the budget is applicable, determines in its sole discretion not to include the amounts for the Payments and Additional Payments in its final approved budget, then an "Event of Non-appropriation" is deemed to have occurred. The chief financial officer of the Borrower shall promptly notify the Bank in writing of the occurrence of an Event of Non-appropriation;

(b) On the occurrence of an Event of Non-appropriation that is not waived in accordance with subsection (c) below, without penalty or expense to Borrower of any kind whatsoever, as of the last day of the fiscal year in which the governing body of the Borrower lawfully budgeted funds to make Payments and Borrower shall have no further obligation to Payments under this Financing Agreement, except as to those Payments funds which have been lawfully budgeted and remain unpaid. No right of action or damages will accrue to the benefit of the Bank, or its assignee, as to that portion of Payments which remain unpaid as a consequence of an Event of Non-appropriation;

(c) Bank may, in its sole discretion, on request by the chief administrative officer of the Borrower, temporarily waive the occurrence of an Event of Non-appropriation and suspend termination of this Financing Agreement for the purpose of allowing reconsideration by the Borrower's governing body of its decision to not appropriate funds with which to pay Payments. If such waiver is granted by Bank, then it is effective for thirty (30) days from the beginning of the fiscal year to which the Event of Non-appropriation applies (the "Waiver Period"). If the Borrower's governing body lawfully appropriates sufficient funds to make Payments prior to the expiration of the Waiver Period, then the Event of Non-appropriation is deemed to have been remedied, this Financing Agreement shall not terminate and the parties shall be restored to the status quo ante. If Borrower's governing body fails to lawfully appropriate

sufficient funds for Payments during the Waiver Period, then this Financing Agreement terminates on the first day following the end of the Waiver Period;

(d) On the occurrence of an Event of Non-appropriation that is not waived in accordance with subsection (c), or following expiration of the Waiver Period in which such Event of Non-appropriation remains uncured, the Borrower agrees to peaceably surrender possession of the Equipment to Bank or its assignee at such place as designated by the Bank or its assignee immediately following the termination of this Financing Agreement pursuant to this Section 5.2, and the Equipment shall be packed at Borrower's cost for shipment at Borrower's cost in accordance with manufacturer specifications. If Borrower remains in possession of the Equipment, or any portion thereof, more than five business days following termination of this Financing Agreement in accordance with this Section 5.2, then Borrower will be deemed a lessee-at-will and shall pay to the Bank a fair and reasonable amount as rental for use of the Equipment during such period (as determined by Bank in its reasonable judgment); and

(e) On termination of this Financing Agreement under this Article 5 and notwithstanding the provisions of subsection (d), Bank is authorized, to the extent permitted by applicable law, to, elect in its sole discretion (i) take possession of the Equipment, with or without legal action, (ii) lease the Equipment, (iii) collect all rents and profits therefrom, with or without taking possession of the Equipment, and (iv) after deducting all costs of collection and administration expenses, apply the net rents and profits first to the payment of necessary maintenance and insurance costs, and then to Borrower's account and in reduction of the amounts due from Borrower to Bank hereunder, if any.

## **ARTICLE 6. REPRESENTATIONS AND WARRANTIES OF BORROWER AND THE BANK**

6.1 Representation and Warranties of the Borrower. The Borrower represents and warrants that each of the following is true in all material respects:

(a) The Borrower is a public body corporate and politic duly created and existing under the laws of the State, and has all powers necessary to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder;

(b) This Financing Agreement, and all other documents relating hereto, have been duly and validly authorized, approved, executed and delivered by the Borrower, and the performance by the Borrower of its obligations under such documents has been approved and authorized, under all laws, regulations and procedures applicable to the Borrower, including, but not limited to, compliance with all applicable public meeting and bidding requirements, and the transactions contemplated by this Financing Agreement and all other documents relating hereto constitute a public purpose for which public funds may be expended pursuant to the Constitution and laws of the State, and, assuming due authorization, execution and delivery hereof by the Bank, constitute valid, legal and binding obligations of the Borrower, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by general principles of equity or by bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally;

(c) No approval or consent is required from any governmental authority with respect to the entering into or performance by the Borrower of this Financing Agreement and the transactions contemplated hereby, or, if any such approval is required, it has been duly obtained;

(d) Since the date the Bank submitted its proposal to enter into this Financing Agreement with the Borrower, there has been no material change in the financial affairs of the Borrower which would affect its ability to make Payments and perform its other obligations under this Financing Agreement;

