

DATE: <LeaseDate>

## MUNICIPAL LEASE AND OPTION AGREEMENT

LESSOR: <Lessor>  
<LessorAddress1>  
<LessorAddress2>

LESSEE: <Lessee>  
<LesseeAddress1>  
<LesseeAddress2>

This Municipal Lease and Option Agreement (the "Agreement") entered into between <Lessor> ("Lessor"), and <Lessee> ("Lessee"), a body corporate and politic duly organized and existing under the laws of the State of <LesseeState> ("State");

### WITNESSETH:

WHEREAS, Lessor desires to lease the Equipment, as hereinafter defined, to Lessee, and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the Constitution and laws of the State to enter into this Agreement for the purposes set forth herein:

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

### ARTICLE I COVENANTS OF LESSEE

Section 1.01. **Covenants of Lessee.** Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

- (a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution of the laws of the State.
- (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.
- (c) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.
- (d) Lessee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the resolution of its governing body, attached hereto as Exhibit A or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met and procedures have occurred, in order to ensure the enforceability of the Agreement, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment thereunder. Lessee shall cause to be executed an opinion of its counsel substantially in the form attached hereto as Exhibit B.
- (e) During the term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than Lessee as outlined in Exhibit C attached hereto.
- (f) During the period this Agreement is in force, Lessee will annually provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee.
- (g) The Equipment will have a useful life in the hands of Lessee that is substantially in excess of the Lease Term.
- (h) The Equipment is, and during the period this Agreement is in force will remain, personal property and, when subjected to use by Lessee under this Agreement, will not be or become fixtures.

### ARTICLE II DEFINITIONS

Section 2.01. **Definitions.** Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement shall have the respective meanings specified below.

"**Acceptance Certificate**" means a certificate in substantially the form attached hereto as Exhibit F and which shall be delivered by Lessee to Lessor upon receipt and acceptance of the Equipment.

"**Agreement**" means this Municipal Lease and Option Agreement with its Exhibits, which Exhibits are attached hereto and incorporated herein by reference.

"**Code**" means the Internal Revenue Code of 1986, as amended, and to the extent applicable, the regulations and rulings issued thereunder.

"**Commencement Date**" is the date when the term of this Agreement begins and Lessee's obligation to pay rent accrues, which date shall be the date first above written.

"**Equipment**" means the property described in Exhibit D and which is the subject of this Agreement.

"**Lease Term**" means the period beginning with the Commencement Date and continuing until terminated as outlined in Section 4.01.

"**Purchase Price**" means the amount set forth and so titled in Exhibit E hereto which Lessee may pay to Lessor to purchase the Equipment as provided under Section 11.01.

"**Rental Payments**" means the basic rental payments payable by Lessee pursuant to Exhibit E of this Agreement.

"**Vendor**" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer.

### ARTICLE III LEASE OF EQUIPMENT

Section 3.01. **Lease of Equipment.** Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment, in accordance with the provisions of this Agreement, to have and to hold for the Lease Term.

## ARTICLE IV LEASE TERM

Section 4.01. **Lease Term.** This Agreement shall be in effect and shall commence as of the Commencement Date and will remain in effect throughout the Lease Term. The Lease Term will terminate upon the first to occur of: (a) the exercise by Lessee of the option to purchase the Equipment under Articles XI or VI; (b) Lessor's election to terminate this Agreement upon a default under Article XIII; (c) the payment by Lessee of all sums required to be paid by Lessee hereunder; or (d) the occurrence of an Event of Nonappropriation in accordance with Article VI, Section 6.05.

## ARTICLE V ENJOYMENT OF EQUIPMENT

Section 5.01. **Quiet Enjoyment.** Lessor hereby agrees not to interfere with Lessee's quiet use and enjoyment of the Equipment so long as Lessee is not in default hereunder.

Section 5.02. **Use of the Equipment.** Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement.

Section 5.03. **Right of Inspection.** During the Lease Term, the Lessor and its officers, employees and agents shall have the right at all reasonable times during business hours to enter into and upon the property of the Lessee for the purpose of inspecting the Equipment.

Section 5.04. **Disclaimer of Warranties.** LESSOR MAKES NO WARRANTY NOR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR ANY OTHER WARRANTY WITH RESPECT THERETO AND, AS TO THE LESSOR, THE LESSEE LEASES THE EQUIPMENT "AS IS". In no event shall the Lessor be liable for any loss or damage, including incidental, indirect, special or consequential damage, in connection with or arising out of this Agreement or the existence, furnishing, functioning or the Lessee's use of any items or products or services provided for in this Agreement.

