



**COLLETON COUNTY**  
SOUTH CAROLINA

**Purchasing Department**  
**113 Mable T. Willis Blvd.**  
**Walterboro, SC 29488**  
**843.782.0504**

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RFP: FIN-12  
LEASE PURCHASE FINANCIAL SERVICES

DUE: Thursday, October 14, 2021 @ 2:00pm

EMAIL YOUR RESPONSE IN A PDF FORMAT TO:

Kaye B. Syfrett at [ksyfrett@colletoncounty.org](mailto:ksyfrett@colletoncounty.org)  
and

George Pugh at [george.pugh@raymondjames.com](mailto:george.pugh@raymondjames.com)  
and

Jennifer Mills at [jennifer.mills@raymondjames.com](mailto:jennifer.mills@raymondjames.com)

## A. OVERVIEW

Colleton County, South Carolina (the "**County**") is requesting proposals from qualified and eligible financial institutions to provide financing services for the acquisition of equipment under a lease purchase agreement.

Subject to the terms, conditions, provisions, and the enclosed specifications, responses to this solicitation will be received at this office until the stated date and time. After which, only the names of the respondents will be publicly announced. Responses received after the scheduled due date and time will be rejected. Proposals must be submitted in a package marked with the Offeror's name, address, and the solicitation name and number.

This solicitation does not commit Colleton County to award a contract, to pay any costs incurred in the preparation of proposals submitted, or to procure or contract for the services. The County reserves the right to accept or reject or cancel in part, or in its entirety offers received as a result of this request if deemed to be in the best interest of the County to do so.

Questions regarding this proposal must be sent via email to **Jon Carpenter, CPA, Finance Director** at [jcarpenter@colletoncounty.org](mailto:jcarpenter@colletoncounty.org) no later than 11:00 a.m. on October 5, 2021. Answers to all questions will be posted on the County website as addendums to this proposal.

## B. SCOPE OF SERVICES

The County (Lessee) proposes to establish an agreement with a qualified and eligible financial institution to provide financing services for the acquisition of equipment under a lease purchase agreement as prescribed herein. The agreement shall be between the County and the successful Offeror (Lessor).

The proposed lease purchase financing project includes items of property for use by the County, as described in SCHEDULE A. The desired terms of the proposed lease purchase financing are as follows:

- A. Principal Amount of Lease-Purchase: \$5,500,000.00** for the acquisition of equipment and machinery listed in Schedule A attached hereto (the "Project").
- B. Tax Exempt Lease Purchase:**
- **This issue shall be "Bank-Qualified"** for taxation purposes in calendar year 2021 (as described in Section 265(b) (3) (B) of the Internal Revenue Code of 1986, as amended).
  - The County intends to enter into a five-year tax-exempt lease purchase agreement in order to provide financing for this Project.
  - **Type/Security:** The obligation of the County to pay lease rental payments shall be subject to annual appropriations by the Colleton County Council.
  - **Interest Rate:** The County desires **fixed rate financing** for these Project purchases. Please include the quoted interest rate in the proposal.
  - The proposal should include an indicative date for the fixed rate quote, and the period that the Bank will "hold" such rate.
  - The County further requests the Offeror to provide to the County a market index or benchmark if the County does not close on the financing within the time period offered should market interest rates change during the stated firm commitment period.
- C. Lease Payments and Terms:** The County is seeking proposals with annual or semiannual payments in arrears for:
- 1) A five (5) year term for the lease purchase agreement. The County is willing to consider either annual or semiannual payments as specified in the Offeror's proposal. Offerors are requested to

provide a schedule of lease payments showing principal and interest components during the term of the financing.