(e) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of the Borrower's knowledge, threatened, against

or affecting the Borrower that challenges or questions (i) the validity or enforceability of this Financing Agreement or any other documents relating hereto, (ii) the performance of the Borrower's obligations hereunder, (iii) the right of any member of the Borrower's governing body to hold office, (iv) the validity of the proceedings by which the Borrower's entry into this Financing Agreement has been authorized (v) the authority of the Borrower to acquire the Equipment or (vi) the authority of the Borrower to appropriate funds to make Payments;

(f) The Borrower's entry into and compliance with the provisions of this Financing Agreement, under the circumstances contemplated hereby, does not and will not in any material respect conflict with, or constitute on the part of the Borrower a breach of or default under any agreement or other instrument to which the Borrower is a party, or any existing law, regulation, court order or consent decree to which the Borrower is subject;

(g) There are no liens or encumbrances on the Equipment other than the lien created by this Financing Agreement;

(h) The purchase of the Equipment is essential to the proper, efficient and economical operation of the Borrower and the delivery of its service and the Equipment will provide an essential use and permit the Borrower to carry out public functions that it is authorized by law to perform;

(i) The Borrower has appropriated or otherwise has legally available and sufficient funds to pay all amounts due under this Financing Agreement within the Borrower's current fiscal year. The Borrower has not terminated any lease, rental agreement, payment agreement, equipment acquisitions, lease-purchase agreement or installment purchase contract to which the Borrower has been a party at any time during the past 10 years as a result of insufficient funds being appropriated in a fiscal year. During the past 10 years, no event has occurred which would constitute an event of default under any debt, revenue bond or obligation issued by or on behalf of the Borrower; and

(j) If this Financing Agreement is indicated as "Bank Qualified" on the first page of this Financing Agreement, then the Borrower designates its obligation hereunder as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code. The Borrower (i) has not and does not expect to issue, directly or indirectly through subordinate units, more than \$10,000,000 of tax-exempt obligations (other than private activity bonds) during this calendar year and (ii) has not and designated during this calendar year more than \$10,000,000 of its obligations (or of its subordinate units) as "qualified tax-exempt obligations."

6.2 Representations and Warranties of the Bank. The Bank represents and warrants that each of the following is true in all material respects:

(a) The Bank has the power and authority to enter into this Financing Agreement;

(b) Neither the execution and delivery of this Financing Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the organizational documents of the Bank or any restriction or any agreement or instrument to which the Bank is now a party or by which the Bank is bound;

(c) The Bank is entering into this Financing Agreement as a vehicle for making a commercial loan and without a present view to the distribution thereof (subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be under its control) within the meaning of the federal securities laws;

(d) The Bank is entering into this Financing Agreement solely for its own account and no other person now has any direct or indirect beneficial ownership or interest therein;

(e) The Bank is cognizant to the extent it deems necessary of the financial and business conditions of the Borrower; the Bank has a net worth substantially in excess of the cost of this Financing

Agreement and in the event it should unexpectedly incur the loss of the entire value of this Financing Agreement, such loss would not materially adversely affect its financial condition; and

(f) The Bank has made such investigation as it deems necessary to make its investment decision, and all information, books and records requested by it have been furnished to it; the Bank acknowledges that, except for the financial information received by it and relied on by it from the Borrower concerning the financial position of the Borrower, no other representations have been made to it as to the financial condition of the Borrower.

## ARTICLE 7. COVENANTS OF THE BORROWER

7.1 Care and Use. The Borrower shall use the Equipment in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Equipment so as to keep the Equipment in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear expected, and shall replace any part of the Equipment as may from time to time become worn out, lost, stolen, destroyed or damaged or unfit for use. The Borrower shall use the Equipment only to perform the Borrower's governmental and proprietary functions.

7.2 Inspection. The Bank shall have the right on reasonable prior notice to the Borrower to enter into and upon the premises where the Equipment is located to inspect the Equipment and observe its use during normal business hours.

7.3 Utilities. The Borrower shall pay, when due, all charges for utility services used in connection with the Equipment. There shall be no abatement of the Payments on account of interruption of any such services.

7.4 Taxes. The Borrower shall pay, when due, all taxes levied by any governmental body as a result of the Borrower's ownership, possession, or use of the Equipment or as a direct or indirect result of the purchase of the Equipment by the Borrower.