Section 5.05. **Vendors Warranties.** Lessee may assert claims and rights that the Lessor may have against any Vendor of any portion of the Equipment.

## ARTICLE VI RENTAL PAYMENTS

Section 6.01. **Rental Payments to Constitute a Current Expense of Lessee.** The obligation of Lessee to pay Rental Payments hereunder is a current expense of Lessee and not a debt of Lessee in contravention of any applicable limitations or requirements, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

Section 6.02. **Interest and Principal Components.** A portion of each Rental Payment is paid as interest and the balance of each Rental Payment is paid as principal. Exhibit E hereto sets forth the interest component and the principal component of each Rental Payment during the Lease Term.

Section 6.03. **Rental Payments to be Unconditional.** The obligations of Lessee to make Rental Payments, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement, notwithstanding any dispute between Lessee and Lessor, any Vendor or any other person. Lessee shall not assert any right of set-off or counterclaim against its obligation to make payments under this Agreement.

Section 6.04. **Continuation of Lease Term by Lessee.** Lessee intends to do all things lawfully within its power to obtain and maintain funds from which the Rental Payments may be made.

Section 6.05. **Nonappropriation.** If (a) sufficient funds are not appropriated for Rental Payments due in any fiscal year and (b) the Lessee shall have at such time no funds duly authorized for the Rental Payments or other amounts payable hereunder from other sources, an Event of Nonappropriation shall be deemed to have occurred. The Lessee shall promptly deliver notice thereof to the Lessor. Upon the occurrence of an Event of Nonappropriation, the Lessee agrees that the Lessor may reclaim possession of the Equipment. Lessee agrees peaceably to deliver the Equipment and title thereto to Lessor at a reasonable location specified by Lessor, all at Lessee's expense.

Section 6.06. **Nonsubstitution.** If an Event of Nonappropriation occurs the Lessee hereby agrees, to the extent permitted by law and subject to applicable public policy, not to purchase, lease or rent equipment performing functions similar to those performed by the Equipment for a period of one year following the date of such event.

## ARTICLE VII TITLE TO EQUIPMENT; SECURITY INTEREST

Section 7.01. **Title to the Equipment.** During the term of this Agreement, title to the Equipment shall vest in Lessee, subject to Lessor's rights upon an Event of Default or an Event of Nonappropriation.

Section 7.02. **Security Interest.** As security for its obligations hereunder Lessee grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, accessions and substitutions thereto, and on any proceeds therefrom.

Section 7.03. **Liens and Encumbrances to Title.** Lessee shall promptly discharge any liens placed on the Equipment other than those created by Lessor.

## ARTICLE VIII MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES

Section 8.01. **Maintenance of Equipment by Lessee.** Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition. If requested by Lessor, Lessee will enter into a maintenance contract for the Equipment with Vendor.

Section 8.02. **Taxes, Other Governmental Charges and Utility Charges.** In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), government charges or utility charges and expenses, Lessee will pay all such taxes and charges as they come due.

Section 8.03. **Provisions Regarding Insurance.** At its own expense Lessee shall cause casualty, public liability and property damage insurance to be carried and maintained (and evidenced by certificates delivered to Lessor throughout the Lease Term) in the amounts and for the coverages set forth on Exhibit G, provided that the amount of casualty and property damage insurance shall not be less than the then applicable Purchase Price. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement.

Section 8.04. **Advances.** In the event Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, Lessor may (but shall be under no obligation) to purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by Lessor shall be repaid to Lessor, together with interest thereon at the rate specified hereafter.

Section 8.05. **Modifications.** Without the prior written consent of the Lessor, the Lessee shall not make any material alterations, modifications or attachments to the

Equipment.

#### ARTICLE IX DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 9.01. **Damage, Destruction and Condemnation.** If (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of the Equipment or any part thereof is taken under the exercise of the power of eminent domain, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied either to the prompt repair, restoration, modification or replacement of the Equipment or, at Lessee's option, to the payment in full of the Purchase Price. Any balance of the Net Proceeds remaining after such work or purchase has been completed shall be paid to Lessee.

For purposes of Article VIII, Section 8.03, and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorney's fees) incurred in the collection of such claims or award.

Section 9.02. **Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or replacement, Lessee shall either (a) complete the work and pay any cost in excess of the amount of Net Proceeds, or (b) Lessee shall pay to Lessor the Purchase Price. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by Lessee.