- D. **Purchase Options:** The County will build equity in the equipment with each lease payment and will have the option to purchase the equipment as specified herein. The County will own the equipment free and clear of Lessor's lien after the last lease payment.
- E. **Pre-payment without Penalty:** The County would like to have a right of prepayment, upon reasonable notice to the Offeror, without penalty, for the outstanding principal amount due under the lease purchase agreement. ***Please indicate, however, whether no right of prepayment (or, right of prepayment which vests after a fixed period of time), would yield a lower interest rate quote from the Offeror for the desired term quotes described above.***
- F. All obligations, costs and responsibilities associated with ownership of the equipment shall be borne by the County whereby disbursing of such funds will be the sole responsibility of the County.
- G. The County is agreeable to leaving the proceeds with the Offeror if the Offeror is a bank with offices in South Carolina and the funds are invested or collateralized in accordance with South Carolina law.
- H. **The County will not pay escrow, investment or any other associated fees.**
- I. **The County will carry insurance coverage to full amount of equipment purchase (approximately \$5.5 Million); the Lessor WILL NOT be named as "Additional Insured" on the policy. The Lessor shall be named as "Loss Payee" on the property coverage.**
- J. **Closing: "Anticipated" Lease Closing Date no later than November 19, 2021 (date subject to change by mutual agreement between Offeror and Lessee).** Offeror to provide the preferred method of closing on the Project. Indicate anticipated closing costs (if applicable) with closing method. Closing cost(s) will be considered in total financing cost calculations made by the County in award decision.
- K. **Legal Costs:** The County has retained bond counsel and will assume all legal costs associated with issuance, opinion letter and lease purchase documentation, and filings with the appropriate fiscal authorities. Offeror/Lessor shall be responsible for perfecting its lien on vehicle titles. Offeror is requested to specify the maximum fees and expenses of its legal counsel in the transaction that it would expect the County to pay. The County will consider the Offeror's legal expenses in evaluating the effective financing cost of the proposal. The County will be represented by the County Attorney and its bond counsel, the firm of Howell Linkous & Nettles, Charleston, SC. The County will pay its legal fees.
- L. The County has also retained Raymond James to serve as its financial advisor in the solicitation and evaluation of the proposals submitted. The County will pay the fees and expenses of Raymond James for its service in this role.

## C. SUBMITTALS

- 1) **Cover Letter;**
- 2) **Rate Proposals and Scheduled Payments of Principal and Interest;**
- 3) **Offeror shall indicate any bank loan fees or other special terms as a separate line item.**
- 4) Copies of the County's audited financial reports for the prior fiscal year(s) are available on the County website, under the Finance Department page. Offerors may also contact the County or its financial advisor, George Pugh, Raymond James, 843-442-5190 or [george.pugh@raymondjames](mailto:george.pugh@raymondjames), to obtain additional financial information regarding the County or the Project. **The proposal must be submitted by**

email to the County on or before 2:00 P.M. on October 14, 2021 to Kaye B. Syfrett via [ksyfrett@colletoncounty.org](mailto:ksyfrett@colletoncounty.org) as well as to the County's Financial Advisor George Pugh at [george.pugh@raymondjames.com](mailto:george.pugh@raymondjames.com) and Jennifer Mills at [jennifer.mills@raymondjames.com](mailto:jennifer.mills@raymondjames.com).

- 5) The County will evaluate the proposals expeditiously within a few days of the receipt of proposals and notify the Offeror that provides the lowest financing cost as soon as practical. Other Offerors will also be notified that their proposals did not have the lowest financing cost and that the County is not asking them to hold their proposals firm thereafter.

The County anticipates awarding the financing to the qualified bidder offering the **lowest cost of financing for the total Project**. Any and all Proposals may be rejected by the County. Should any proposal not conform to the terms and conditions in this proposal, the proposal may be rejected as non-responsive. The right to permit the Offeror to withdraw nonconforming terms and conditions from its proposal prior to a determination by the County is hereby reserved. Further, the County has the right to waive minor defects or variations from the exact requirements of the specifications in a proposal which do not affect the quality or schedule of the services being procured. If insufficient information is submitted in order to properly evaluate the proposal by an Offeror, the County shall have the right to require such additional information as it may deem necessary after the proposal time and date, provided that the information requested does not change the quality or schedule of the services being procured.

## D. INSTRUCTIONS TO FIRM

1. Submittal must include a cover letter and submitted by email in a \*.pdf format. The Individual signing the response must be an Agent legally authorized to bind the Offeror.
2. It is the Offeror's sole responsibility to ensure that solicitation responses, amendments thereto or withdrawal requests are submitted by the scheduled due date and time.
3. The Offeror must clearly mark as "Confidential" each part of their response, which they consider to be proprietary information that could be exempt from disclosure under Section 30-40(C) Code of Laws of South Carolina, 1976, Freedom of Information Act. Colleton County reserves the right to determine whether this information should be exempt from disclosure and legal action may not be brought against the County or its agents for its determination in this regard.
4. RESPONSE FORM: All responses shall be printed in ink or typewritten. If required, additional pages may be attached. Proposals written in pencil will be disqualified.

