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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement") is dated as of [REDACTED], and is between COLLETON COUNTY, SOUTH CAROLINA, a public body of the State of South Carolina (the "County"), and [REDACTED]

RECITALS:

The County 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 [REDACTED] to make available to the County the sum of [REDACTED] to enable the County to acquire the Equipment (as defined below) by lease, and provides for securing the County's obligations under this Agreement by creating certain security interests in favor of [REDACTED]

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 [REDACTED] reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of [REDACTED] 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 [REDACTED] is required to pay as a result of this Agreement, inspection and re-inspection fees, and any other amounts payable by the County (or paid by [REDACTED] on the County's behalf) as a result of its covenants under this Agreement (together with interest that may accrue on any of the above if the County shall fail to pay the same, as set forth in this Agreement).

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

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

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

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

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

"County" means Colleton County, South Carolina.

"County Administrator" means the County Administrator for the County (or the person or persons authorized to perform the duties thereof in the absence of the County Administrator).

"County Representative" means the County's Finance Director or such other person or persons at the time designated, by a written certificate furnished to [REDACTED] and signed on the County's behalf by the County Administrator, to act on the County's behalf for any purpose (or any specified purpose) under this Agreement.

"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 County'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, and is generally expected to include the personal property described in Exhibit A.

"Event of Default" means one or more events of default as defined in Section 6.01.

"Event of Nonappropriation" means any failure by the Governing Board to adopt, by the first day of any Fiscal Year, a budget for the County that includes an appropriation for Required Payments as contemplated by Section 3.05.

"Fiscal Year" means the County's fiscal year beginning July 1 or such other fiscal year as the County may later lawfully establish.

"Governing Board" means the County Council as from time to time constituted.

"Hazardous Materials" has the meaning assigned in Section 4.10.

"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 County or [REDACTED] for amounts previously expended to remedy the event giving rise to such payment or proceeds.

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"Payment Dates" means the dates indicated in Exhibit B.

"Prime Rate" means the interest rate so denominated and set by [REDACTED] (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.

"Proceeds" has the meaning assigned in Section 4.02.

"Project Costs" means all costs of the design, planning, acquiring, installing 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 County under this Agreement, including (a) sums required to reimburse the County or its agents for advances made for any such costs, (b) interest during the installation process 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.

"Project Fund Agreement" has the meaning assigned in Section 2.02.

"Rate Adjustment Event" has the meaning assigned in Section 3.07.

"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.

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ARTICLE II

LEASE; ADVANCE; SECURITY

2.01. Lease. [REDACTED] hereby leases to the County, and the County hereby leases from [REDACTED], the Equipment, for a term beginning on the Closing Date and ending upon final payment of all Required Payments, unless this Lease is earlier terminated. The County 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 or no Event of Nonappropriation has occurred.

2.02. Advance. [REDACTED] advances \$ [REDACTED] (the "Amount Advanced") to the County on the Closing Date, and the County hereby accepts the Amount Advanced from [REDACTED]. [REDACTED] is advancing the Amount Advanced by making a deposit to a Project Fund (the "Project Fund") as provided in a Project Fund Agreement of even date (the "Project Fund Agreement") between the County and [REDACTED]. All amounts on deposit from time to time in the Project Fund, including the Amount Advanced and all investment earnings, shall be used only for Project Costs until the Project Fund is terminated as provided under the Project Fund Agreement.

2.03. UCC Security Agreement.

(a) This Agreement is intended as and constitutes a security agreement pursuant to the UCC with respect to the following:

- (i) all moneys on deposit from time to time in the Project Fund; and
- (ii) all property acquired by the County with funds advanced by [REDACTED] 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 Security Property, and all proceeds of the foregoing (collectively, the "Equipment").

The County hereby grants to [REDACTED] a security interest in the Equipment and in the moneys on deposit from time to time in the Project Fund to secure the Required Payments.

(b) The County shall execute, 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 requested by [REDACTED]) in such form as [REDACTED] 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.