7.5 Risk of Loss. The Borrower shall bear all risk of loss to and condemnation of the Equipment, and no such loss or damage and no defect or unfitness or obsolescence with respect to the Equipment shall relieve the Borrower of its obligation to make the Payments. In the event of loss or damage to or condemnation of the Equipment, the Borrower shall either (a) continue to make the Payments due hereunder and repair or replace the Equipment, or (b) prepay in full the principal components of the outstanding Payments. Said repair or replacement of the Equipment shall meet with the satisfaction of the Bank.

7.6 Performance by the Bank of the Borrower's Responsibilities. Any performance required of the Borrower or any payments required to be made by the Borrower may, if not timely performed or paid, be performed or paid by the Bank, and, in that event, the Bank shall be immediately reimbursed by the Borrower for such payments and for any costs and expenses, legal or otherwise, associated with the payments or other performance by the Bank, with interest thereon at a per annum rate equal to the Bank's then-announced "Prime Rate" in effect on the last business day of the calendar month preceding the payment (but not exceeding the maximum rate, if any, permitted by applicable law).

7.7 Financial Statements; Budget. The Borrower agrees that it will furnish the Bank at such reasonable times as the Bank shall request current audited financial statements (including, without limitation, the Borrower's annual budget as submitted or approved), and permit the Bank or its agents and representatives to inspect the Borrower's books and records and make extracts therefrom at its own expense during regular business hours and in a manner which will not disrupt the normal business routine of the Borrower. The Borrower represents and warrants to the Bank that all financial statements which have been delivered to the Bank fairly and accurately reflect the Borrower's financial condition and there has been no

material adverse change in the Borrower's financial condition as reflected in the financial statements since the date thereof.

7.8 Other Responsibilities and Conditions. Simultaneously with the execution of this Financing Agreement and prior to the disbursement of the Advancement, the Borrower shall cause to be provided to the Bank the following:

(a) Certified copies any ordinance of the Borrower's governing body authorizing the Borrower to enter into this Financing Agreement and carry out its terms;

(b) A certificate of the Borrower, executed by any of the Borrower's authorized officers, in form and substance satisfactory to the Bank that certifies (i) the Borrower is duly authorized to enter in the Financing Agreement; (ii) the resolution or ordinance authorizing the Financing Agreement and the transactions contemplated thereunder is in full force and effect and has not been modified, repealed or amended in whole or in part; (iii) each of the Borrower's representations and warranties in the Financing Agreement are true and correct in all material respects as of the date of the certificate; (iv) the names, specimen signatures and positions of the Borrower Authorized Representatives;

(c) An Opinion Letter from counsel to the Borrower, in form and substance satisfactory to the Bank, which opines that (i) the Borrower is a public body corporate and politic duly created and existing under the laws of the State, and has all powers necessary to enter into the Financing Agreement and to carry out its obligations thereunder; (ii) the Financing Agreement is duly authorized and a valid and enforceable obligation of the Borrower; (iii) there is no pending or threatened litigation challenging (A) the Financing Agreement, (B) the Borrower's performance of its obligations thereunder, (C) the right of any member of the Borrower's governing body to hold office, (D) the validity of the proceedings by which the Borrower's entry into the Financing Agreement has been authorized, (E) the authority of the Borrower to acquire the Equipment or (F) the authority of the Borrower to appropriate funds to make Payments; and (iv) the Borrower's entry into and compliance with the provisions of the Financing Agreement does not and will not in any material respect conflict with or constitute on the part of the Borrower a breach of or default under any agreement or other instrument to which the Borrower is a party, or any existing law, regulation, court order or consent decree to which the Borrower is subject;

(d) A certificate or other proof of insurance on the Equipment, in a form consistent with the requirements of Article 9 and satisfactory to the Bank; and

(e) Executed originals of any other documents and instruments required by this Financing Agreement or as may be requested by the Bank.

## **ARTICLE 8. SECURITY INTEREST; LIENS**

8.1 Security Interest. To secure all of its obligations under this Financing Agreement, the Borrower grants to the Bank a first and priority security interest in the Equipment, in any and all additions, accessions, repairs, replacements, substitutions, and modifications to the Equipment, and all proceeds of all the foregoing, including any insurance proceeds paid because of loss or damage to the Equipment. The Bank may file a financing statement with respect to the Equipment and this Financing Agreement without the Borrower's signature. If the Equipment is or includes one or more motor vehicles, the ownership of which evidenced by a certificate of title, the Borrower shall cause the Bank's lien to be properly shown on each certificate as a first lien security interest.

