

ORDINANCE NO. 21-010

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 \$843,750, 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 "City Council"), the governing body of the City of Mullins, South Carolina (the "City"), 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 fire 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 Truist 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 Appendix 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 \$843,750 to finance the purchase of the Equipment. The Financing Agreement will bear interest at a rate of Two and Twenty-seven hundredths per centum (2.27%) per annum, will be payable over a term which shall extend no later than that date which is tenth 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 Appendix A hereto. 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 "Mayor"), the Interim Administrator, and the City Clerk (the "Clerk") are hereby authorized, empowered, and directed, either singly or collectively, to execute, acknowledge, and deliver the Financing Agreement substantially in the form attached hereto, and all necessary or associated documents to Lessor and other appropriate parties.

The Financing Agreement shall be delivered in form substantially similar to that attached hereto as Appendix 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 \$843,750. 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.

The Mayor, the Interim Administrator and the Clerk are also authorized to authorized, empowered, and directed, either singly or collectively, to execute, acknowledge, and deliver to the Lender an agreement for the keeping by the Lender of the proceeds of the Financing Agreement and the disbursement of such proceeds.

Section 2.03 Other Documents.

The Mayor, the Interim Administrator, and the 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 ___ day of August, 2021.

(SEAL)

[Signature]
Mayor, City of Mullins

Attest:

[Signature]
Councilman

[Signature]
Clerk, City of Mullins

[Signature]
Councilman

[Signature]
Councilman

[Signature]
Councilman

[Signature]
Councilman

Councilman

APPROVED AS TO FORM:

[Signature]
City Attorney

First Reading: 8-10, 2021

Second Reading: 8-24, 2021

DONE IN MEETING ASSEMBLED on the ___ day of August, 2021.

(SEAL)

Al Peplay
Mayor, City of Mullins

Attest:

Felicia J. Sawyer
Clerk, City of Mullins

Terry D. Davis
Councilman

Pat Phillips
Councilman

Ed Ward Kester
Councilman

Andre L. Ambrose
Councilman

Carolyn J. Wilson
Councilman

Councilman

APPROVED AS TO FORM:

Proffery
City Attorney

First Reading: 8-10, 2021

Second Reading: 8-24, 2021

DONE IN MEETING ASSEMBLED on the ___ day of August, 2021.

(SEAL)

[Signature]
Mayor, City of Mullins

Attest:

Terry D. Dawes
Councilman

[Signature]
Clerk, City of Mullins

[Signature]
Councilman

[Signature]
Councilman

[Signature]
Councilman

[Signature]
Councilman

Councilman

APPROVED AS TO FORM:

[Signature]
City Attorney

First Reading: 8-10, 2021

Second Reading: 8-24, 2021

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "*Agreement*") is dated as of August __, 2021, and is between **CITY OF MULLINS, SOUTH CAROLINA**, a public body of the State of South Carolina (the "*Lessee*"), and **TRUIST BANK** ("*TRUIST*").

RECITALS:

The Lessee has the power to acquire such personal property as it may deem appropriate for carrying out its governmental and proprietary functions, and to acquire such property pursuant to lease agreements. This Agreement provides for Truist to make available to the Lessee the sum of \$843,750 to enable the Lessee to acquire the Equipment (as defined herein) by lease, and provides for securing the Lessee's obligations under this Agreement by creating certain security interests in favor of Truist.

NOW THEREFORE, for and in consideration of the mutual promises in this Agreement, and other good and valuable consideration, the parties hereby agree as follows:

**ARTICLE I
DEFINITIONS; INTERPRETATION**

Unless the context clearly requires otherwise, capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

"Additional Payments" means any of Truist's reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of Truist's expenses (including attorneys' fees) in prosecuting or defending any action or proceeding in connection with this Agreement, any required license or permit fees, state and local sales and use or ownership taxes or property taxes which Truist is required to pay as a result of this Agreement, inspection and re-inspection fees, and any other amounts payable by the Lessee (or paid by Truist on the Lessee's behalf) as a result of its covenants under this Agreement (together with interest that may accrue on any of the above if the Lessee shall fail to pay the same, as set forth in this Agreement).

"Amount Advanced" has the meaning assigned in Section 2.02 hereof.

"Base Payments" means the rental payments payable by the Lessee pursuant to Section 3.01 hereof.

"Bond Counsel Opinion" means a written opinion (in form and substance acceptable to Truist) of an attorney or firm of attorneys acceptable to Truist.

"Budget Officer" means the Lessee officer or official from time to time charged with preparing the Lessee's draft budget as initially submitted to the Governing Board for its consideration.

"Business Day" means any day on which banks in the State are not by law authorized or required to remain closed.

"Interim City Administrator" means the Interim City Administrator of the Lessee.

“Closing Date” means the date on which this Agreement is first executed and delivered by the parties.

“Code” means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the Lessee’s obligations under this Agreement and all proposed (including temporary) regulations which, if adopted in the form proposed, would apply to such obligations. Reference to any specific Code provision shall be deemed to include any successor provisions thereto.

“Equipment” has the meaning assigned in Section 2.03 hereof, and is generally expected to include the personal property described on Exhibit A attached hereto.

“Event of Default” means one or more events of default as defined in Section 7.01 hereof.

“Event of Nonappropriation” means any failure by the Governing Board to adopt, by the first day of any Fiscal Year, a budget for the Lessee that includes an appropriation for Required Payments, or the Governing Board’s amendment of an annual budget to remove an appropriation for Required Payments, in each case, as contemplated by Section 3.05 hereof.

“Fiscal Year” means the Lessee’s fiscal year beginning July 1 or such other fiscal year as the Lessee may later lawfully establish.

“Governing Board” means the City Council of City of Mullins as from time to time constituted.

“Lessee” means City of Mullins, South Carolina.

“Lessee Representative” means the Lessee’s finance officer, investment officer or such other person or persons at the time designated, by a written certificate in the form of Exhibit D attached hereto furnished to Truist and signed on the Lessee’s behalf by the Interim City Administrator, to act on the Lessee’s behalf for any purpose (or any specified purpose) under this Agreement.

“Net Proceeds,” when used with respect to any amounts derived from claims made on account of insurance coverages required under this Agreement, any condemnation award arising out of the condemnation of all or any portion of the Equipment, or any amounts received in lieu or in settlement of any of the foregoing, means the amount remaining after deducting from the gross proceeds thereof all expenses (including attorneys’ fees and costs) incurred in the collection of such proceeds, and after reimbursement to the Lessee or Truist for amounts previously expended to remedy the event giving rise to such payment or proceeds.

“Prime Rate” means the interest rate so denominated and set by Truist Bank (whether or not such bank, or any affiliate thereof, is at any time the counterparty to this Agreement) as its “Prime Rate,” as in effect from time to time.

“Project Costs” means all costs of the acquiring, installing and equipping of the Equipment as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Base Payments payable by the Lessee under this Agreement, including (a) sums required to reimburse the Lessee or its agents for advances made for any such costs, (b) interest during the period of the acquisition, installation and equipping of the Equipment and for up to six months thereafter, and (c) all costs related to the financing of the Equipment through this Agreement and all related transactions.

“Project Fund” has the meaning assigned in Section 2.02 herein.

“**Required Payments**” means Base Payments and Additional Payments.

“**Security Property**” means the Equipment and all amounts on deposit from time to time in the Project Fund.

“**State**” means the State of South Carolina.