2.04. County's Limited Obligation. (a) No provision of this Agreement shall be construed or interpreted as creating an indebtedness of the County or a pledge of the County's faith and credit 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 County'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 County's

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moneys (other than the funds held under the Project Fund Agreement or this Agreement), nor shall any provision of this Agreement restrict the future issuance of any of the County's bonds or obligations payable from any class or source of the County'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 or the Project Fund Agreement.

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

- (a) [REDACTED]'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 County, 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 [REDACTED] (but this section provision does not relieve [REDACTED] of any of its obligations under this Agreement or the Project Fund Agreement);
- (e) The sale of all or any part of the Security Property; or
- (f) Another party's assumption of the County's obligations under this Agreement.

ARTICLE III

COUNTY'S PAYMENT OBLIGATION AND RELATED MATTERS

3.01. Rental; Purchase Option. (a) As rental for the Equipment, the County shall make Base Payments to [REDACTED] in lawful money of the United States at the times and in the amounts set forth in Exhibit B, 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 County may, at its option, purchase all of [REDACTED] interest in the Equipment, on an as-is, where-is basis, upon payment to [REDACTED] of the sum of Ten Dollars. This option to purchase the Equipment is personal to the County and is not assignable.

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3.02. Additional Payments. The County 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.

3.03. Prepayment. At its option and on any scheduled Payment Date, the County 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 [REDACTED] 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) 101% of the outstanding principal component of the Amount Advanced.

3.04. Late Payments. If the County fails to pay any Base Payment when due, the County 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.

3.05. Appropriations. (a) The Budget Officer shall include in the initial proposal for each of the County'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 County's final budget for such Fiscal Year.

(b) The Budget Officer shall deliver to [REDACTED], within 15 days after the beginning of each Fiscal Year, a certificate stating whether an amount equal to the Base Payments and estimated Additional Payments coming due during the next Fiscal Year has been appropriated by the County in such budget for such purposes.

(c) The actions required of the County and its officers 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 County official to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the County 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 County.

(d) The County reasonably believes that it can obtain funds sufficient to pay all Required Payments when due.

(e) The County acknowledges and agrees that the nonappropriation provisions of this Agreement are not intended to be used (i) as a substitute for convenience termination nor (ii) to allow the County to replace the Equipment with other substantially identical or functionally equivalent property. The County, to the extent permitted by law, agrees not to use the nonappropriation provisions for any such purpose.

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 County assumes and shall bear the entire risk of loss and damage to the

Equipment from any cause whatsoever. The Base Payments shall be made in all events unless the County's obligation to make Base Payments is terminated as otherwise provided in this Agreement.

3.07. Interest Rate and Payment Adjustment. (a) "Rate Adjustment Event" means any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining (i) that the interest component of Base Payments, or any portion thereof, is includable in any counterparty's gross income for federal income tax purposes or (ii) that the County's obligations under this Agreement are not "qualified tax-exempt obligations" within the meaning of Code Section 265 (a "265 Event"), in any case as a result of any misrepresentation by the County or as a result of any action the County takes or fails to take.

(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), to the date (retroactively, if need be) determined pursuant to the Rate Adjustment Event to be the date interest became includable in any counterparty's gross income for federal income tax purposes (in the case of a 265 Event, retroactively to the Closing Date).

(c) The County shall pay interest at such adjusted rate (subject to credit for interest previously paid) to each affected counterparty, notwithstanding the fact that any particular counterparty may not be a counterparty to this Agreement on the date of a Rate Adjustment Event. The County shall additionally pay to all affected counterparties any interest, penalties or other charges assessed against or payable by such counterparty and attributable to a Rate Adjustment Event notwithstanding the prior repayment of the entire Amount Advanced or any transfer to another counterparty.

ARTICLE IV

COUNTY'S COVENANTS, REPRESENTATIONS AND WARRANTIES

4.01. Indemnification. To the extent permitted by law, the County shall indemnify, protect and save [REDACTED] and its officers and directors 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 Security Property or the transactions contemplated by this Agreement, including without limitation the possession, condition or use of the Equipment. The indemnification arising under this Section shall survive the Agreement's termination.