## E. SPECIFIC TERMS AND CONDITIONS

1. COMPETITION: This solicitation is intended to promote full and open competition. If any language, specifications, terms and conditions, or any combination thereof restricts or limits the requirements in this solicitation to a single source, it shall be the responsibility of the interested vendor to notify the Procurement Division in writing no later than five (5) business days prior to the scheduled due date and time.
2. RESPONDANTS QUALIFICATION: The County reserves the right to request satisfactory evidence of their ability to furnish services in accordance with the terms and conditions listed herein. The County further reserves the right to make the final determination as to the Offeror's ability to provide said services.

3. RESPONSE WITHDRAWAL: Any responses may be withdrawn prior to the established closing date and time, but not thereafter with proper approval from the Procurement Manager.
4. REJECTION: Colleton County reserves the right to reject any and all proposals, to cancel or withdraw this solicitation, and to waive any technicality if deemed to be in the best interest of the County.
5. WAIVER: The County reserves the right to waive any Instruction to Offerors, General or Special Provisions, General or Special Conditions, or specifications deviation if deemed to be in the best interest of the County.
6. RESPONSE PERIOD: All responses shall be valid for a minimum period of one week. The County will evaluate the proposals expeditiously and notify the Offerors regarding the status of their proposals. Unsuccessful Offerors will not be required to hold their proposals firm after notification.
7. DEVIATIONS FROM SPECIFICATIONS: Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful bidder will be held responsible therefor. Deviations must be explained in detail on separate attached sheet(s). The listing of deviations, if any, is required but will not be construed as waiving any requirements of the specifications. Unidentified deviations found during the evaluation of the response may be cause for rejection.
8. AMENDMENTS: All amendments to and interpretations of this solicitation shall be in writing and issued by the Procurement Manager of Colleton County.
9. DEBARMENT: By submitting a qualification package including the attached "Debarment" form, the Offeror is certifying that they are not currently debarred from responding to any request for proposals by any agency or subdivision of the State of South Carolina or the United States Federal Government, nor are they an agent of any person or entity that is currently debarred from submitting bids on contracts by any agency or subdivision of the State of South Carolina.
10. DEFAULT: In case of default by the Offeror, the County reserves the right to purchase any or all items in default in the open market, charging the Offeror with any excessive costs. Should such charge be assessed, no subsequent solicitation response of the defaulting Offeror will be considered in future bids until the assessed charge has been satisfied.
11. MISCELLANEOUS: The issuance of this request for proposals constitutes only an invitation to submit a proposal. Colleton County reserves the right to determine, at its sole discretion, whether any aspect of a respondent's submittal meets the criteria in this request for proposals. Colleton County also reserves the right to seek clarifications, to negotiate with any vendor submitting a response, to reject any or all responses with or without cause, and to modify the procurement process and schedule.
12. CANCELLATION: In the event that this request for proposals is withdrawn or the project canceled for any reason, Colleton County shall have no liability to any respondent for any costs or expenses incurred in connection with this request for proposals or otherwise.
13. COLLETON COUNTY PURCHASING ORDINANCE: The Request of Proposals is subject to the provisions of the Colleton County Purchasing Ordinance and any revisions thereto, which are hereby incorporated into this request for bids in their entirety except as amended or superseded within. This ordinance can be found at <https://www.municode.com/library/sc/colletoncounty/codes/codeofordinances> under Title 3 -Revenue and Finance.

14. FAILURE TO SUBMIT ALL MANDATORY FORMS: Failure to submit all the mandatory forms from this request of proposals may be just cause for the rejection of the proposal. However, Colleton County reserves the right to decide, on a case by case basis, in its sole discretion, whether or not to reject such proposal as non-responsive.
15. CONTRACT AWARD:
  - a. This solicitation and submitted documents, when properly accepted by Colleton County shall constitute an agreement equally binding between the successful Offeror and the County. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting agreement. The County shall not be legally bound by any amendment or interpretation that is not fully executed by both parties in writing.
16. CONTRACT ADMINISTRATION: Questions or problems arising after award of an agreement shall be directed to the Procurement Manager by calling (843) 782-0504. Copies of all correspondence concerning this solicitation or resulting agreement shall be sent to the Colleton County Purchasing Department at 113 Mable T. Willis Blvd., Walterboro, SC 29488.