#### ARTICLE X TAX COVENANT

Section 10.01. **Tax Covenant.** It is the intention of the Lessee and the Lessor that the interest portion of the Rental Payments received by the Lessor be and remain exempt from federal income taxation. Lessee covenants that it will take any and all reasonable action necessary to maintain the exemption from federal income taxation of the interest portion of the Rental Payments, and that it will not intentionally perform any act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall have the effect of terminating the exemption from federal income taxation of the interest portion of the Rental Payments, including (without limitation) leasing all or any portion of the Equipment or contracting to a third party for the use or operation of all or any portion of the Equipment if entering into such lease or contract would have such effect.

#### ARTICLE XI OPTION TO PURCHASE

Section 11.01. **Purchase Rights.** Lessee shall be entitled to purchase the Equipment:

- (a) upon payment in full of all Rental Payments in accordance with Exhibit E hereof and all other amounts due hereunder; or
- (b) provided there is no Event of Default hereunder and upon written notice delivered at least 30 days in advance, Lessee may purchase the Equipment on any rental payment date by paying to Lessor the Rental Payment then due, together with the Purchase Price set forth in Exhibit E along with all other amounts then due hereunder.

#### ARTICLE XII ASSIGNMENT, SUBLEASING, INDEMNIFICATION, MORTGAGING AND SELLING

Section 12.01. **Assignment or Sale by Lessor.**

(a) This Agreement, and the obligations of Lessee to make payments hereunder, may be sold, assigned or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees or subassignees by Lessor. Upon any sale, disposition, assignment or reassignment, Lessee shall be provided with a notice of said assignment. During the term of this Agreement, Lessee shall each keep a complete and accurate register of all such assignments in form necessary to comply with Section 149(a) of the Code.

(b) Lessee agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (except arising from Lessor's breach of this Agreement) that Lessee may from time to time have against Lessor or Vendor. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by Lessor or assignee to protect its interests in the Equipment and in this Agreement.

(c) Lessee hereby agrees that Lessor may sell or offer to sell this Agreement (i) through a certificate of participation program, whereby two or more interests are created in the Agreement, the Equipment or the Rental Payments; or (ii) with other similar instruments, agreements and obligations through a pool, trust, limited partnership, or other entity.

Section 12.02. **No Sale, Assignment or Subleasing by Lessee.** This Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

Section 12.03. **Release and Indemnification Covenants.** To the extent permitted by the laws and Constitution of the State, Lessee shall protect, hold harmless and indemnify Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof except those resulting from Lessor's intentional or negligent acts and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person. The indemnification arising under this paragraph shall survive the termination of this Agreement.

#### ARTICLE XIII EVENTS OF DEFAULT AND REMEDIES

Section 13.01. **Events of Default.** The following constitute "Events of Default" under this Agreement:

- (a) failure by the Lessee to pay any Rental Payment or other payment required to be paid hereunder when due; or
- (b) failure by the Lessee to maintain insurance on the Equipment in accordance with Article VIII Section 8.03 hereof; or
- (c) failure by the Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of 30 days after written notice is given to the Lessee by the Lessor, specifying such failure and requesting that it be remedied; provided, however, that if the failure stated in such notice cannot be corrected within such 30-day period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected; or
- (d) initiation by the Lessee of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning its indebtedness.

The foregoing provisions of this Section are subject to the provisions of Article VI, Section 6.05, hereof.

Section 13.02. **Remedies On Default.** Whenever any Event of Default shall have occurred and be continuing, the Lessor shall have the right, at its sole option without

any further demand or notice, to take any one or any combination of the following remedial steps:

(a) Terminate this Agreement and retake possession of the Equipment wherever situated, and sell or lease, sublease or make other disposition of the Equipment for use over a term in a commercially reasonable manner, all for the account of Lessor; provided that Lessee shall remain directly liable for the amount actually appropriated for the purchase or rental of the Equipment and unpaid by Lessee during the current fiscal year.

Lessor shall apply the sale proceeds in the following manner:

FIRSTLY, to pay all proper and reasonable costs and expenses associated with the recovery, repair, storage and sale of the Equipment, including reasonable attorneys' fees and expenses;

SECONDLY, to pay the Lessor (i) the amount of all unpaid Rental Payments, if any, which are then due and owing, together with interest and late charges thereon, (ii) the then applicable Purchase Price (taking into account the payment of past due Rental Payments as aforesaid), plus a pro rata allocation of interest, at the rate utilized to establish the interest component for the Rental Payment next due, from the next preceding due date of a Rental Payment until the date of payment by the buyer, and (iii) any other amounts due hereunder;

THIRDLY, to pay the remainder of the sale proceeds, purchase moneys or other amounts paid by a buyer of the Equipment, to the Lessee.