4.02. Covenant as to Tax Exemption. (a) The County shall not take or permit, or omit to take or cause to be taken, any action that would cause its obligations under this Agreement to be "arbitrage bonds" or "private activity bonds" within the meaning of the Code, or otherwise adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Base Payments to which such components would otherwise be entitled. If the County should take or permit, or omit to take or cause to be taken, any such action, the County shall

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take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(b) In particular, the County covenants that it shall not permit the Amount Advanced, plus the investment earnings thereon (the "Proceeds"), to be used in any manner that would result in 5% or more of the Base Payments being directly or indirectly secured by an interest in property, or derived from payments in respect of property or borrowed money, being in either case used in a trade or business carried on by any person other than a governmental unit, as provided in Code Section 141(b), or result in 5% or more of the Proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Code Section 141(c); provided, however, that if the County receives a Bond Counsel Opinion that compliance with any such covenant is not required to prevent the interest components of Base Payments from being includable in the counterparty's gross income for federal income tax purposes under existing law, the County need not comply with such covenant.

(c) Unless the County qualifies for one or more exceptions to the arbitrage rebate requirement with respect to this financing, the County shall provide for the rebate to the United States of (i) at least 90% of the required rebate amount (A) on or before 60 days after the date that is five years from the Closing Date, and (B) at least once during each five years thereafter while the obligations remain outstanding, and (ii) the entire required rebate amount on or before 60 days after the date of final payment of the obligations. Payments shall be made in the manner prescribed by the Internal Revenue Service. The County shall cause the required rebate amount to be recomputed as of each fifth anniversary of the Closing Date, and again as of the date of final payment of the obligations. The County shall provide [REDACTED] with a copy of the results of such computation within 20 days after the end of each computation period or final payment of the obligations. Each computation shall be prepared or approved, at the County's expense, by a person with experience in matters of accounting for federal income tax purposes, a bona fide arbitrage rebate calculating and reporting service, or nationally-recognized bond counsel, in any case reasonably acceptable to [REDACTED]. The County shall engage such rebate consultant to perform the necessary calculations not less than 60 days prior to the date of the required payment.

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

4.03. Validity of Organization and Acts. The County 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 County.

4.04. Maintenance of Existence. The County shall maintain its existence, shall continue to be a local governmental unit of the State, validly organized and existing under State law, and shall not consolidate with or merge into another local governmental unit of the State, or permit one or more other local governmental units of the State to consolidate with or merge into it, unless the local governmental unit thereby resulting assumes the County's obligations under this Agreement.

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4.05. 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 County'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 and installation of the Equipment have been obtained and are in full force and effect, and there is no reason why any future required permits, consents, approvals, authorizations or orders cannot be obtained as needed.

4.06. 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 County's knowledge, constitutes a violation of any provision of law governing the County 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 County is a party or by which the County is bound.

4.07. No Litigation. There is no litigation or any governmental administrative proceeding to which the County (or any official thereof in an official capacity) is a party that is pending or, to the best of the County's knowledge after reasonable investigation, threatened with respect to (a) the County'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 County officer, (e) any authority or proceedings relating to the County's execution or delivery of this Agreement, or (f) the undertaking of the transactions contemplated by this Agreement.

4.08. No Current Default or Violation. (a) The County is not in violation of any existing law, rule or regulation applicable to it, (b) the County is not in default under any contract, other agreement, order, judgment, decree or other instrument or restriction of any kind to which the County 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.

4.09. No Misrepresentation. No representation, covenant or warranty by the County in this Agreement is false or misleading in any material respect.

4.10. Environmental Warranties and Indemnification. (a) The County warrants and represents to [REDACTED] that, to the best of the County'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.

(b) The County 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 County shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the County or any lessee, the release of Hazardous Materials onto the Equipment or suffer the presence of Hazardous

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Materials on the Equipment, except in connection with the normal maintenance and operation of the Equipment.