## F. GENERAL CONTRACTUAL REQUIREMENTS

1. OFFEROR'S COOPERATION: The Offeror shall maintain regular communications with the Finance Director and shall actively cooperate in all matters pertaining to this contract.
2. RESPONSIBILITY: The Offeror shall at all times observe and comply with all federal, state, local and municipal laws, ordinances, rules and regulations in any manner affecting the contract.
3. INDEMNIFICATION: Except for expenses or liabilities arising from the negligence of the County, the Offeror hereby expressly agrees to indemnify and hold the County harmless against any and all expenses and liabilities arising out of the performance or default of any resulting agreement or arising from or related to the Work as follows:

Offeror expressly agrees to the extent that there is a causal relationship between its negligence, action or inaction, or the negligence, action or inaction of any of its employees or any person, firm, or corporation directly or indirectly employed by the Offeror, and any damage, liability, injury, loss or expense (whether in connection with bodily injury or death or property damage or loss) that is suffered by the County and its employees or by any member of the public, to indemnify and save the County and its employees harmless against any and all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs, and expenses arising out of the performance or default of any resulting agreement or arising from or related to the equipment. Such costs are to include defense, settlement and reasonable attorneys' fees incurred by the County and its employees. This promise to indemnify shall include bodily injuries or death occurring to Offeror's employees and any person, directly or indirectly employed by Offeror (including without limitation any employee of any subcontractor), the County's employees, the employees of any other independent contractor, or occurring to any member of the public. When the County submits notice, Offeror shall promptly defend any aforementioned action.

The County will not provide indemnity to the successful Offeror. Failure to comply with this section may result in your proposal being deemed non-responsive.

4. FORCE MAJEURE: The Offeror shall not be liable for any excess costs if the failure to perform the resulting agreement arises out of causes beyond the control and without fault or negligence of the Offeror. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government

in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by default of a subcontractor, and if such default arises out of causes beyond the control of both the Offeror and subcontractor and without excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule.

5. **ARBITRATION:** Under no circumstances and with no exception will Colleton County act as arbitrator between the Offeror and any sub-contractor.
6. **PUBLICITY RELEASES:** Offeror agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the products or services provided are endorsed or preferred by the County. The Offeror shall not have the right to include the County's name in its published list of customers without prior approval of the County Administrator. With regard to news releases, only the name of the County, type and duration of any resulting agreement may be used and then only with prior approval of the County. The Offeror also agrees not to publish, or cite in any form, any comments or quotes from the County's staff unless it is a direct quote from the Procurement Manager.
7. **GOVERNING LAWS:** Any agreement or contract resulting from this solicitation shall be governed by the laws of the State of South Carolina and any and all disputes arising out of said agreement shall, if litigation is necessary, be litigated only in a Circuit Court for the Fourteenth Judicial Circuit sitting in Colleton County, South Carolina. The prevailing party shall be entitled to attorney's fees and all costs of said litigation.
8. **ASSIGNMENT:** The Offeror shall not assign in whole or in part any agreement resulting from this Request for Proposals without the prior written consent of the County. The Offeror shall not assign any money due or to become due to him under said agreement without the prior written consent of the County.
9. **AFFIRMATIVE ACTION:** The successful Offeror will take affirmative action in complying with all Federal and State requirements concerning fair employment and treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap.
10. **BONDS:** Payment and Performance Bonds are not required for this request for proposal.
11. **OWNERSHIP OF MATERIAL:** Ownership of all data, material, and documentation originated and prepared for the County pursuant to this contract shall belong exclusively to the County.