“**UCC**” means the Uniform Commercial Code or any successor law as in effect from time to time in the State.

All references in this Agreement to designated “Sections” and other subdivisions are to the designated sections and other subdivisions of this Agreement. The words “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision unless the context indicates otherwise. Words importing the singular number shall include the plural number and vice versa.

ARTICLE II LEASE; ADVANCE; SECURITY

Section 2.01. Lease. Truist hereby leases to the Lessee, and the Lessee hereby leases from Truist, the Equipment, for a term beginning on the Closing Date and ending upon final payment of all Required Payments, unless this Agreement is earlier terminated as provided herein. The Lessee shall be entitled to possession of all property constituting any portion of the Equipment and may retain possession of all property constituting any portion of the Equipment so long as no Event of Default is continuing under this Agreement and no Event of Nonappropriation has occurred.

Section 2.02. Advance. Truist shall advance \$843,750 (the “*Amount Advanced*”) to the Lessee by making a deposit of \$843,750 as provided in Article IV herein, and the Lessee hereby accepts the Amount Advanced from Truist.

Section 2.03. UCC Security Agreement.

(a) This Agreement is intended as and constitutes a security agreement pursuant to the UCC with respect to the Security Property, which is described as follows:

(i) all moneys on deposit from time to time in the Project Fund; and

(ii) all property acquired by the Lessee with funds advanced by Truist pursuant to this Agreement, all personal property obtained in substitution or replacement therefore and all personal property obtained in substitution or replacement for any portion of the Equipment, and all proceeds of the foregoing (collectively, the “*Equipment*”).

The Lessee hereby grants to Truist a security interest in the Security Property to secure the Required Payments.

(b) The Lessee shall allow Truist to deliver and file, or cause to be filed, in such place or places as may be required by law, financing statements (including any continuation statements required by the UCC or determined by Truist) in such form as Truist may reasonably require to perfect and continue the security interest in the Equipment and in the moneys on deposit from time to time in the Project Fund.

Section 2.04. Lessee's Limited Obligation.

(a) No provision of this Agreement shall be construed or interpreted as creating a pledge of the Lessee's full faith, credit or taxing power within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as an improper delegation of governmental powers or as a donation or a lending of the Lessee's credit within the meaning of the State constitution. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the Lessee's moneys (other than the funds held under this Agreement), nor shall any provision of this Agreement restrict the future issuance of any of the Lessee's bonds or obligations payable from any class or source of the Lessee's moneys (except to the extent this Agreement restricts the incurrence of additional obligations secured by the Security Property).

(b) Nothing in this Section is intended to impair or prohibit execution on the Security Property if the Required Payments are not paid when due or otherwise upon the occurrence of an Event of Default under this Agreement.

Section 2.05. Lessee's Continuing Obligations. Except for an Event of Nonappropriation as described in Section 3.05 hereof, the Lessee shall remain liable for full performance of all its covenants under this Agreement (subject to the limitations described in Section 2.04 hereof), including payment of all Required Payments, notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

- (a) Truist's waiver of any right granted or remedy available to it;
- (b) The forbearance or extension of time for payment or performance of any obligation under this Agreement, whether granted to the Lessee, a subsequent owner of the Equipment or any other person;
- (c) The release of all or part of the Security Property or the release of any party who assumes all or any part of such performance;
- (d) Any act or omission by Truist (but this provision does not relieve Truist of any of its obligations under this Agreement);
- (e) The sale of all or any part of the Equipment; or
- (f) Another party's assumption of the Lessee's obligations under this Agreement.

**ARTICLE III
LESSEE'S PAYMENT OBLIGATION AND RELATED MATTERS**

Section 3.01. Rental; Purchase Option.

(a) As rental for the Equipment, the Lessee shall make Base Payments to Truist in lawful money of the United States at the times and in the amounts set forth in Exhibit B attached hereto, except as otherwise provided in this Agreement. As indicated in Exhibit B, the Base Payments reflect the repayment of the Amount Advanced and include designated interest components.

(b) Upon payment of all the Base Payments and all Additional Payments, the Lessee may, at its option, purchase all of Truist's interest in the Equipment, on an as-is, where-is basis, upon notice and payment

to Truist of the sum of Ten Dollars (\$10.00). This option to purchase the Equipment is personal to the Lessee and is not assignable.

Section 3.02. Additional Payments. The Lessee shall pay all Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed in lawful money of the United States.

Section 3.03. Prepayment. At its option at any time on or after the fifth anniversary of the date of this Agreement, the Lessee may prepay the outstanding principal component of the Amount Advanced (in whole but not in part), and thereby obtain ownership of all the Equipment free of this lease and Truist's security interest in the Equipment, by paying (a) all Additional Payments then due and payable, (b) all interest accrued and unpaid to the prepayment date, and (c) 100% of the outstanding principal component of the Amount Advanced, in accordance with the provisions of Exhibit B attached hereto.

Section 3.04. Late Payments. If the Lessee fails to pay any Base Payment when due, the Lessee shall pay additional interest on the principal component of the late Base Payment at an annual rate equal to the Prime Rate from the original due date.

Section 3.05. Appropriations.

(a) The Budget Officer shall include in the initial proposal for each of the Lessee's annual budgets the amount of all Base Payments and estimated Additional Payments coming due during the Fiscal Year to which such budget applies. Notwithstanding that the Budget Officer includes such an appropriation for Required Payments in a proposed budget, the Governing Board may determine not to include such an appropriation in the Lessee's final budget for such Fiscal Year.

(b) The Budget Officer shall deliver notification to Truist within 15 days after the adoption of the annual budget if an amount equal to the Base Payments and estimated Additional Payments coming due during the next Fiscal Year has not been appropriated by the Lessee in such budget for such purposes. The provision of such notice shall be conclusive as to the occurrence of an Event of Nonappropriation, provided, however, that the failure of the Budget Officer to so notify Truist shall not obviate the fact of the occurrence of an Event of Nonappropriation or the rights and responsibilities of the parties as provided in the remainder of this Section 3.05 and this Agreement generally arising upon such occurrence.

(c) The actions required of the Lessee and its officers and/or officials pursuant to this Section shall be deemed to be and shall be construed to be in fulfillment of ministerial duties, and it shall be the duty of each and every Lessee officer and/or official to take such action and do such things as are required by law in the performance of the official duty of such officers and/or officials to enable the Lessee to carry out and perform the actions required pursuant to this Section and the remainder of this Agreement to be carried out and performed by the Lessee.

(d) Subject to its right of nonappropriation, the Lessee currently believes that it can obtain funds sufficient to pay all Required Payments when due.

(e) Notwithstanding any other provision of the Agreement to the contrary, if the Governing Board fails to appropriate funds to pay the Required Payments for the next Fiscal Year to continue leasing of the Equipment, an Event of Nonappropriation shall be deemed to have occurred, this Agreement shall terminate, shall create no further obligation of the Lessee as to subsequent Fiscal Years and shall be null and void. The Lessee shall not, in this sole event, be obligated to make any Required Payments beyond the end of the last Fiscal Year for which funds were appropriated to pay Required Payments.