(c) The County shall comply with, and 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 County receives any notices from any governmental agency or any lessee with regard to Hazardous Materials on, from or affecting the Equipment, the County shall immediately notify [REDACTED]. The County 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 [REDACTED]'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) To the extent permitted by law, the County shall indemnify and hold [REDACTED] harmless from and against (i) any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against [REDACTED] as a direct or indirect result of any warranty or representation made by the County in subsections (a) through (c) above being false or untrue in any material respect, or (ii) any requirement under any law, regulation or ordinance, local, State or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by [REDACTED] or the County or any transferee or assignee [REDACTED] or the County.

(f) The County'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.

4.11. Further Instruments. Upon [REDACTED] request, the County shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by [REDACTED] to carry out more effectively the purposes of this Agreement or any other document related to the transactions contemplated by this Agreement, and to 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.

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

4.13. Equipment Will Be Used and Useful. The acquisition and installation of the Equipment is necessary and expedient for the County, and will perform essential functions of the County appropriate for units of local government. The County 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.

4.14. Financial Information. (a) The County shall send to [REDACTED] a copy of the County's audited financial statements for each Fiscal Year within 30 days of the County's acceptance of such statements, but in any event within 180 days of the completion of such Fiscal Year.

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

4.15. Taxes and Other Governmental Charges. The County 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 County shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the Agreement term. The County shall not allow any liens for taxes, assessments or governmental charges with respect to the Security Property or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Security Property or any portion thereof which, if not paid, will become a charge on any interest in the Security Property, including [REDACTED] interest, or the rentals and revenues derived therefrom or hereunder).

4.16. County's Insurance. (a) The County 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 estimated replacement cost, including installation costs, of the Equipment. Such property damage insurance shall include a lender's loss payable endorsement in favor of [REDACTED]. The County shall provide evidence of such coverage to [REDACTED] promptly upon acquisition or installation of the Equipment. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 5.14.

(b) The County shall, at its own expense, acquire, carry and maintain comprehensive general liability insurance in an amount not less than \$600,000 for personal injury or death and \$600,000 for property damage, and must include [REDACTED] as a loss payee with respect to occurrences related to the Equipment.

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(c) The County shall also maintain workers' compensation insurance issued by a responsible carrier authorized under State law to insure the County 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 and may carry reasonable deductible or risk-retention amounts. All such policies shall be deposited with [REDACTED], provided that in lieu of such policies there may be deposited with [REDACTED] a certificate or certificates of the respective insurers attesting the fact that the insurance required by this Section is in full effect. Prior to the expiration of any such policy, the County shall furnish [REDACTED] evidence satisfactory to [REDACTED] that the policy has been renewed or replaced or is no longer required by this Agreement.

(e) No County agent or employee shall have the power to adjust or settle any property damage loss greater than \$50,000 with respect to the Equipment, whether or not covered by insurance, without [REDACTED] prior written consent.

(f) [REDACTED] 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 [REDACTED].

(g) The County shall deliver to [REDACTED] annually by June 30 of each year 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 V

THE EQUIPMENT

5.01. Acquisition and Installation. The County 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 thereof and thereafter promptly place each such portion in service.

5.02. Changes in Location. The County shall promptly inform [REDACTED] if any component of the Equipment shall be moved from the location designated for such Equipment at the time of its acquisition.

5.03. Acquisition and Installation within Funds Available. The County 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 County promises to pay any such excess costs, with no resulting reduction or offset in the amounts otherwise payable by the County under this Agreement.

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5.04. Disclaimer of Warranties. The County agrees that [REDACTED] has not designed the Equipment, that [REDACTED] has not supplied any plans or specifications with respect thereto and that [REDACTED] (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 County intends therefor, or (iii) is safe in any manner or respect.

[REDACTED] 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 County is to bear all risks relating to the Equipment, the installation thereof and the transactions contemplated by this Agreement, and the County hereby waives the benefits of any and all implied warranties and representations of [REDACTED].

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

5.05. Right of Entry and Inspection. [REDACTED] and its representatives and agents shall have the right to enter upon the County's property and inspect the Equipment from time to time during installation and after the completion of installation, and the County shall cause any vendor, contractor or sub-contractor to cooperate with [REDACTED] and its representatives and agents during such inspections.