**SCHEDULE A**  
**EQUIPMENT LIST/SPECIFICATIONS**  
**(to be completed by Purchasing Office)**

***(BEGINS NEXT PAGE)***

Colleton County				
2021 Lease Purchase \$5.5 million				
SCHEDULE A				
Department	Description	Number of Units	Price per Unit	Total Purchase Amount
Fleet Management	Bay Doors on Shop	6	9,300.00	55,800.00
Roads & Bridges	JD 670G Motor Grader w/pack-n-roll assembly	3	285,000.00	855,000.00
Roads & Bridges	KW T880 with 18' Ox Dump	1	185,624.00	185,624.00
Roads & Bridges	KW T280 with 14' Contractor	1	109,150.00	109,150.00
Roads & Bridges	Compaction Roller	1	80,974.00	80,974.00
Solid Waste	KW Roll Off Truck w/75000 lb. lift	2	190,000.00	380,000.00
Solid Waste	JD 410L Rubber Tire Backhoe	1	95,060.00	95,060.00
Solid Waste	4WD 4 Seater UTV (Polaris Ranger Crew)	1	14,000.00	14,000.00
Solid Waste	Wagner LC120 Landfill Compactor	1	919,392.00	919,392.00
Animal Control	Exiss 4 Horse Stock Trailer	1	14,000.00	14,000.00
Fire Rescue	KW Ambulance w/stretchers	4	360,000.00	1,440,000.00
Fire Rescue	Cardiac Monitor for Car12/Medic 2	2	38,000.00	76,000.00
Fire Rescue	E-ONE Pumper	3	425,000.00	1,275,000.00
<b>TOTAL ALL</b>				<b>5,500,000.00</b>

**SCHEDULE B**  
**SAMPLE FORM OF LEASE PURCHASE AGREEMENT**

*(BEGINS NEXT PAGE)*

## ACQUISITION, USE AND SECURITY AGREEMENT

**THIS ACQUISITION, USE AND SECURITY AGREEMENT** (this “Agreement”) is dated as of \_\_\_\_\_, 2021, and is between **COLLETON COUNTY, SOUTH CAROLINA** (the “County”), a body corporate and politic and a political subdivision of the State of South Carolina, and \_\_\_\_\_ (“Lessor”).

### 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 Lessor to make available to the County the sum of \$5,500,000.00 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 Lessor.

**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 Lessor’s expenses (including attorneys’ fees) in prosecuting or defending any action or proceeding in connection with this Agreement and any additional obligations of the County for making payments under Sections 3.04, 4.12, and 4.15 hereof.

“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 Lessor) of an attorney or firm of attorneys acceptable to Lessor.

“Budget Officer” means the County officer from time to time charged with preparing the County’s draft budget as initially submitted to the County Council for its consideration.

“Business Day” means any day on which banks in the State are not by law authorized or

required to remain closed. Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday, or a legal or public holiday in the State of South Carolina, such payment shall be made on the secular or business day next succeeding such Saturday, Sunday, or holiday, as provided in Section 53-5-30 of the Code.

“Capital Projects & Purchasing Director” means the Capital Projects & Purchasing Director of the County.

“Chairman” means the Chairman of Colleton County Council.

“Chief Financial Officer” means the Chief Financial Officer of the County.

“County” means Colleton County, South Carolina, a body corporate and politic and a political subdivision of the State of South Carolina.

“County Council” means the County Council of the County, as from time to time constituted.

“County Representative” means the County Administrator, the County’s Chief Financial Officer or such other person or persons at the time designated, by a written certificate furnished to Lessor and signed on the County’s behalf by the Chairman, to act on the County’s behalf for any purpose (or any specified purpose) under this Agreement.

“County Treasurer” means the Colleton County Treasurer.

“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 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(a), 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 County Council 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.

“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 Lessor for amounts previously expended to remedy the event giving rise to such payment or proceeds.

“Payment Dates” means the dates indicated in Exhibit B.

“Prime Rate” means the interest rate so denominated and set by Lessor (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.

“Required Payments” means Base Payments and Additional Payments.

“Security Property” means the Equipment.

“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

**2.01. Lease.** Lessor hereby leases to the County, and the County hereby leases from Lessor, the Equipment, whether now owned or hereafter acquired, for a term beginning on the Closing Date and ending upon final payment of all Required Payments, unless this Agreement is earlier terminated. Upon acquisition, 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 and no Event of Nonappropriation has occurred.