8.2 Security Agreement. This Financing Agreement is a security agreement pursuant to the Uniform Commercial Code.

8.3 No Other Liens. The Borrower shall not directly or indirectly create, incur, assume or suffer to exist any lien, charge, security interest, encumbrance or claim on or with respect to the Equipment (except the security interest granted to the Bank). The Borrower shall promptly, at its own expense, take such action as may be necessary to duly discharge any such lien, security interest, charge,

encumbrance or claim if the same shall arise at any time. The Borrower shall reimburse the Bank for any expense incurred by the Bank in order to discharge or remove any such lien, security interest, encumbrance or claim.

## **ARTICLE 9. INSURANCE; DAMAGE; CONDEMNATION; USE OF NET PROCEEDS**

9.1 Insurance. The Borrower shall obtain and maintain, at its expense, at all times until termination of this Financing Agreement a primary policy of insurance covering the Equipment and providing the insurance protection described in this Section 9.1. The Borrower shall maintain fire, casualty, public liability, property damage and theft insurance, and such other insurance as required by the Bank. The Borrower shall maintain such insurance in such amounts and with such deductibles, if any, as required by the Bank from time to time. The Equipment shall be insured in an amount at least equal to its actual cash value. All policies of insurance required under this Article 9 shall be maintained with an insurance company or companies satisfactory to the Bank and shall, if permitted by the Borrower's insurance carrier name the Bank as a co-loss payee. The Bank shall also be named as an additional insured with respect to liability insurance, but only if permitted by the Borrower's insurance carrier.

On acceptance of any Equipment, the Borrower shall deliver to the Bank the policies of insurance or duplicates thereof or other evidence satisfactory to the Bank of such insurance coverage as required under this Section 9.1 for such Equipment. Each insurer shall agree by endorsement on the policy or policies issued by it that (i) it will give 30 days' prior written notice to the Bank of the cancellation or material modification of such policy; and (ii) the coverage of the Bank, if the Bank is an additional insured, will not be terminated, reduced or affected in any manner regardless of any breach or violation by the Borrower of any warranties, declarations and conditions of such insurance. The Borrower hereby appoints the Bank as the Borrower's attorney-in-fact (i) to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment under any insurance policies with respect to the Equipment; and (ii) to make, adjust, settle or release any claims under or relating to such insurance. The Borrower agrees to cooperate fully in all accident insurance investigations, claims and litigation proceedings. The Borrower shall cooperate fully with the Bank in filing any proof of loss with respect to any insurance policy described above. The Borrower shall not voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Equipment without the written consent of the Bank.

The Bank may, but shall not be required, to permit the Borrower, in lieu of obtaining the foregoing policies of insurance, to adopt alternative risk management programs including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs..

9.2 Loss and Damage. In the event of damage or loss to any item of Equipment, Borrower shall within five days notify the Bank in writing of such loss or damage in all material particulars, and within 15 days thereafter notify the Bank in writing of the course of action, consistent with this Section 9.2, which it intends to take with respect to such lost or damaged Equipment. The Borrower shall within thirty (30) days, deposit any Net Proceeds received with respect to such damaged or lost Equipment in accordance with Section 9.4, or if no Net Proceeds shall:

(a) Place the damaged Equipment in good repair at Borrower's sole expense, the adequacy of such repairs being subject to Bank's reasonable approval;

(b) Replace at Borrower's sole expense the lost or damaged Equipment with equipment having substantially similar specifications and of equal or greater value to the lost or damaged Equipment immediately prior to the time of the loss or damage, such replacement equipment to be subject to Bank's reasonable approval, whereupon such replacement equipment shall be substituted on Exhibit A hereto; or

(c) Pay Bank in cash all of the following: (i) all amounts owed by Borrower to Bank under this Financing Agreement in the then-current fiscal year, and (ii) following such payment in subsection (i) either (A) the remaining principal balance payable under this Financing Agreement or (B) the principal portion, accrued but unpaid interest, and any other amounts due under this Financing Agreement related to the lost or damaged Equipment. On Bank's receipt of such payment, Borrower shall be entitled to whatever interest Bank may have in the Equipment, or portion thereof, in its then condition and location, without warranty expressed or implied.

9.3 Condemnation. Borrower shall immediately notify Bank if any governmental authority shall institute, or shall notify Borrower of any intent to institute, any action or proceeding for the taking of, or damages to, all or any part of the Equipment or any interest therein under the power of eminent domain, or if there shall be any damage to the Equipment due to governmental action, but not resulting in a taking of any portion of the Equipment. Borrower shall file and prosecute its claims for any such awards or payments in good faith and with due diligence and cause the same to be collected and paid over to Bank, and to the extent permitted by law hereby irrevocably authorizes and empowers Bank, in the Borrower's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. Any condemnation award shall be applied in the same manner as insurance proceeds as if the Equipment was lost or damaged as further provided in Section 9.4.