No right of inspection or approval granted in this Section shall be deemed to impose upon [REDACTED] any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by [REDACTED] shall be deemed to impose upon [REDACTED] 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 [REDACTED] and no warranties (either express or implied) are made by [REDACTED] as to the quality or fitness of any improvement, any such inspection and approval being made solely for [REDACTED]'s benefit.

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

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

(d) The County 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.

5.07. Use and Operation. The County shall use and operate the Equipment and related property as various vehicles and equipment, and for no other purpose unless required by law. The County shall be solely responsible for the Equipment's operation, and shall not contract with any other person or entity for the Equipment's operation.

5.08. Maintenance and Repairs; Additions. (a) The County 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 County 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 County 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 [REDACTED]'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) above, however, the County 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 County's sole property in which [REDACTED] 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 [REDACTED] shall reasonably determine that the Equipment would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

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5.09. Security. The County 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 County's personal property that is not subject to this Agreement.

5.10. Utilities. The County shall pay all charges for utility services furnished to or used on or in connection with the Equipment.

5.11. Risk of Loss. The County shall bear all risk of loss to and condemnation of the Equipment.

5.12. Condemnation. (a) The County shall immediately notify [REDACTED] if any governmental authority shall institute, or shall notify the County 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 County 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 [REDACTED], and to the extent permitted by law hereby irrevocably authorizes and empowers [REDACTED], in the County's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the County receives any Net Proceeds arising from any such action, the County shall apply such Net Proceeds as provided in Section 5.14.

(b) If any of the real or personal property acquired or improved by the County (in whole or in part) using any portion of the Amount Advanced consists of or is located on any real property acquired by the County through the exercise of the power of eminent domain, or through the threat of the exercise of the power of eminent domain, then during the term of this Agreement the County may not transfer any interest in such real property to any entity other than a local governmental unit without [REDACTED] prior express written consent.

5.13. No Encumbrance, Mortgage or Pledge of Equipment. (a) The County 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 County 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 County shall reimburse [REDACTED] for any expense incurred by [REDACTED] to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, with interest thereon at the Prime Rate.

5.14. Damage and Destruction; Use of Net Proceeds. (a) The County shall promptly notify [REDACTED] if (i) the Security Property 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.

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(b) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is not more than \$50,000, the County shall retain such Net Proceeds and apply the same to the prompt completion, repair or restoration of the Equipment, and shall promptly thereafter report to [REDACTED] regarding the use of such Net Proceeds.

(c) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is more than \$50,000, then the County shall cause such Net Proceeds to be paid to an escrow agent (which shall be a bank, trust company or similar entity exercising fiduciary responsibilities) or deposit in a special escrow fund to be held by such escrow agent. The County shall thereafter provide for the application of all Net Proceeds to the prompt completion, repair or restoration of the Equipment, as the case may be. The escrow agent shall disburse Net Proceeds for the payment of such costs upon receipt of requisitions in substantially the form of Exhibit A to the Project Fund Agreement. If the Net Proceeds shall be insufficient to pay in full the cost of completion, repair or restoration, the County shall either (i) complete the work and pay any cost in excess of the Net Proceeds, or (ii) not carry out such completion, repair or restoration, and instead apply the Net Proceeds, together with other available funds as may be necessary, to the prepayment of all outstanding Required Payments pursuant to Section 3.03.

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

ARTICLE VI

DEFAULTS AND REMEDIES; TERMINATION

6.01. Events of Default. An "Event of Default" is any of the following:

- (a) The County's failing to make any Base Payment when due.
- (b) The County's breaching or failing to perform or observe any term, condition or covenant of this Agreement or of the Project Fund Agreement on its part to be observed or performed, other than as provided in subsection (a) above, 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 County by [REDACTED], unless [REDACTED] 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 County as a debtor, or the appointment of a receiver, custodian or similar officer for the County 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 County in this Agreement or the Project Fund Agreement is found to be incorrect or misleading in any material respect on the Closing Date (or, if later, on the date made).

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(e) Any lien, charge or encumbrance prior to the security interest created under Section 2.03, or affecting the validity of the Agreement, is found to exist, or proceedings are instituted against the County 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.