**2.02. Advance.** Lessor shall advance the sum of \$5,500,000.00 (the “Amount Advanced”) to the County on the Closing Date, and the County hereby accepts the Amount Advanced from Lessor pursuant to the terms hereof. On the Closing Date, the Amount Advanced shall be deposited in escrow, pending acquisition by the County of the vehicles and other component items constituting

the Equipment, into a demand deposit account of the County held with \_\_\_\_\_ (the “Escrow Account”). The Amount Advanced shall be used only for the costs of acquisition of the Equipment, and the County may draw funds from the Escrow Account to fund purchases of the Equipment upon presentation by the County’s Capital Projects & Purchasing Director to Lessor of an invoice, purchase order, or other documentation of purchase price thereof, along with Bills of Sale relating to the items of equipment acquired, and documentation sufficient to permit Lessor to perfect its lien in such Equipment. Upon presentation of such documentation, Lessor shall disburse funds as directed by the Capital Projects & Purchasing Director, and shall provide documentation of such disbursement to the Capital Projects & Purchasing Director, the Chief Financial Officer, and to the County Treasurer, who shall maintain a record of the expenditures. The County shall assist Lessor in perfecting its liens in the Equipment as purchases are made, however, Lessor shall be solely responsible for the perfection of its lien or liens.

**2.03. Security Agreement.**

(a) This Agreement is intended as and constitutes a security agreement with respect to all property acquired by the County with funds advanced by Lessor pursuant to this Agreement, all personal property obtained in substitution or replacement therefor, 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 Lessor a security interest in the Equipment 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, a lien on the titles of the vehicles constituting the Equipment, and any other documentation evidencing the lien on the Equipment as may be required by law from time to time, as Lessor may reasonably require, to perfect and continue the security interest in the Equipment.

**2.04. County’s Limited Obligation.** (a) No provision of this Agreement shall be construed or interpreted as creating 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 moneys (other than the funds held under 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.

**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), including payment of all Required Payments, notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

- (a) Lessor'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 Lessor (but this section provision does not relieve Lessor of any of its obligations under this 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 Lessor 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 Lessor's interest in the Equipment, on an as-is, where-is basis, upon payment to Lessor of the sum of Ten Dollars. This option to purchase the Equipment is personal to the County and is not assignable.

**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 at any time, 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 Lessor's security interest in the Equipment, by paying 100% of the outstanding principal component of the Amount Advanced.

**3.04. Late Payments.** If a late payment is 10 days or more late, the County will be charged 5.00% of the unpaid portion of the regularly scheduled payment, but in no event less than \$10.00, as an Additional Payment.

**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 County Council 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 Lessor, 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 that the interest component of Base Payments, or any portion thereof, is includable in any counterparty's gross income for federal income tax purposes 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, 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.

(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. 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 an "arbitrage bond" or "private activity bond" 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 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 (other than the federal government), 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 (other than the federal government), 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 Lessor 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 Lessor. 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 component of Base Payments 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.

**4.02. Validity of Organization and Acts.** The County is a body corporate and politic and a political subdivision of the State, 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.

**4.03. Maintenance of Existence.** The County shall maintain its existence, shall continue to be a body corporate and politic and a political subdivision 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.

**4.04. 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 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.

**4.05. 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.

**4.06. 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 County 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 County Council member or any other County officer, (e) any County or proceedings relating to the County's execution or delivery of this Agreement, or (f) the undertaking of the transactions contemplated by this Agreement.

**4.07. 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.

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

**4.09. Environmental Warranties and Indemnification.** (a) The County warrants and represents to Lessor 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 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 Lessor. 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 Lessor'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 Lessor 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 Lessor 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 Lessor or the County or any transferee or assignee Lessor or the County. Lessor shall give notice in reasonable detail to the County as promptly as practicable after becoming aware of facts and circumstances under which it expects to make a claim for indemnification hereunder, provided that the failure of Lessor to give such notice shall not relieve the County of its obligations under this Section except to the extent the County has been materially prejudiced thereby.

(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.

**4.10. Further Instruments.** Upon Lessor’s request, the County shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by Lessor 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.

**4.11. Lessor’s Advances for Performance of County’s Obligations.** If the County fails to perform any of its obligations under this Agreement, Lessor is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by Lessor (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 Lessor immediately upon demand.

**4.12. Equipment Will Be Used and Useful.** The acquisition 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.

**4.13. Financial Information.** (a) The County shall send to Lessor a copy of the County's audited financial statements for each Fiscal Year within 30 days of the County's acceptance of such statements.

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

**4.14. 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 the Equipment. 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 Lessor's interest, or the rentals and revenues derived therefrom or hereunder).