Upon the occurrence of an Event of Nonappropriation, this Agreement shall terminate on the last day of the Fiscal Year for which Required Payments have been paid by Lessee, without penalty or expense to the Lessee of any kind whatsoever. Subsequent to such termination of this Agreement, the Lessee shall have no continuing obligation to make Required Payments under this Agreement. No right of action or damages shall accrue to the benefit of Truist or its assignee as to that portion of this Agreement which may so terminate. The provisions of this paragraph shall remain in full force and effect notwithstanding the failure of any party to comply with any provision of this Agreement and whether or not the Lessee is in default under this Agreement. The Lessee agrees to surrender possession of the Equipment to Truist or its assignee within ten (10) days of the date of such termination. Upon the occurrence of an Event of Nonappropriation, Truist shall, beginning on the first day of the Fiscal Year to which such Event of Nonappropriation is applicable, have all the rights and remedies to take possession of the Equipment and to sell, lease, or otherwise dispose of the Equipment as its own property without liability to the Lessee.

In the event Lessee fails to timely notify Truist of the occurrence of an Event of Nonappropriation, or to deliver the Equipment to Truist upon such occurrence, the Lessee shall be liable to Truist for one-twelfth of the amount due for the applicable Fiscal Year, as shown on Exhibit B, for each month or portion thereof that Lessee fails to provide notice or deliver the Equipment to Truist.

Section 3.06. No Abatement. There shall be no abatement or reduction of the Required Payments for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or imaginary) arising out of or related to the Equipment, except as expressly provided in this Agreement. The Lessee assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever. The Required Payments shall be made in all events unless the Lessee's obligation to make Required Payments is terminated as otherwise provided in this Agreement.

Section 3.07. Interest Rate and Payment Adjustment. (a) "*Rate Adjustment Event*" means (i) any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining (A) that, owing to acts or omissions of Lessee in contravention of its covenants herein made, the interest component of Base Payments, or any portion thereof, is includable in gross income for federal income tax purposes or (B) that the Lessee's obligations under this Agreement are not "qualified tax-exempt obligations" within the meaning of Code Section 265 (a "*265 Event*").

(b) Upon any Rate Adjustment Event, (i) the unpaid principal portion of the Amount Advanced shall continue to be payable on dates and in amounts as set forth in Exhibit B, but (ii) the interest components of the Base Payments shall be recalculated, at an interest rate equal to an annualized interest rate equal to the Prime Rate plus 2% (200 basis points) (except as to a 265 Event, in which case the annualized interest rate shall be 2.53%), to the date (retroactively, if need be) determined pursuant to the Rate Adjustment Event to be the date interest became includable in gross income for federal income tax purposes (or in the case of a 265 Event, retroactively to the Closing Date).

(c) The Lessee shall pay to Truist or its assignee interest at such adjusted rate (subject to credit for interest previously paid) along with any interest, penalties or other charges assessed against or payable by Truist and attributable to a Rate Adjustment Event notwithstanding the prior repayment of the entire Amount Advanced or assignment of this Agreement.

ARTICLE IV PROJECT FUND

Section 4.01. Project Fund. Pursuant to Section 2.02, on the Closing Date, Truist shall deposit \$843,750 into the Project Fund, which shall be a special account of the Lessee at Truist Bank to be designated "2021-_____ City of Mullins, South Carolina Project Fund". The Project Fund shall be held

separate and apart from all other funds or accounts of the Lessee. The Project Fund is the Lessee's property, but the Lessee may withdraw amounts on deposit in the Project Fund only as provided herein and only for application from time to time to the payment of Project Costs or otherwise as permitted by Section 4.03 hereof. Pending such application, such amounts shall be subject to a lien and charge in favor of Truist to secure the Lessee's obligations hereunder.

Section 4.02. Requisitions from Project Fund. The Lessee may withdraw funds from the Project Fund only after authorization from Truist. Truist shall authorize the disbursement of funds from the Project Fund only to the Lessee and only upon its receipt of one or more written requisitions in the form set forth in Exhibit C attached hereto signed by a Lessee Representative. The Lessee shall submit its signed requisitions in pdf format by electronic transmission at the email address contained in the requisition form.

Upon receipt of a requisition from the Lessee, Truist shall undertake such review of the matters referred to in such requisition as it shall deem appropriate, and within seven (7) Business Days after such receipt shall notify the Lessee if it does not approve the requisition with the reasons for its disapproval. Truist has no obligation to make a review and any review by Truist is only for Truist's benefit. Truist shall not unreasonably withhold payment of any requisition.

Section 4.03. Disposition of Project Fund Balance. (a) Promptly after the acquisition of the Equipment, and when the Lessee has withdrawn from the Project Fund all of the funds needed to acquire the Equipment, the Lessee shall deliver to Truist a written certificate of completion executed by a Lessee Representative stating that (i) the Equipment has been acquired, (ii) there are no mechanic's or other liens against the Equipment for labor or materials furnished in connection with the acquisition of the Equipment, and (iii) no further funds will be requisitioned from the Project Fund to pay Project Costs. Truist shall then withdraw any balance remaining in the Project Fund (and not required to be retained to pay Project Costs incurred but not yet paid) and apply such amount as provided in subsection (d) of this Section.

(b) Upon the occurrence of an Event of Default, Truist shall withdraw any balance remaining in the Project Fund and apply such amount as provided in subsection (d) of this Section.

(c) If (i) more than three years have elapsed from the Closing Date or (ii) at least six months have elapsed from Truist's most recent receipt of a requisition for Project Costs, then Truist, upon 30 days' notice from Truist to the Lessee, shall withdraw any balance remaining in the Project Fund and apply such amount as provided in subsection (d) of this Section.

(d) Truist shall apply any amounts withdrawn from the Project Fund pursuant to this Section in the following order: (i) to the payment of any Additional Payments then due to Truist under this Agreement, (ii) to the payment of any interest accrued to the Project Fund disposition date that is then due and payable, (iii) to the payment of any principal amount then due and payable, (iv) to the prepayment of principal and accrued interest in accordance with the prepayment provisions of this Agreement, and (v) to the payment of future principal components of Base Payments in inverse order of maturity; provided, however, that (1) at the option of Truist, Truist may deliver funds held in the Project Fund, not exceeding \$500 in any case, to the Lessee to be applied to additional Project Costs or future debt service payments, and (2) in no event will Truist apply any funds in the manner set forth herein if it is advised in an opinion of bond counsel provided by the Lessee that such a use of funds could adversely affect the exclusion from gross income for federal income tax purposes of the interest component of Base Payments. Any prepayment pursuant to this Section shall not affect any other Lessee payment obligation hereunder. Truist shall notify the Lessee of any withdrawal from the Project Fund made under this Section, and in the notice shall describe its application of the funds so withdrawn.

Section 4.04. Investment. (a) The Lessee and Truist agree that money in the Project Fund will be

continuously invested and reinvested in a public funds money rate savings account, as directed by Truist, that meets the requirements of Section 6-5-10 of the Code of Laws of South Carolina 1976, as amended.

(b) From and after the date that is three years from the Closing Date, the Lessee and Truist agree that money in the Project Fund will not be invested at a "yield," as determined under the Code, in excess of the "yield" on the Lessee's obligations under this Agreement, unless the Lessee has supplied Truist with an opinion of bond counsel to the effect that such investment will not adversely affect the exclusion from gross income for federal income tax purposes to which the interest components of Base Payments would otherwise be entitled.

(c) Investment obligations acquired with money in the Project Fund shall be deemed at all times to be part of the Project Fund. The interest accruing thereon and any profit or loss realized upon the disposition or maturity of any such investment shall be credited to or charged against the Project Fund.

(d) All earnings on moneys in the Project Fund shall be used for Project Costs or otherwise applied in accordance with Section 4.03 hereof.