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

(c) Use or retake such portion of the Equipment as the Lessor, in its sole discretion, may decide.

All of the Lessee's right, title and interest in any Equipment the possession of which is retaken by the Lessor upon the occurrence of an Event of Default or Event of Nonappropriation shall terminate immediately upon such repossession.

Section 13.03. **Return of Equipment.** Upon an Event of Default, Lessee agrees to allow Lessor to recover the Equipment at Lessee's sole cost and expense, in accordance with Article VI, Section 6.05.

Section 13.04. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity.

Section 13.05. **Late Charge; Interest on Late Payment.** Any Rental Payment not paid on the due date thereof shall bear a late charge equal to two percent (2%) of the amount of the past due Rental Payment, but in no event less than \$100.00. Any unpaid Rental Payment or other amount payable by Lessee to the Lessor hereunder, shall bear interest at the lesser of (a) the rate payable on the principal portion of the Purchase Price, plus five full percentage points per annum, or (b) the maximum rate allowed by law.

Section 13.06. **Force Majeure.** If by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI and Article VIII Section 8.03 hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances; act of public enemies, orders or restraints of any kind of the government of the United States of America or the State or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

#### ARTICLE XIV MISCELLANEOUS

Section 14.01. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses set forth on the first page hereof.

Section 14.02. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 14.03. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.04. **Amendments.** All amendments hereto must be in writing.

Section 14.05. **Execution in Counterparts.** This Agreement may be executed in several counterparts.

Section 14.06. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 14.07. **Captions.** The captions or heading in the Agreement are for convenience only and no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 14.08. **Entire Agreement.** This Agreement constitutes the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein regarding this Agreement or the Equipment leased hereunder. Any terms and conditions of any purchase order or other document (with the exception of Supplements) submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

#### ARTICLE XV DEFEASANCE

Section 15.01. **Defeasance.** The Lessee's obligation to pay the Purchase Price will be deemed to be paid and the Lessee's obligations under this Agreement will be discharged and satisfied upon the deposit by the Lessee with the Lessor of (a) moneys sufficient to pay the Purchase Price or (b) obligations which are directly insured or guaranteed by the United States or, with the prior written consent of the Lessor, any other obligations in which any sinking fund for bonds issued by the Lessee may legally be invested, the principal of and interest on which when due will provide sufficient moneys for such payment.

IN WITNESS WHEREOF, Lessor has executed this Agreement in its corporate name, attested by its duly authorized officers, and Lessee has caused this Agreement to be executed in its corporate name, attested by its duly authorized officers. All of the above occurred as of the date first written on the heading hereof.

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

LESSOR:            «Lessor»  
  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

LESSEE:           «Lessee»  
  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

*Proprietary to Saulsbury Hill Financial, LLC*

**EXHIBIT A**

**RESOLUTION OF GOVERNING BODY EXTRACT OF MINUTES**

Lessee:                    «Lessee»  
Date of Agreement:       «LeaseDate»

At a duly called meeting of the governing body of Lessee (as defined in the Agreement) held on the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ the following resolution was introduced and adopted.

RESOLVED, whereas the governing body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment described in the Municipal Lease and Option Agreement presented to this meeting; and

WHEREAS, the governing body of Lessee has taken the necessary steps, including any legal bidding requirements, under applicable law to arrange for the acquisition of such Equipment.

BE IT RESOLVED, by the governing body of Lessee that the terms of said Municipal Lease and Option Agreement are in the best interests of Lessee for the acquisition of such Equipment, and the governing body of Lessee designates and confirms the following persons to execute and deliver, and to witness (or attest), respectively, the Municipal Lease and Option Agreement and any related documents necessary to the consummation of the transactions contemplated by the Municipal Lease and Option Agreement.

FURTHERMORE BE IT RESOLVED, that the governing body of Lessee hereby represents that the reasonably anticipated amount of qualified tax-exempt obligations which have been and will be issued by the Lessee does not exceed \$10,000,000 for the calendar year within which this Municipal Lease and Option Agreement is to be "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code.

*Proprietary to Saulsbury Hill Financial, LLC*

\_\_\_\_\_  
(Name of Party to Execute Agreement)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name of Party to Execute Agreement)

\_\_\_\_\_  
(Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect and further certifies that the above and foregoing Municipal Lease and Option Agreement is the same as presented at said meeting of the governing body of Lessee.