**4.15. 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 of the Equipment. Such property damage insurance shall include Lessor as a loss payee. The County shall provide evidence of such coverage to Lessor promptly upon acquisition 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 \$1,000,000 for personal injury or death and \$1,000,000 for property damage.

(c) All insurance shall be maintained with generally recognized responsible insurers or the insurance reserve fund and may carry reasonable deductible or risk-retention amounts. All such policies shall be deposited with Lessor, provided that in lieu of such policies there may be deposited with Lessor 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 Lessor evidence satisfactory to Lessor that the policy has been renewed or replaced or is no longer required by this Agreement.

(d) 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 Lessor's prior written consent.

(e) Lessor 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 Lessor.

(f) The County shall deliver to Lessor 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.** 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, and thereafter promptly place each such portion in service.

**5.02. Changes in Location.** The County shall promptly inform Lessor if any component of the Equipment shall be permanently removed from the County.

**5.03. Acquisition and Installation within Funds Available.** The County represents that the Equipment can be acquired for a total price within the total amount of funds to be available therefor by Lessor and other funds previously identified and designated for such purpose. If the total amount available for such purposes shall be insufficient to pay the entire cost of acquiring 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.

**5.04. Disclaimer of Warranties.** The County agrees that Lessor has not designed the Equipment, that Lessor has not supplied any plans or specifications with respect thereto and that Lessor (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.

LESSOR 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 Lessor.

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

**5.05. Right of Entry and Inspection.** Lessor 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 Lessor and its representatives and agents during such inspections.

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

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

(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 Lessor'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 Lessor 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 Lessor shall reasonably determine that the Equipment would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

**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.** The County shall immediately notify Lessor if any governmental entity 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 Lessor, and to the extent permitted by law hereby irrevocably authorizes and empowers Lessor, 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.**

**5.13. No Encumbrance, Mortgage or Pledge of Equipment.**

(a) Other than the lien securing Lessor, 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 Lessor for any expense incurred by Lessor 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 Lessor 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 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) 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 Lessor 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 used for the Amount Advanced. 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 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 30 days after written notice specifying such failure and requesting that it be remedied shall have been given to the County by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration.

(d) 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.

(e) Any warranty, representation, or statement made by the County 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).

(f) 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.

(g) 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, Lessor 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; and

(c) 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, Lessor 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 County whatsoever. The County agrees to peaceably surrender possession of the Equipment to Lessor or its assignees on the first day of the Fiscal Year to which the Event of Nonappropriation applies.

In addition, upon the occurrence of any Event of Nonappropriation, Lessor may, without any further demand or notice, 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 occurring prior to the Event of Nonappropriation, or of liability under those provisions of this 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 Lessor), and thereupon the County (a) shall pay monthly in advance to Lessor a fair and reasonable rental value for the use and possession of the Equipment (in an amount Lessor shall determine in its reasonable judgment), and (b) upon Lessor's demand, shall deliver possession of the Equipment to Lessor or, at Lessor'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, Lessor, 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 Lessor shall reasonably deem appropriate. Lessor 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 Lessor, 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 Lessor employs an attorney to assist in the enforcement or collection of Required Payments, or if Lessor 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:

(i) If to the County, to 109 Benson Street, Walterboro, South Carolina 29488, Attention: County Administrator; or

(ii) If to \_\_\_\_\_, to \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, Attention: \_\_\_\_\_.

(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 Lessor.** Lessor 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, Lessor's rights to receive Required Payments. Any assignment made by Lessor or any subsequent assignee shall not purport to convey any greater interest or rights than those held by Lessor pursuant to this Agreement.

The County agrees that this Agreement may become part of a pool of obligations at Lessor's or its assignee's option. Lessor 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 Lessor'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 Lessor'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. Indemnification by Lessor.** Lessor expressly agrees to the extent that there is a causal relationship between its negligence, action or inaction, or the negligence, action or inaction of any of its employees or any person, firm, or corporation directly or indirectly employed by the Lessor, and any damage, liability, injury, loss or expense (whether in connection with bodily injury or death or property damage or loss) that is suffered by the County and its employees or by any member of the public, to indemnify and save the County and its employees harmless against any and all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs, and expenses arising out of the performance or default of any resulting agreement or arising from or related to the equipment. Such costs are to include defense, settlement and reasonable attorneys' fees incurred by the County and its employees. This promise to indemnify shall include bodily injuries or death occurring to Lessor's employees and any person, directly or indirectly employed by Lessor (including without limitation any employee of any subcontractor), the County's employees, the employees of any other independent contractor, or occurring to any member of the public. When the County submits notice, Lessor shall promptly defend any aforementioned action.