9.4 Use of Net Proceeds. The Net Proceeds of any insurance policies or condemnation awards shall be deposited in the Escrow Fund or, if no Escrow Fund exists, in a separate fund held by the Bank.

(a) Unless the Borrower exercises its option to prepay all or a portion of the outstanding Payments in accordance with Section 9.4(b), all Net Proceeds shall be applied to the prompt repair or replacement of the Equipment so condemned, lost or damaged. The Bank shall disburse Net Proceeds to the Borrower for such repair or replacement on receipt of a Disbursement Request Form from a Borrower Authorized Representative;

(b) The Borrower may apply the Net Proceeds to pay the principal, accrued but unpaid interest, and any other amounts due under this Financing Agreement related to the Equipment so condemned, lost or damaged;

(c) Any balance of Net Proceeds remaining following application in subsection (a) or (b) shall be applied first against the principal portion of any remaining Payments due under this Financing Agreement, accrued but unpaid interest, and last to any other amounts due under this Financing Agreement. Any balance of Net Proceeds remaining shall be distributed to the Borrower.

## **ARTICLE 10. INDEMNIFICATION**

To the extent permitted by applicable law, the Borrower hereby agrees to indemnify, protect and save the Bank and the Escrow Agent harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Equipment, including without limitation, the possession, condition or use thereof.

The indemnification arising under this Section shall continue in full force and effect notwithstanding the payment in full of all obligations under this Financing Agreement.

## ARTICLE 11. DISCLAIMER OF WARRANTIES

11.1 No Representations by the Bank. The Borrower agrees that it has selected the Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by the Bank with respect thereto. The Borrower agrees that its acceptance of any portion of the Advancement, whether of even date herewith or hereafter by way of a Disbursement Request Form, shall constitute, to the extent of the particular Equipment to the purchase of which such portion of the Advancement is applied, an acknowledgment that Borrower has inspected such Equipment and found such Equipment to be satisfactory.

11.2 Disclaimer by the Bank. THE BANK MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

## ARTICLE 12. DEFAULT AND REMEDIES

12.1 Definition of Event of Default. The Borrower is deemed to be in default under this Financing Agreement on the happening of any of the following events (each, an "Event of Default"):

(a) The Borrower fails to make any Payment or fail to pay any Additional Payment when due (provided, however, that an Event of Non-appropriation is not an Event of Default under this Financing Agreement); or

(b) The Borrower shall fail to perform or observe any term, condition or covenant of this Financing Agreement or shall breach any warranty by the Borrower herein or therein contained; or

(c) Proceedings under any bankruptcy, insolvency, reorganization or similar litigation shall be instituted by or against the Borrower, or a receiver, custodian or similar officer shall be appointed for the Borrower or any of its property, and such proceedings or appointments shall not be vacated or fully stayed after the institution or occurrence thereof; or

(d) Any warranty, representation or statement made by the Borrower herein or in any other document executed or delivered in connection herewith is found to be incorrect or misleading in any material respect on the date made; or

(e) An attachment, levy or execution of a security interest or lien is levied upon or against the Equipment.

12.2 Remedies on Default. Upon the occurrence of any Event of Default, the Bank may exercise any one or more of the following remedies as the Bank in its sole discretion shall elect:

(a) Subject to Article 5, declare the entire principal amount of the Payments and all accrued interest and other charges immediately due and payable without notice or demand to the Borrower;

(b) Proceed by appropriate court action to enforce performance by the Borrower of the applicable covenants of this Financing Agreement or to recover for the breach thereof;

(c) Exercise all the rights and remedies at law or in equity, including those rights and remedies of a secured party or creditor under the Uniform Commercial Code and the general laws of the State with respect to the enforcement of the security interest granted or reserved hereunder; and

(d) Terminate this Financing Agreement, and thereafter (i) take possession of the Equipment, with or without legal action, and sell the same to a third party, (ii) lease the Equipment to a third party in such manner and for such consideration as it shall determine in its sole discretion, (iii) collect rents and profits, any, therefrom, with or without taking possession of the Equipment, and (iv) after deducting all costs of collection and administration expenses, apply the net rents and profits first to the payment of necessary maintenance and insurance costs, and then as a credit against the amounts due from



Borrower to the Bank hereunder. Any net rents and profits, if any, remaining after satisfaction of the amounts due from the Borrower to the Bank shall be paid to Borrower. If Borrower remains in possession of the Equipment or any portion thereof, more than five business days following termination of the Financing Agreement in accordance with this subsection (d), the Borrower is deemed a lessee-at-will and will pay to the Bank a fair and reasonable amount as rental for the use of the Equipment during such period, as determined by the Bank.