ARTICLE V LESSEE'S COVENANTS, REPRESENTATIONS AND WARRANTIES

Section 5.01. [Reserved]

Section 5.02. Covenant as to Tax Exemption. (a) The Lessee covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income taxation purposes of the interest portion of the obligation created by this Agreement under Section 103 of the Code. In particular, the Lessee covenants that it will not directly or indirectly use or permit the use of any proceeds of any fund created under this Agreement, any funds of the Lessee or any property financed or refinanced with funds provided to the Lessee under this Agreement, or otherwise take or omit to take any action, that would cause the obligation created by this Agreement to be an "arbitrage bond" within the meaning of Section 148(a) of the Code or a "private activity bond" under Section 141 of the Code. The Lessee will maintain books on which will be recorded (i) Truist or (ii) any assignee of the Base Payments due under this Agreement, as the registered owner of such Base Payments. To that end, the Lessee has executed the Use of Proceeds Certificate dated as of the date hereof (the "*Use of Proceeds Certificate*") and will comply with all requirements of Section 141 and Section 148 of the Code to the extent applicable.

(b) The Lessee hereby represents and warrants that its representations and warranties in the Use of Proceeds Certificate with respect to its investment and use of funds provided under this Agreement, and its use of any property financed or refinanced with funds provided under this Agreement, are true, correct and complete.

(c) Without limiting the generality of the foregoing, the Lessee agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the obligation created by this Agreement from time to time. This covenant shall survive the termination of this Agreement.

(d) Notwithstanding any provision of this Section, if the Lessee shall provide to Truist a Bond Counsel Opinion to the effect that any action required under this Section or the Use of Proceeds Certificate is no longer required, or to the effect that some further action is required, to maintain the exclusion from

gross income of the interest on the obligation created by this Agreement pursuant to Section 103 of the Code, the Lessee and Truist may rely conclusively on such opinion in complying with the provisions thereof.

(e) To the extent permitted by law, the Lessee hereby designates and authorizes Truist and its employees as its agents and attorneys-in-fact of the Lessee for the purpose of preparing and filing with the IRS a form 8038 (or other form required under Section 149(e) of the Code) with respect to this Agreement.

(f) The Lessee acknowledges that its personnel must be familiar with the arbitrage rebate rules because the tax-exempt status of the interest on the Base Payments depends upon continuing compliance with such rules. The Lessee therefore covenants to take all reasonable action to assure that Lessee personnel responsible for the investment of and accounting for financing proceeds comply with such rules.

(g) The Lessee represents that the aggregate face amount of all tax-exempt obligations issued by the Lessee during the current calendar year does not, and will not, exceed \$10,000,000. The Lessee also represents that it has designated each of the Base Payments under this Agreement as a "qualified tax-exempt obligation" for the purposes of the Code.

Section 5.03. Validity of Organization and Acts. The Lessee is validly organized and existing under State law, has full power to enter into this Agreement and has duly authorized and has obtained all required approvals and all other necessary acts required prior to the execution and delivery of this Agreement. This Agreement is a valid, legal and binding obligation of the Lessee.

Section 5.04. Maintenance of Existence. The Lessee shall take all action permitted by the law of the State to maintain its existence, to be a local governmental unit of the State, to be validly organized and existing under State law, and shall take no action to consolidate with or merge into another governmental unit of the State, or to permit one or more other governmental units of the State to consolidate with or merge into it, unless the governmental unit thereby resulting assumes the Lessee's obligations under this Agreement. This Section 5.04 shall not be construed to interpose any limitation on the authority of the General Assembly of the State to order its political subdivisions as it may determine according to the Constitution and laws of the State.

Section 5.05. Acquisition of Permits and Approvals. All permits, consents, approvals or authorizations of all governmental entities and regulatory bodies, and all filings and notices required on the Lessee's part to have been obtained or completed as of today in connection with the authorization, execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the acquisition, installation and equipping of the Equipment have been obtained and are in full force and effect, and, after due investigation, is aware of no reason why any future required permits, consents, approvals, authorizations or orders cannot be obtained as needed.

Section 5.06. No Breach of Law or Contract. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement, nor the fulfillment of or compliance with the terms and conditions of this Agreement, (a) to the best of the Lessee's knowledge, constitutes a violation of any provision of law governing the Lessee or (b) results in a breach of the terms, conditions or provisions of any contract, agreement or instrument or order, rule or regulation to which the Lessee is a party or by which the Lessee is bound.

Section 5.07. No Litigation. There is no litigation or any governmental administrative proceeding to which the Lessee (or any official thereof in an official capacity) is a party that is pending or, to the best of the Lessee's knowledge after reasonable investigation, threatened with respect to (a) the Lessee's organization or existence, (b) its authority to execute and deliver this Agreement or to comply with the terms of this Agreement, (c) the validity or enforceability of this Agreement or the transactions contemplated by this Agreement, (d) the

title to office of any Governing Board member or any other Lessee officer or official, (e) any authority or proceedings relating to the Lessee's execution or delivery of this Agreement, or (f) the undertaking of the transactions contemplated by this Agreement.

Section 5.08. No Current Default or Violation. (a) The Lessee is not presently in violation of any existing law, rule or regulation applicable to it, (b) the Lessee is not in default under any contract, other agreement, order, judgment, decree or other instrument or restriction of any kind to which the Lessee is a party or by which it is bound or to which any of its assets are subject, including this Agreement, and (c) no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including this Agreement, which constitutes or which, with notice or lapse of time, or both, would constitute an event of default hereunder or thereunder.

Section 5.09. No Misrepresentation. No representation, covenant or warranty by the Lessee in this Agreement is false or misleading in any material respect.

Section 5.10. Environmental Warranties.

(a) The Lessee warrants and represents to Truist that, to the best of the Lessee's knowledge after thorough investigation, the Equipment is not now and has not ever been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials (defined below).

(b) The Lessee covenants that the Equipment shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in connection with the normal maintenance and operation of the Equipment, and the Lessee shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any lessee, the release of Hazardous Materials onto the Equipment or suffer the presence of Hazardous Materials on the Equipment, except in connection with the normal maintenance and operation of the Equipment.

(c) The Lessee shall comply with, and shall use all reasonable efforts to ensure compliance by all users and lessees with, all applicable federal, State and local laws, ordinances, rules and regulations with respect to Hazardous Materials and shall keep the Equipment free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. If the Lessee receives any notices from any governmental agency or any lessee with regard to Hazardous Materials on, from or affecting the Equipment, the Lessee shall immediately notify Truist. The Lessee shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Equipment in accordance with all applicable federal, State and local laws, ordinances, rules, regulations and policies and to Truist's satisfaction.

(d) "**Hazardous Materials**" means any explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any materials containing asbestos, or any other substance or material as defined by any federal, State or local environmental law, ordinance, rule or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. sections 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. sections 9601 et seq.), and the regulations adopted and publications promulgated pursuant thereto.

(e) [Reserved]

(f) The Lessee's obligations under this Section shall continue in full force and effect notwithstanding full payment of the Required Payments or execution on the security interests created under this Agreement.

Section 5.11. Further Instruments. Upon Truist's request, the Lessee shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by Truist to carry out the purposes of this Agreement or any other document related to the transactions contemplated by this Agreement, and subject to the liens and security interests hereof and thereof all or any part of the Security Property intended to be given or conveyed hereunder or thereunder, whether now given or conveyed or acquired and conveyed subsequent to the date of this Agreement.