**7.05 Amendments.** No term or provision of this Agreement may be amended, modified, or waived without the prior written consent of the County and Lessor.

**7.06. Governing Law.** The County and Lessor intend that State law shall govern this Agreement.

**7.07. 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.

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

**7.09. 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 succeeding Business Day.

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

**7.11. 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.

**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.

**COLLETON COUNTY**

\_\_\_\_\_  
By: J. Kevin Griffin  
County Administrator

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

In my capacity as Colleton County Treasurer, I consent to the procedure for advances of funds set forth in Section 2.02 of this Acquisition, Use, and Security Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

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By: Becky Hill  
Colleton County Treasurer

**EXHIBIT A -- PROJECT AND EQUIPMENT DESCRIPTION**

Equipment, as further described in the attachments hereto.

**EXHIBIT B -- PAYMENT SCHEDULE**



**LEASE PURCHASE FINANCIAL SERVICES**

**ADDENDA ACKNOWLEDGMENT**

The Firm has examined and carefully studied the Request for Proposal and the following Addenda, receipt of all of which is hereby acknowledged:

<i>Amendment No.</i>	<i>Issue Date</i>

**The firm must acknowledge any issued addenda. Proposals which fail to acknowledge the vendor's receipt of any addendum will result in the rejection of the offer if the addendum contained information which substantively changes the Owner's requirements or pricing.**

**CERTIFICATE OF FAMILIARITY**

The undersigned, having fully familiarized him/her with the information contained within this entire solicitation and applicable amendments, submits the attached response, and other applicable information to the County, which I verify to be true and correct to the best of my knowledge. I further certify that this response is made without prior understanding, agreement, or connection with any corporation, contractor, or person submitting a response for the same materials, supplies or equipment, and is in all respects, fair and without collusion or fraud. I agree to abide by all conditions outlined in this solicitation and certify that I have signature authority to bind the company listed herein.

**MINORITY BUSINESS:** Are you a minority business?

▶ **Yes** \_\_\_\_ ( \_\_\_\_ Women-owner/ \_\_\_\_ Disadvantaged) if yes, please submit a copy of your certificate with your response.

▶ **No** \_\_\_\_

**Financial Institution:** \_\_\_\_\_

**Authorized Representative Name and Title:** \_\_\_\_\_

**Signature of Authorized Representative:** \_\_\_\_\_

**THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR PROPOSAL**



**RFP: FIN-12**  
**LEASE PURCHASE FINANCIAL SERVICES**

**DEBARMENT**

The Firm is certifying that they are not currently debarred from responding to any request for proposals by any agency or subdivision of the State of South Carolina or the United States Federal Government, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency or subdivision of the State of South Carolina or the United States Federal Government.

A Registered Contractor with SAM's Yes  No

Cage Code. \_\_\_\_\_

DUN's No. \_\_\_\_\_

***Financial Institution:*** \_\_\_\_\_

***Authorized Representative Name and Title:*** \_\_\_\_\_

***Signature of Authorized Representative:*** \_\_\_\_\_

**THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR PROPOSAL**



**RFP: FIN-12**  
**LEASE PURCHASE FINANCIAL SERVICES**  
**PROPOSAL RESPONSE FORM**

**1. Interest Rate:** **5 Year:** \_\_\_\_\_ %

**2. Schedule of Principal and Interest Payments:** *Please attach to Proposal Response.*

**3. Origination, Legal and Closing Costs** \_\_\_\_\_

County's Preferred Funding Date: No later than **November 19, 2021**

Offeror's Funding Date (if different from County's preferred date): \_\_\_\_\_

Details: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Financial Institution (Offeror)**

\_\_\_\_\_  
**Authorized Representative (Signature)**

\_\_\_\_\_  
**Authorized Representative/Title (print or type)**

\_\_\_\_\_  
**Email address (print or type)**

**THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR PROPOSAL**