12.3 Further Remedies. All remedies of the Bank are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. The Borrower agrees to pay to the Bank all court costs and reasonable attorney fees incurred by Bank in enforcing the Bank's rights and remedies under this Financing Agreement.

12.4 Agreement to Pay Attorneys' Fees and Expenses. In the event of a default by the Borrower under the provisions of this Financing Agreement, the Borrower agrees, subject to the limitations and provisions of State law, that it will pay on demand to the Bank, the reasonable costs and expenses, including attorneys' fees, incurred by the Bank in the collection of Payments and Additional Payments or the enforcement of performance or observation of any obligation or agreement by the Borrower.

### ARTICLE 13. ASSIGNMENT

13.1 Assignment by the Borrower. The Borrower shall not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in the Equipment or this Financing Agreement (except for the lien and security interest of the Bank therein) without the Bank's prior written consent.

13.2 Assignment by the Bank. The Bank may, at any time and from time to time, assign all or any part of its interest in the Equipment, this Financing Agreement, including without limitation, the Bank's rights to receive the Payments and any Additional Payments due and to become due hereunder. This Financing Agreement, or any interest herein, is not subject to assignment through a public offering. Any assignment made by the Bank or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Bank pursuant to this Financing Agreement. No assignment shall be effective until such time as the assignee hereof shall have executed a Letter of Representation satisfactory to Borrower's counsel.

13.3 Book-Entry System. During the term of this Financing Agreement, Borrower shall keep a complete and accurate record of all assignments and other transfers in form and substance necessary to comply with Section 149(a) of the Internal Revenue Code. On receipt of notice of assignment from the Bank as described in Section 13.2, Borrower shall record the assignment in Borrower's "book entry system" as that term is defined in Section 149(a) of the Code.

13.4 Escrow Fund Assignment by the Bank. The Bank may freely assign all or any part of its interest in the Escrow Fund and its duties as Escrow Agent in connection with an assignment by the Bank of this Financing Agreement.

### ARTICLE 14. TAX COVENANTS

14.1 Intent of Parties. If the Financing Agreement is designated as "tax-exempt" as indicated on the first page hereof, it is the intention of the parties hereto that the interest portion of the Payments paid by the Borrower to the Bank under this Financing Agreement are to be tax-exempt under Section 103 of the Internal Revenue Code. Borrower acknowledges that the continued exclusion of the interest component of the Payment from the Bank's gross income for federal income tax purposes depend in part, on the Borrower's compliance with certain provisions and requirements of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder. To that end, the Borrower covenants that it will comply with all requirements of the Code that must be satisfied

subsequent to the execution of this Financing Agreement so that the interest component of each Payment is and remains excludable from gross income for federal income tax purposes, and further, specifically covenants as follows:

(a) The Borrower will make no use of the Advancement (the "Proceeds") which would cause this Financing Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Code;

(b) The Equipment shall be used exclusively for essential governmental purposes of the Borrower and no use shall be made of the proceeds or of the Equipment, directly or indirectly, which would cause this Financing Agreement to be a "private activity bond" within the meaning of Section 141 of the Code;

(c) No part of the payment of principal or interest under this Financing Agreement is or shall be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof; and

(d) The Borrower shall timely file such reports and information as required by the Code, including a Form 8038-G or 8038-GC, or other comparable forms, as applicable, and shall furnish the Bank copies of such filings.

14.2 Duty to Notify the Bank. The Borrower agrees to give prompt written notice to the Bank on the Borrower's receipt of any oral or written notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability or a Change in Deductibility has occurred.

## ARTICLE 15. MISCELLANEOUS

15.1 Waiver. No covenant or condition of this Financing Agreement can be waived except by the written consent of the Bank. Any failure of the Bank to require strict performance by the Borrower or any waiver by the Bank of any of the terms, covenants or conditions herein are not a waiver of any other breach of the same or any other term, covenant or condition herein.

15.2 Severability. If any provision in this Financing Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such ruling shall not affect any other term or provision herein, except that the invalid or unenforceable provision and the other provisions in this Financing Agreement automatically shall be modified as minimally as possible so as to be valid and enforceable and to effectuate the intent of the parties, provided that such modification can be made while still preserving the intent of the parties, and the remaining terms and provisions, as modified, if modified, shall remain binding on the parties. In the event that no such modification can be made while still preserving the intent of the parties hereto, then the invalid or unenforceable provision shall be stricken from this Financing Agreement, and the remaining terms, if sufficient to constitute a binding contract, shall remain in full force and effect.