Section 5.12. Truist's Advances for Performance of Lessee's Obligations. If the Lessee fails to perform any of its obligations under this Agreement, Truist is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by Truist (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Equipment, and any associated legal or other expenses, together with interest at the Prime Rate), shall be secured as Additional Payments under this Agreement. The Lessee promises to pay all such amounts to Truist immediately upon demand.

Section 5.13. Equipment Will Be Used and Useful. The acquisition, installation and equipping of the Equipment is necessary and expedient for the Lessee, and will perform essential functions of the Lessee appropriate for units of local government. The Lessee has an immediate need for, and expects to make immediate use of, all of the Equipment, and does not expect such need or use to diminish in any material respect during the term of the Agreement. The Equipment will not be used in any private business or put to any private business use.

Section 5.14. Financial Information.

(a) The Lessee shall send to Truist a copy of the Lessee's audited financial statements for each Fiscal Year within 30 days of the Lessee's acceptance of such statements, but in any event within 270 days of the completion of such Fiscal Year.

(b) The Lessee shall furnish Truist, at such reasonable times as Truist shall request, all other financial information (including, without limitation, the Lessee's annual budget as submitted or approved) as Truist may reasonably request. The Lessee shall permit Truist or its agents and representatives to inspect the Lessee's books and records and make extracts therefrom.

Section 5.15. Taxes and Other Governmental Charges. The Lessee shall pay, as Additional Payments, the full amount of all taxes, assessments and other governmental charges lawfully made by any governmental body during the term of this Agreement. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Lessee shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the Agreement term. The Lessee shall not allow any liens for taxes, assessments or governmental charges with respect to the Equipment or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Equipment or any portion thereof which, if not paid, will become a charge on any interest in the Equipment, including Truist's interest, or the rentals and revenues derived therefrom or hereunder).

Section 5.16. Lessee's Insurance.

(a) The Lessee shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to all Equipment in an amount equal to the actual cash value

of the Equipment. Such property damage insurance shall include Truist as co-loss payee. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 6.15 hereof.

(b) The Lessee shall, at its own expense, acquire, carry and maintain comprehensive general liability insurance (and auto liability insurance, if applicable) in accordance with the South Carolina Torts Claim Act, Sections 15-78-10 *et seq.*, Code of Laws of South Carolina, 1976, as amended from time to time.

(c) The Lessee shall also maintain workers' compensation insurance issued by a responsible carrier authorized under State law to insure the Lessee against liability for compensation under applicable State law as in effect from time to time.

(d) All insurance shall be maintained with generally recognized responsible insurers in accordance with State law and may carry reasonable deductible or risk-retention amounts.

(e) Truist shall not be responsible for the sufficiency or adequacy of any required insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by Truist.

(g) Upon request by Truist, the Lessee shall deliver to Truist a certificate stating that the risk coverages required by this Agreement are in effect, and stating the carriers, policy numbers, coverage limits and deductible or risk-retention amounts for all such coverages.

ARTICLE VI THE EQUIPMENT

Section 6.01. Acquisition, Installation and Equipping. The Lessee shall comply with all provisions of law applicable to the acquisition of the Equipment, accept all portions of the Equipment when properly delivered, provide for the proper installation and equipping thereof and thereafter promptly place each such portion in service.

Section 6.02. Changes in Location. The Lessee shall promptly inform Truist if any component of the Equipment shall be moved from the location designated for such Equipment at the time of its acquisition.

Section 6.03. Acquisition and Installation within Funds Available. The Lessee represents that, based upon its examination of the plans and specifications for the Equipment, estimated installation costs and the Equipment's anticipated configuration, the Equipment can be acquired and installed for a total price within the total amount of funds to be available therefor in the Project Fund, income anticipated to be derived from the investment thereof and other funds previously identified and designated for such purposes. If the total amount available for such purposes in the Project Fund shall be insufficient to pay the entire cost of acquiring and installing the Equipment, the Lessee promises to pay any such excess costs (or, with the consent of Truist, which consent shall not be unreasonably withheld, modify Exhibit A to allow for the acquisition, installation and equipping of personal property for which sufficient Amounts Advanced remain available), with no resulting reduction or offset in the amounts otherwise payable by the Lessee under this Agreement. Any payment required by this Section 6.03 is subject to lawful appropriation by the Governing Body of funds with which to make such payment. The failure of the Governing Body to appropriate funds for such purpose shall not constitute an Event of Nonappropriation or Event of Default under this Agreement.

Section 6.04. Disclaimer of Warranties. The Lessee agrees that Truist has not designed the Equipment, that Truist has not supplied any plans or specifications with respect thereto and that Truist (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Equipment or similar equipment, (b)

has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Equipment or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Equipment or any component part thereof or any property or rights relating thereto at any stage of the acquisition, installation and equipping thereof, (c) has not, at any time, had physical possession of the Equipment or any component part thereof or made any inspection thereof or of any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Equipment or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the Lessee intends therefor, or (iii) is safe in any manner or respect.

TRUIST MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE, and further including the design or condition thereof; the safety, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Equipment's ability to perform any function; that the Amount Advanced will be sufficient to pay all costs of the acquisition and installation of the Equipment; or any other characteristic of the Equipment; it being agreed that the Lessee is to bear all risks relating to the Equipment, the installation thereof and the transactions contemplated by this Agreement, and the Lessee hereby waives the benefits of any and all implied warranties and representations of Truist.

The provisions of this Section shall survive the Agreement's termination.

Section 6.05. Right of Entry and Inspection. Truist and its representatives and agents shall have the right to enter upon the Lessee's property and inspect the Equipment from time to time, and the Lessee shall cause any vendor, contractor or sub-contractor to cooperate with Truist and its representatives and agents during such inspections.

No right of inspection or approval granted in this Section shall be deemed to impose upon Truist any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by Truist shall be deemed to impose upon Truist any duty or obligation whatsoever to identify or correct any defects in the Equipment or to notify any person with respect thereto, and no liability shall be imposed upon Truist, and no warranties (either express or implied) are made by Truist as to the quality or fitness of any improvement, any such inspection and approval being made solely for Truist's benefit.

Section 6.06. Compliance with Requirements.

(a) The Lessee shall cause the Equipment to be installed in a careful manner and in compliance with all applicable legal requirements.

(b) The Lessee shall observe and comply promptly with all current and future requirements relating to the Equipment's use or condition imposed by (i) any judicial, governmental or regulatory body having jurisdiction over the Equipment or any portion thereof or (ii) any insurance company writing a policy covering the Equipment or any portion thereof, whether or not any such requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Equipment.

(c) The Lessee shall obtain and maintain in effect all licenses and permits required for the Equipment's operation.

(d) The Lessee shall in no event use the Equipment or any part thereof, nor allow the same to be used, for any unlawful purpose, or suffer any act to be done or any condition to exist with respect to the Equipment or any part thereof, nor any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.

Section 6.07. Use and Operation. The Lessee shall use and operate the Equipment and related property for its reasonably intended use or purpose and for no other purpose unless required by law. The Lessee shall be solely responsible for the Equipment's operation, and shall not contract with any other person or entity for the Equipment's operation.

Section 6.08. Maintenance and Repairs; Additions.

(a) The Lessee shall keep the Equipment in good order and repair (reasonable wear and tear excepted) and in good operating condition, shall not commit or permit any waste or any other thing to occur whereby the value or usefulness of the Equipment might be impaired, and shall make from time to time all necessary or appropriate repairs, replacements and renewals.