\_\_\_\_\_  
Secretary/Clerk

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

**EXHIBIT B**

**OPINION OF LESSEE'S COUNSEL**  
(Please furnish this form on Attorney's Letterhead)

«LeaseDate»

«Lessor»  
«LessorAddress1»  
«LessorAddress2»

Gentlemen:

As counsel for «Lessee» ("Lessee"), I have examined duly executed originals of the Municipal Lease and Option Agreement (the "Agreement") dated «LeaseDate», between Lessee and «Lessor» ("Lessor"), and based upon the examination and upon such other examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a public body corporate and politic, legally existing under the laws of the State of «LesseeState».
2. The Agreement has been duly authorized, executed and delivered by Lessee, pursuant to constitutional, statutory and/or home rule provision which authorizes this transaction and the Resolution, attached as Exhibit A to the Agreement.
3. The Agreement is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms. In the event the Lessor obtains a judgement against Lessee in money or damages, as a result of an event of default under the Agreement, Lessee will be obligated to pay such judgement.
4. Applicable public bidding requirements have been complied with.
5. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, in any way questioning or affecting the validity of the resolution or the Agreement.
6. The signatures of the officers of Lessee which appear on the Agreement are true and genuine; I know said officers and know them to hold the offices set forth below their names.

Respectfully submitted,

Counsel

**EXHIBIT C**

**CERTIFICATE OF LESSEE**

I, \_\_\_\_\_, am a duly authorized representative and acting Secretary or Clerk of the named Lessee under that certain Municipal Lease and Option Agreement dated «LeaseDate» «Lessor» as Lessor (the "Agreement") hereby certify as follows and in accordance with the requirements of the Agreement. Capitalized terms used herein have the same meaning as in the Agreement:

**A. INCUMBENCY OF OFFICERS AND SIGNATURES:**

I have custody of the records of Lessee and the following officers of the Lessee are duly elected or appointed and hold the office or title set forth opposite each individual's name, and the signatures opposite their names are true and correct, and where required, have been filed with the appropriate officials of the State, and each such individual has the authority to enter into the Agreement on behalf of the Lessee:

<u>Name</u>	<u>Title/Office</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____

**B. ESSENTIAL USE:**

1. The Equipment will be used by the Lessee for the following governmental purpose of:  
 \_\_\_\_\_  
 \_\_\_\_\_

*Proprietary to Saulsbury Hill Financial, LLC*

2. The Equipment is essential for the functioning of the Lessee and is immediately needed by the Lessee. Such need is neither temporary nor expected to diminish during the Lease Term. The Equipment is expected to be used by the Lessee for a period in excess of the Lease Term.

**C. CERTIFICATE OF APPROPRIATIONS:**

1. Monies for all rental payments to be made under the Lease for the fiscal year ending \_\_\_\_\_, 19\_\_\_\_ are available from unexhausted and unencumbered appropriations and/or funds within Lessee's budget for such fiscal year; and that appropriations and/or funds have been designated for the payment of those rental payments that may come due under the Agreement in such fiscal year.

**D. SECTION 265(b)(3) MATTERS:**

1. Lessee (a) maintains a register or list of Exempt Government Obligations, (b) files when required Form 8038G or Form 8038GC, and (c) therefore can certify that the total Exempt Government Obligations issued to date in the current calendar year, including the Agreement, is less than \$10,000,000 and hereby designates the Agreement as a Qualified Tax Exempt Obligation pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

This Certificate is based upon facts, circumstances, estimates and expectations of the Lessee as of the date on which the Agreement was executed, and to the best of my knowledge and belief, as of this date, such facts, circumstances and estimates are true and correct and such expectations are reasonable.

IN WITNESS WHEREOF, I have executed and delivered this certificate as of the \_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Secretary/Clerk

**EXHIBIT D**

**DESCRIPTION OF THE EQUIPMENT**

EQUIPMENT:    «EquipmentDescription»

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EQUIPMENT LOCATION: \_\_\_\_\_  
\_\_\_\_\_

«Lessee»

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

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

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

***Proprietary to Saulsbury Hill Financial, LLC***

**EXHIBIT F**

**ACCEPTANCE CERTIFICATE**

To Lessor:        «Lessor»  
                      «LessorAddress1»  
                      «LessorAddress2»

In accordance with the terms of the Municipal Lease and Option Agreement dated «LeaseDate» (the "Lease") between «Lessor» ("Lessor"), and the undersigned ("Lessee"), Lessee hereby certifies and represents to, and agrees with, Lessor as follows:

1. The Equipment, as such term is defined in the Lease, has been delivered and installed at the Equipment Location specified in Exhibit D - Description of the Equipment to the Lease and accepted on the date indicated below.