15.3 Governing Law. This Financing Agreement shall be construed, interpreted and enforced in accordance with the laws of the State.

15.4 Notices. Any and all notices, requests, demands, and other communications given under or in connection with this Financing Agreement shall be in writing and shall be deemed to have been given when the writing is delivered, if given or delivered by hand, overnight delivery service, or facsimile or electronic transmitter (with confirmed receipt), or three (3) days after being mailed, or on the day it was actually received, whichever is earlier, if mailed by first class United States mail, postage prepaid, to the mailing address, telecopy number or email addresses set forth below:

**If to the Bank, address to:**

Anderson Brothers Bank  
101 N. Main Street  
PO Box 310  
Mullins, SC 29574

**If to the Borrower, address to:**

City of Mullins, South Carolina  
151 E. Front St.  
P.O. Box 408  
Mullins, SC 29574

The Borrower or the Bank may, by notice given hereunder, designate any further or different addresses or telecopy numbers to which subsequent demands, notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed. The Bank also may give notice to the Borrower at any updated address for the Borrower of which the Borrower gives the Bank informal notice which the Bank maintains in its records.

15.5 Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Financing Agreement.

15.6 Entire Contract. This Financing Agreement, together with the exhibits and attachments hereto, which are incorporated herein by reference, constitutes the entire Financing Agreement between the parties and this Financing Agreement shall not be modified, amended, altered or changed except by written agreement signed by the parties.

15.7 Binding Effect. This Financing Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

15.8 Time. Time is of the essence of this Financing Agreement and each and all of its provisions.

15.9 Execution in Counterparts. This Financing Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

15.10 Reliance of the Bank on Document. The Bank may act in reliance on any writing, instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Bank is not liable in any manner for the sufficiency or correctness as to the form, manner of execution, or validity of any instrument or as to the identity, authority, or right of any person executing the same; and the Bank's duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Bank, and for the disposition of the same in accordance herewith.

IN WITNESS WHEREOF, the parties hereto have caused this Financing Agreement to be executed as of the day and year first above written.

[SEAL]

**CITY OF MULLINS, SOUTH CAROLINA**

By: \_\_\_\_\_  
Name: Holly Jackson  
Title: Interim City Administrator

ATTEST:

By: \_\_\_\_\_  
Name: Felicia Sawyer  
Title: City Clerk

**ANDERSON BROTHERS BANK,**  
as Bank and Escrow Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A  
**DESCRIPTION OF EQUIPMENT**

Financing Agreement Date: January \_\_, 2021

Borrower: City of Mullins, South Carolina

Advancement: \$420,115.00

<u>Description and Serial Number</u>	<u>Purchase Price</u>	<u>Department and Purpose or Function of Equipment</u>	<u>Location of Equipment After Delivery</u>
1 Garbage Truck			
1 Garbage Truck			

EXHIBIT B  
**PAYMENT SCHEDULE**

Financing Agreement Date: January \_\_, 2021  
 Borrower: City of Mullins, South Carolina  
 Lender: Anderson Brothers Bank  
 Advancement: \$420,115.00  
 Interest Rate: 2.50%

Compounding Period: Annual  
 Nominal Annual Rate: 2.500%

**Cash Flow Data - Loans and Payments**

Event	Date	Amount	Number	Period	End Date
1 Loan	01/08/2021	420,115.00	1		
2 Payment	01/08/2022	90,428.43	5	Annual	01/08/2026

**TValue Amortization Schedule - Normal, 365 Day Year**

Date	Payment	Interest	Principal	Balance
Loan 01/08/2021				420,115.00
<b>2021 Totals</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	
1 01/08/2022	90,428.43	10,502.88	79,925.55	340,189.45
<b>2022 Totals</b>	<b>90,428.43</b>	<b>10,502.88</b>	<b>79,925.55</b>	
2 01/08/2023	90,428.43	8,504.74	81,923.69	258,265.76
<b>2023 Totals</b>	<b>90,428.43</b>	<b>8,504.74</b>	<b>81,923.69</b>	
3 01/08/2024	90,428.43	6,456.64	83,971.79	174,293.97
<b>2024 Totals</b>	<b>90,428.43</b>	<b>6,456.64</b>	<b>83,971.79</b>	
4 01/08/2025	90,428.43	4,357.35	86,071.08	88,222.89
<b>2025 Totals</b>	<b>90,428.43</b>	<b>4,357.35</b>	<b>86,071.08</b>	
5 01/08/2026	90,428.43	2,205.54	88,222.89	0.00
<b>2026 Totals</b>	<b>90,428.43</b>	<b>2,205.54</b>	<b>88,222.89</b>	
<b>Grand Totals</b>	<b>452,142.15</b>	<b>32,027.15</b>	<b>420,115.00</b>	

Last interest amount decreased by 0.03 due to rounding.