(b) The Lessee may, also at its own expense, make from time to time any additions, modifications or improvements to the Equipment that it may deem desirable for its governmental or proprietary purposes and that do not materially impair the effective use, nor materially decrease the value or substantially alter the intended use, of the Equipment. The Lessee shall do, or cause to be done, all such things as may be required by law in order fully to protect the security of and all Truist's rights under this Agreement.

(c) Any and all additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the "Equipment" for the purposes of this Agreement.

(d) Notwithstanding the provisions of subsection (c) of this Section, however, the Lessee may, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Equipment. All such property shall remain the Lessee's sole property in which Truist shall have no interest; provided, however, that any such property which becomes permanently affixed to the Equipment shall be subject to the lien and security interest arising under this Agreement if Truist shall reasonably determine that the Equipment would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

Section 6.09. Security. The Lessee shall take all reasonable steps necessary to safeguard the Equipment against theft. The security afforded the Equipment shall at all times be equal to or better than the security afforded the Lessee's personal property that is not subject to this Agreement.

Section 6.10. Utilities. The Lessee shall pay all charges for utility services furnished to or used on or in connection with the Equipment, as may be applicable dependent upon the type of equipment.

Section 6.11. Risk of Loss. The Lessee shall bear all risk of loss to the Equipment.

Section 6.12. Condemnation. The Lessee shall immediately notify Truist if any governmental authority shall institute, or shall notify the Lessee 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. The Lessee 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 Truist, and

to the extent permitted by law hereby irrevocably authorizes and empowers Truist, in the Lessee's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the Lessee receives any Net Proceeds arising from any such action, the Lessee shall apply such Net Proceeds as provided in Section 6.15.

Section 6.13. Title. Title to the Equipment and any and all additions, repairs, replacements or modifications thereto shall at all times be in the Lessee, subject to the lien of this Agreement. Upon the Lessee's payment in full of all Required Payments, Truist, at the Lessee's request, shall cancel this Agreement. Lessee shall reimburse Truist for any actual costs paid to third parties necessary to cancel this Agreement.

Section 6.14. No Encumbrance, Mortgage or Pledge of Equipment.

(a) The Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics' and materialmen's liens), charge, encumbrance or other claim in the nature of a lien on or with respect to the Equipment. The Lessee shall promptly, at its own expense, take such action as may be duly necessary to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it shall have created, incurred or suffered to exist.

(b) The Lessee shall reimburse Truist for any expense incurred by Truist to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, with interest thereon at the Prime Rate.

Section 6.15. Damage and Destruction; Use of Net Proceeds.

(a) The Lessee shall promptly notify Truist if (i) the Equipment or any portion thereof is stolen or is destroyed or damaged by fire or other casualty, (ii) a material defect in the installation of the Equipment shall become apparent, or (iii) title to or the use of all or any portion of the Equipment shall be lost by reason of a defect in title. Each notice shall describe generally the nature and extent of such damage, destruction or taking.

(b) The Lessee shall apply the Net Proceeds, (i) to the prompt completion, repair or restoration of the Equipment, (and pay any costs in excess of Net Proceeds, if necessary), or (ii) together with other available funds as may be necessary, to the prepayment of all outstanding Required Payments pursuant to Section 3.03. The Lessee shall promptly report to Truist regarding the use of Net Proceeds.

(c) Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of Net Proceeds shall be the Lessee's property and shall be part of the Equipment.

**ARTICLE VII
DEFAULTS AND REMEDIES; TERMINATION**

Section 7.01. Events of Default. An "*Event of Default*" is any of the following:

(a) Except as provided in Section 7.04 hereof, the Lessee's failing to make any Base Payment when due.

(b) The Lessee's breaching or failing to perform or observe any term, condition or covenant of this Agreement on its part to be observed or performed, other than as provided in subsection (a) of this Section, including payment of any Additional Payment, for a period of 15 days after written notice specifying such failure and requesting that it be remedied shall have been given to the Lessee by Truist, unless Truist shall agree in writing to an extension of such time prior to its expiration.

(c) The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law by or against the Lessee as a debtor, or the appointment of a receiver, custodian or similar officer for the Lessee or any of its property, and the failure of such proceedings or appointments to be vacated or fully stayed within 30 days after the institution or occurrence thereof.

(d) Any warranty, representation or statement made by the Lessee in this Agreement is found to be incorrect or misleading in any material respect on the Closing Date (or, if later, on the date made), provided, however, that this Section 7.01(d) is inapplicable to any warranty, representation or statement made by the Lessee in this Agreement as to the applicability of Article 9 of the UCC, as enacted in the State, to this Agreement or any rights of Truist thereunder.

(e) Any lien, charge or encumbrance prior to the security interest created under Section 2.03 hereof, or affecting the validity of the Agreement, is found to exist, or proceedings are instituted against the Lessee to enforce any lien, charge or encumbrance against the Equipment and such lien, charge or encumbrance would be prior to the lien of this Agreement.

Section 7.02. Remedies on Default. Upon the continuation of any Event of Default, Truist may, without any further demand or notice, exercise any one or more of the following remedies:

(a) Declare the unpaid principal components of the Base Payments which have been lawfully appropriated by the Lessee but not yet paid to Truist immediately due and payable;

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

(c) As provided in Article IV hereof, pay over any balance remaining in the Project Fund to be applied against outstanding Base Payments in any manner Truist may reasonably deem appropriate; and

(d) Avail itself of all available remedies under this Agreement, including execution as provided in Section 7.03 hereof, and, to the extent permitted by law, recovery of attorneys' fees and other expenses.

Section 7.03. Execution on Personal Property. Upon the continuation of any Event of Default and in addition to all other remedies granted in this Agreement, Truist shall have all the rights and remedies of a secured party under the UCC and may proceed to execute upon the Security Property.

Section 7.04. Consequences of Nonappropriation. Upon an Event of Nonappropriation, the Lessee shall have no further obligation to pay Base Payments beyond the end of the Fiscal Year for which amounts have been appropriated for Base Payments. This Agreement shall terminate on the last day of the Fiscal Year for which amounts have been appropriated for Base Payments without any penalty to the Lessee whatsoever. The Lessee agrees to peaceably surrender possession the Equipment to Truist or its assignees on the first day of the Fiscal Year to which the Event of Nonappropriation applies, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States as designated by Truist.

In addition, upon the occurrence of any Event of Nonappropriation, Truist may, without any further demand or notice, take action with respect to the Lessee and the Equipment as contemplated in Section 7.05 hereof.

Section 7.05. Possession of Equipment. Upon the continuation of an Event of Default or the occurrence of an Event of Nonappropriation, the Lessee shall immediately lose the right to possess, use and

enjoy the Equipment (but may remain in possession of the Equipment as a lessee at will of Truist), and thereupon the Lessee (a) shall pay monthly in advance to Truist a fair and reasonable rental value for the use and possession of the Equipment (in an amount Truist shall determine in its reasonable judgment), and (b) upon Truist's demand, shall deliver possession of the Equipment to Truist or, at Truist's direction, to any purchaser of the Equipment after an execution sale.

In addition, upon the continuation of any Event of Default or the occurrence of an Event of Nonappropriation, Truist, to the extent permitted by law, is hereby authorized to (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 the Lessee's account and in reduction of the Lessee's corresponding Required Payments in such fashion as Truist shall reasonably deem appropriate. Truist shall be liable to account only for rents and profits it actually receives.