(f) The County's failing to pay when due any principal of or interest on any of its general obligation debt.

6.02. Remedies on Default. Upon the continuation of any Event of Default, [REDACTED] 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 immediately due and payable;

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

(c) As provided in the Project Fund Agreement, require [REDACTED] to pay over any balance remaining in the Project Fund to be applied against outstanding Required Payments in any manner [REDACTED] may reasonably deem appropriate; and

(d) Avail itself of all available remedies under this Agreement, including execution as provided in Section 6.03, and recovery of attorneys' fees and other expenses.

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

6.04. Consequences of Nonappropriation. Upon an Event of Nonappropriation, the County 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 Borrower whatsoever. The County agrees to peaceably surrender possession of the Equipment to [REDACTED] 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 or Canada designated by [REDACTED].

In addition, upon the occurrence of any Event of Nonappropriation, [REDACTED] may, without any further demand or notice, (a) as provided in the Project Fund Agreement, require the Escrow Agent to pay over any balance remaining in the Project Fund to be applied against outstanding Required Payments in any manner [REDACTED] may reasonably deem appropriate, and (b) take action with respect to the County and the Equipment as contemplated in Section 6.05. An Event of Nonappropriation and resulting termination of this Agreement shall not relieve the County of liability for any defaults under this Agreement or the Project Fund Agreement occurring prior to the

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Event of Nonappropriation, or of liability under those provisions of this Agreement and the Project Fund Agreement which are stated to survive termination.

6.05. Possession of Equipment. Upon the continuation of an Event of Default or the occurrence of an Event of Nonappropriation, the County 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 [REDACTED]), and thereupon the County (a) shall pay monthly in advance to [REDACTED] a fair and reasonable rental value for the use and possession of the Equipment (in an amount [REDACTED] shall determine in its reasonable judgment), and (b) upon [REDACTED]'s demand, shall deliver possession of the Equipment to [REDACTED] or, at [REDACTED] 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, [REDACTED], 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 County's account and in reduction of the County's corresponding Required Payments in such fashion as [REDACTED] shall reasonably deem appropriate. [REDACTED] shall be liable to account only for rents and profits it actually receives.

6.06. 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 [REDACTED], 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.

6.07. Payment of Costs and Attorney's Fees. If [REDACTED] employs an attorney to assist in the enforcement or collection of Required Payments, or if [REDACTED] 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 County with any of the provisions of this Agreement, the County 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 VII

MISCELLANEOUS

7.01. 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 or five days after being mailed by first-class mail, postage prepaid, addressed as follows:

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(i) If to the County, to P. O. Box 157 Walterboro, South Carolina 29488, Attention: Finance Director; or

(ii) If to [REDACTED], [REDACTED], Attention: Account Administration/Municipal.

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

7.02. No Assignments by County. The County shall not sell or assign any interest in this Agreement.

7.03. Assignments by [REDACTED] [REDACTED] 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, [REDACTED]'s rights to receive Required Payments. Any assignment made by [REDACTED] or any subsequent assignee shall not purport to convey any greater interest or rights than those held by [REDACTED] pursuant to this Agreement.

The County agrees that this Agreement may become part of a pool of obligations at [REDACTED]'s or its assignee's option. [REDACTED] 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 [REDACTED]'s interest in the Equipment or this Agreement shall be effective unless and until the County 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 County further agrees that [REDACTED]'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 County 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 County agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the County, and the County shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the County 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.

7.04. Amendments. No term or provision of this Agreement may be amended, modified or waived without the prior written consent of the County and [REDACTED].

7.05. Governing Law. The County and [REDACTED] intend that South Carolina law shall govern this Agreement.

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7.06. Liability of Officers and Agents. No officer, agent or employee of the County 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 County from the performance of any official duty provided by law.

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

7.08. 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.

7.09. Entire Agreement. This Agreement constitutes the County's entire agreement with respect to the general subject matter covered by this Agreement.

7.10. Binding Effect. Subject to the specific provisions of this Agreement, and in particular Section 7.03, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.