EXHIBIT C

**DISBURSEMENT REQUEST FORM**

Date: \_\_\_\_\_

1. The amount of the requested disbursement to be paid to City of Mullins, South Carolina \$ \_\_\_\_\_

2. The method of disbursement (limited to two draws per month):

Account Transfer to Acct #: \_\_\_\_\_  
Acct name: \_\_\_\_\_

Wire Transfer Bank Name: \_\_\_\_\_ ABA#: \_\_\_\_\_  
Credit Acct Name: \_\_\_\_\_  
Credit Acct #: \_\_\_\_\_

Special Instructions: \_\_\_\_\_

3. A brief description of the purpose of the disbursement: \_\_\_\_\_

4. The undersigned certifies as follows:

a. Payment of the disbursement for the purpose requested will not cause the undersigned to be in violation of any of terms of the Lease Financing Agreement dated September 15, 2020 (the "Financing Agreement").

b. The amounts requested to be disbursed were properly incurred in connection with the acquisition of the Equipment and were not subject of any previous request for disbursement.

c. The Equipment for which the disbursement is requested has been finally accepted by the Borrower.

d. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable under the Financing Agreement to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this disbursement.

e. This disbursement contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.

f. No Event of Default is continuing under the Financing Agreement, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.

g. The Borrower has in place insurance on this portion of the Equipment that complies with the insurance provisions of the Financing Agreement.

5. Attached hereto are the following: proof of insurance, bills, receipts, invoices, or other documents evidencing the amounts and purposes for which the disbursement is requested.

6. Also attached hereto is a list of the Equipment to which this Disbursement Request applies, including descriptions, quantities and serial numbers.

7. Borrower agrees that the Equipment subject to this Disbursement Request shall be added to the Description of Equipment List (Exhibit A to the Financing Agreement) without further notice to or request by Borrower.

8. Borrower acknowledges that the delivery and any required installation of the Equipment subject to this Disbursement Request has been completed in accordance with the terms of the Financing Agreement, and that such Equipment has been inspected and accepted by Borrower on \_\_\_\_\_, 20\_\_.

(check if the following sentence is true): Acceptance Certificate. The items of Equipment subject to this Disbursement Request represent the final items of the Equipment to be accepted by Borrower. The Borrower has acquired and accepted all of the Equipment.

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**STATE OF SOUTH CAROLINA**

**COUNTY OF MULLINS**

I, the undersigned, City Clerk of the City of Mullins, South Carolina, **DO HEREBY CERTIFY:**

That the foregoing constitutes a true, correct, and verbatim copy of an Ordinance enacted by the City Council of the City (the "City Council"). The Ordinance was read at two (2) public meetings of City Council on two (2) separate days. An interval of at least six (6) days occurred between each reading. At each meeting, a quorum of City Council was present and remained present throughout the meeting.

The meeting held on December 11, 2020, was a special meeting of the City Council for which notice was given pursuant to and in conformity with Chapter 4, Title 30 of the Code of Laws of South Carolina 1976, as amended. For such meeting, an agenda including the consideration of the Ordinance was posted in the administrative offices of the City, posted on the City's public website, and provided to news media, in each case at least 24 hours prior to the commencement thereof.

The meeting held on December 11, 2020, was a special meeting of the City Council for which notice was given pursuant to and in conformity with Chapter 4, Title 30 of the Code of Laws of South Carolina 1976, as amended. For such meeting, an agenda including the consideration of the Ordinance was posted in the administrative offices of the City, posted on the City's public website, and provided to news media, in each case at least 24 hours prior to the commencement thereof.

The original of the Ordinance is duly entered in the permanent records of the City, in my custody as Clerk.

The Ordinance is now in full force and effect.

**IN WITNESS WHEREOF**, I have hereunto set my Hand and the Seal of the City of Mullins, South Carolina, this day of January 12, 2021.

(SEAL)

\_\_\_\_\_  
City Clerk, City of Mullins, South Carolina