Section 7.06. No Remedy Exclusive; Delay Not Waiver. All remedies under this Agreement 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. If any Event of Default shall occur and thereafter be waived by Truist, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any other breach under this Agreement.

Section 7.07. Payment of Costs and Attorney's Fees. If Truist employs an attorney to assist in the enforcement or collection of Required Payments, or if Truist voluntarily or otherwise shall become a party to any suit or legal proceeding (including a proceeding conducted under any state or federal bankruptcy or insolvency statute) to protect the Equipment, to protect the lien of this Agreement, to enforce collection of the Required Payments or to enforce compliance by the Lessee with any of the provisions of this Agreement, the Lessee, to the extent permitted by law, agrees to pay reasonable attorneys' fees and all of the costs that may reasonably be incurred (whether or not any suit or proceeding is commenced), and such fees and costs (together with interest at the Prime Rate) shall be secured as Required Payments.

ARTICLE VIII WIRE TRANSFER REQUIREMENTS

In order to prevent unauthorized or fraudulent wire transfers through cyber fraud and other means, Truist and the Lessee hereby agree to the provisions of this Article VIII.

Section 8.01. Wire Transfer Requirements. In the event a wire transfer is made by Truist to disburse funds as contemplated by this Agreement (a "**Disbursement**"), said wire transfer shall be delivered as directed in a written "**Disbursement Authorization**" provided to Truist by a representative of the Lessee, subject to the terms and conditions set forth in this Article. For the purposes of this Article, a representative of the Lessee shall include employees and elected and/or appointed officials of the Lessee, bond counsel, the Lessee's legal counsel or the Lessee's financial advisor.

Section 8.02. Verification Procedures. Prior to making any Disbursement pursuant to a Disbursement Authorization not delivered to Truist in person by a representative of the Lessee, Truist shall verify such Disbursement Authorization verbally via telephone communication with a representative of the Lessee. The Lessee shall ensure that a representative of the Lessee will provide such verification to Truist. The Lessee shall not disclose, or allow to be disclosed, such Truist verification procedures to any third party unless there is a legitimate business need to make such disclosure or such disclosure is required by law, and the Lessee accepts the risk of such third-party knowledge of the security procedures. If the Lessee has reason to believe that a security procedure has been obtained by or disclosed to an unauthorized person or

learns of any unauthorized transfer or of any discrepancy in a transfer request, then the Lessee shall notify Truist immediately.

Section 8.03. Payee Identification. The Lessee is solely responsible for accurately identifying the wire transfer information contained in the Disbursement Authorization delivered to Truist by a representative of the Lessee, including but not limited to the bank name and its ABA number, beneficiary's account name and account number and beneficiary's physical address, together with other information requested by Truist (collectively, "*Remittance Instructions*"). If the Remittance Instructions describe a beneficiary inconsistently by name and account number, the Lessee acknowledges that Truist may make payment on the basis of the account number alone, that Truist is not obligated to detect such errors, and that the Lessee assumes the risk of any loss resulting therefrom.

Section 8.04. Duty to Reconcile Written Confirmation. Upon request from a representative of the Lessee, Truist shall use its best efforts to send a representative of the Lessee written confirmation of the Disbursement in the form of a reference number, beneficiary name and wire amount. A representative of the Lessee shall promptly review and reconcile the written confirmation of the Disbursement sent by Truist, and shall report to Truist in writing, promptly, but in no event later than ten (10) Business Days after the date of such written confirmation, any unauthorized, erroneous, unreceived or improperly executed payment. Truist and the Lessee agree that ten (10) Business Days is a reasonable time for the detection and reporting to Truist of such information. After that time, all items on the written confirmation will be considered correct and the Lessee will be precluded from recovering from Truist if such wire transfer identified in the written confirmation was actually made by Truist. For the avoidance of doubt, any such writings can be provided electronically.

Section 8.05. Unauthorized Payments. Notwithstanding any other provision herein, if a Disbursement has been verified by a representative of the Lessee pursuant to Section 8.02, it shall be binding on the Lessee if Truist acted in good faith in making such Disbursement.

Section 8.06. Recordation. Truist may record any telephone conversation between Truist and a representative of the Lessee in order to reduce the risk of unauthorized or erroneous transfers. Truist may retain such recordings for as long as Truist may deem necessary.

Section 8.07. RESERVED

Section 8.08. Applicable Law. All wire transfer orders are governed by Article 4A of the UCC, except as any provisions thereof that may be and are modified by the terms hereof. If any part of the applicable wire transfer order involves the use of the Fedwire, the rights and obligations of Truist and the Lessee regarding that wire transfer order are governed by Regulation J of the Federal Reserve Board.

**ARTICLE IX
MISCELLANEOUS**

Section 9.01. Notices.

- (a) Any communication required or permitted by this Agreement must be in writing.
- (b) Any communication under this Agreement shall be sufficiently given and deemed given when delivered by hand, on the date shown on a certified mail receipt, or delivery receipt from a national commercial package delivery service or five days after being mailed by first-class mail, postage prepaid, if addressed as follows:

(i) If to the Lessee, to City of Mullins Administration, Attention: City Administrator, 151 Front Street, Post Office Box 408, Mullins South Carolina 29574; or

(ii) If to Truist, to Truist Bank, 5130 Parkway Plaza Boulevard, Charlotte, North Carolina 28217, Attention: Governmental Finance.

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

Section 9.02. No Assignments by Lessee. The Lessee shall not sell or assign any interest in this Agreement.

Section 9.03. Assignments by Truist. Truist may, at any time and from time to time, assign all or any part of its interest in the Security Property or this Agreement, including, without limitation, Truist's rights to receive Required Payments. Any assignment made by Truist or any subsequent assignee shall not purport to convey any greater interest or rights than those held by Truist pursuant to this Agreement.

The Lessee agrees that this Agreement may become part of a pool of obligations at Truist's or its assignee's option. Truist or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement. Notwithstanding the foregoing, no assignment or reassignment of Truist's interest in the Equipment or this Agreement shall be effective unless and until the Lessee shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

The Lessee further agrees that Truist's interest in this Agreement may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Agreement, provided the Lessee receives a copy of such agency contract and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Agreement a written record of each assignment and reassignment of such certificates of participation.

The Lessee agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Lessee, and the Lessee shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the Lessee shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

Truist expressly agrees that its rights described in this Section 9.03 are subject in all respects to the terms of that Written Confirmation executed and delivered to Lessee of even date herewith.

Section 9.04. Amendments. No term or provision of this Agreement may be amended, modified or waived without the prior written consent of the Lessee and Truist.

Section 9.05. Governing Law. The Lessee and Truist intend that State law shall govern this Agreement.

Section 9.06. Liability of Officers and Agents. No officer, agent or employee of the Lessee shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated by this Agreement. Such officers or agents shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve an officer, agent or employee of the Lessee from the performance of any official duty provided by law.

Section 9.07. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

Section 9.08. Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

Section 9.09. Entire Agreement. This Agreement constitutes the Lessee's entire agreement with respect to the general subject matter covered by this Agreement.

Section 9.10. Binding Effect. Subject to the specific provisions of this Agreement, and in particular, Section 9.03 hereof, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the parties have duly signed, sealed and delivered this Agreement by duly authorized officers, all as of the date first above written.

(SEAL)

Attest:

CITY OF MULLINS, SOUTH CAROLINA

By: _____
Printed Name: Felicia Sawyer
Title: City Clerk

By: _____
Printed Name: Holly C. Jackson
Title: Interim City Administrator

TRUIST BANK

By: _____
Printed Name: Andrew G. Smith
Title: Senior Vice President

[Lease Agreement dated August __, 2021, between the City of Mullins, South Carolina and Truist Bank]

EXHIBIT A -- EQUIPMENT DESCRIPTION

- a. Side Mount Tanker Truck
- b. Rescue Pumper Truck

EXHIBIT B – PAYMENT SCHEDULE

Cash Flow Data - Loans and Payments

Event	Date	Amount	Number	Period	End Date
1 Loan	08/30/2021	843,750.00	1		
2 Payment	08/30/2022	95,263.60	10	Annual	08/30/2031

TValue Amortization Schedule - Normal, 30E3/360

Date	Payment	Interest	Principal	Balance
Loan 08/30/2021				843,750.00
2021 Totals	0.00	0.00	0.00	
1 08/30/2022	95,263.60	19,153.13	76,110.47	767,639.53
2022 Totals	95,263.60	19,153.13	76,110.47	
2 08/30/2023	95,263.60	17,425.42	77,838.18	689,801.35
2023 Totals	95,263.60	17,425.42	77,838.18	
3 08/30/2024	95,263.60	15,658.49	79,605.11	610,196.24
2024 Totals	95,263.60	15,658.49	79,605.11	
4 08/30/2025	95,263.60	13,851.45	81,412.15	528,784.09
2025 Totals	95,263.60	13,851.45	81,412.15	
5 08/30/2026	95,263.60	12,003.40	83,260.20	445,523.89
2026 Totals	95,263.60	12,003.40	83,260.20	
6 08/30/2027	95,263.60	10,113.39	85,150.21	360,373.68
2027 Totals	95,263.60	10,113.39	85,150.21	
7 08/30/2028	95,263.60	8,180.48	87,083.12	273,290.56
2028 Totals	95,263.60	8,180.48	87,083.12	
8 08/30/2029	95,263.60	6,203.70	89,059.90	184,230.66
2029 Totals	95,263.60	6,203.70	89,059.90	
9 08/30/2030	95,263.60	4,182.04	91,081.56	93,149.10
2030 Totals	95,263.60	4,182.04	91,081.56	
10 08/30/2031	95,263.60	2,114.50	93,149.10	0.00
2031 Totals	95,263.60	2,114.50	93,149.10	
Grand Totals	952,636.00	108,886.00	843,750.00	

EXHIBIT C – FORM OF PROJECT FUND REQUISITION

[TO BE PREPARED ON LESSEE’S LETTERHEAD FOR SUBMISSION]

PROJECT FUND REQUISITION

[Date] _____

Email requisitions to: GFProjectfunds@bbandt.com

Requisition Team

Truist Bank

Direct Dial: (252) 296-0452 or (252) 296-0653

RE: Request for disbursement of funds from the Project Fund related to Contract No. _____ with the City of Mullins, South Carolina, the Lessee dated August __, 2021

To Whom It May Concern,

Pursuant to the terms and conditions of the Lease Agreement dated as of August __, 2021 (the “Agreement”), between the City of Mullins, South Carolina (the “Lessee”), and Truist Bank, the Lessee requests the disbursement of funds from the Project Fund established under the Agreement for the following Project Costs:

This is requisition number ____ from the Project Fund.

Disbursements will be to the Lessee.

Amount: \$ _____

Attach copies of Certificates of Origin or Titles and applicable vendor invoices when submitting.

Project Description:

Location of Equipment/Project:

To receive funds via wire transfer please include:

ABA Routing Number:

Account Number:

Physical address of Lessee: [Lessee], [Address], Attention: _____

The Lessee makes this requisition pursuant to the following representations:


1. The Lessee has appropriated in its current fiscal year funds sufficient to pay the Base Payments and estimated Additional Payments due in the current Fiscal Year.
2. The purpose of this disbursement is for partial payment of the cost of the Project provided for under the Agreement referenced above.
3. The requested disbursement has not been subject to any previous requisition.
4. 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 herein 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 requisition.
5. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.
6. No Event of Default is continuing under the Agreement, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.
7. The Lessee shall allow Truist to deliver and file, or cause to be filed, any Uniform Commercial Code financing statements with respect to the Project or portion of the Project that Truist may request to evidence its security interest.
8. The Lessee has in place insurance on this portion of the Project that complies with the insurance provisions of the Agreement.
9. Each amount requested for payment in this requisition either (a) represents a reimbursement to the Lessee for a Project Cost expenditure previously made, and such reimbursement complies with the provisions of the Code (generally, an issuer may reimburse a prior expenditure out of tax-exempt bond proceeds if (i) the issuer has declared its "official intent" to reimburse the expenditure no later than 60 days after the date the expenditure is paid *and* (ii) the expenditure is being reimbursed no later than the end of the permitted "reimbursement period" of at least 18 months, and at most 3 years, from the date the expenditure was paid), or (b) will be used by the Lessee promptly upon the receipt of funds from Truist to make payments for Project Costs to third parties described in this requisition. [Note: adjust for taxable transactions]

Capitalized terms used in this requisition have the meanings ascribed in the Agreement.

Attached is evidence that the amounts shown in this requisition are properly payable at this time, such as bills, receipts, invoices, architects' payment certifications or other appropriate documents.

IF REQUEST IS FINAL REQUEST, CHECK HERE .

CITY OF MULLINS, SOUTH CAROLINA

By: 
Printed Name: Robert L Woodbury
Title: Mayor

**EXHIBIT D - CERTIFICATE DESIGNATING LESSEE REPRESENTATIVES
AND OFFICIAL CUSTODIAN**

In accordance with the terms of the Lease Agreement dated August __, 2021 (the "Agreement") between the City of Mullins, South Carolina (the "Lessee") and Truist Bank ("Lender"), the Lessee designates the following persons as Lessee Representatives authorized to sign requisitions to withdraw funds from the Project Fund account (as such terms are defined in the Agreement):

Printed Name:

Signature:

Holly C. Jackson

The Lessee designates the person listed below an Official Custodian for the purposes of the Federal Deposit Insurance Corporation. The person listed below is an officer, employee or agent of the Lessee who has plenary authority, including control, over funds owned by the Lessee. Control of public funds includes possession of, as well as the authority to establish, accounts in an insured depository institution and to make deposits, withdrawals and disbursements. The Official Custodian on the account is considered the insured depositor.

Printed Name:

Signature:

Last 4 Numbers
of SSN¹:

Date of
Birth:

Holly C. Jackson

Upon written notification to Lender, the Lessee may update (a) Lessee Representatives to sign requisitions, or (b) the Official Custodian.

CITY OF MULLINS, SOUTH CAROLINA

Name: Holly C. Jackson

Title: Interim City Administrator

**The Official Custodian must provide a copy of his/her driver's license.*

¹ The last 4 digits of the official custodian's social security number will be used only to differentiate the official custodian from other Lender account holders with the same name.

STATE OF SOUTH CAROLINA

COUNTY OF MULLINS

I, the undersigned, City Clerk of the City of Mullins, South Carolina (the "City"), **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 August __, 2021, 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 August __, 2021, 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 August, 2021.

(SEAL)

City Clerk, City of Mullins, South Carolina