2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.

3. No Event of Default, as such term is defined in the Lease, and no event which with notice or lapse of time, or both, would become an Event of Default, has occurred and is continuing at the date hereof.

Lessee: «Lessee»

**Proprietary to Saulsbury Hill Financial, LLC**

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

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

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

**EXHIBIT G**

**INSURANCE COVERAGE REQUIREMENTS**

TO:            «Lessor»  
                 «LessorAddress1»  
                 «LessorAddress2»

FROM:         «Lessee»  
                 «LesseeAddress1»  
                 «LesseeAddress2»

SUBJECT: INSURANCE COVERAGE REQUIREMENTS

1.        In accordance with Article VIII, Section 8.03 of the Agreement, we have instructed the insurance agent named below (please fill in name, address and telephone number)

\_\_\_\_\_  
\_\_\_\_\_

*Proprietary to Saulsbury Hill Financial, LLC*

to issue:

- a.        All Risk Physical Damage Insurance on the leased equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming «Lessor» as loss payee.

Coverage Required: Full Replacement Value

- b.        Public Liability Insurance evidence by a Certificate of Insurance naming «Lessor» and/or its assigns as an Additional Insured.

Minimum Coverage Required:

\$500,000.00 per person  
\$500,000.00 aggregate bodily injury liability  
\$100,000.00 property damage liability

**OR**  
(check one)

- \_\_\_\_ 2.        Pursuant to Article VIII, Section 8.03 of the Agreement, we are self-insured for all risk, physical damage, and public liability and will provide proof of such self-insurance in letter form together with a copy of the statute authorizing this form of insurance.
- \_\_\_\_ 3.        Proof of insurance coverage will be provided prior to the time that the equipment is delivered to us.

«Lessee»

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

Dated: \_\_\_\_\_

***Proprietary to Saulsbury Hill Financial, LLC***



a. Upon receipt of written authorization and instructions from Lessee and Lessor, which shall at a minimum consist of (a) the payment request form - Schedule B describing the items of Equipment for which payment is to be made, executed by Lessee and certified by Lessor, (b) the vendor(s) or manufacturer(s)' invoice(s) specifying the Equipment acquisition price of Equipment described in the payment request form, and (c) a UCC Financing Statement and/or Application for Certificate of Title covering the items of Equipment, the Escrow Agent shall pay to the vendor(s) or manufacturer(s) of the Equipment payments then due and payable with respect thereto.

b. In the event that Lessor provides to the Escrow Agent written notice of the occurrence of an event of default under the Agreement, the Escrow Agent shall thereupon promptly remit to Lessor the Escrow Fund.

c. Upon receipt by the Escrow Agent of written notice from Lessor that the Equipment acquisition price has been paid in full, the Escrow Agent shall apply the then remaining Escrow Fund, first, to all reasonable fees and expenses incurred by the Escrow Agent in connection herewith as evidenced by its statement forwarded to Lessor and Lessee; and, second, to prepay to Lessor rent payments due by Lessee to Lessor, to be applied to the Rental Payments under the Agreement at the sole discretion of Lessor as evidenced by Lessor's statement submitted to the Escrow Agent, unless Lessor, by written notice to Escrow Agent, authorizes Escrow Agent to pay any remaining amount in the Escrow Fund directly to Lessee.

6. The reasonable fees and expenses, of the Escrow Agent incurred in connection herewith shall be the responsibility of Lessee.

7. The Escrow Agent shall have no liability for acting upon any written instruction presented by Lessor in connection with this Agreement which the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Agreement except for its own negligence, willful misconduct or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investment decisions (pursuant to Section 4, Qualified Investments), made by the Escrow Agent.

8. The Lessee hereby agrees to indemnify and save the Escrow Agent harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder, and which are not due to the Escrow Agent's negligence or default. Indemnification for any tort shall be limited to the extent and in the amounts provided for by «LesseeState» law. No indemnification will be made under this Section or elsewhere in this Agreement for willful misconduct, negligence, or default under this Agreement by the Escrow Agent, its officers, agents, employees, successors or assigns.

9. The Escrow Agent may at any time resign by giving at least 30 days' prior written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of the successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by Lessor and Lessee. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent. Thereupon such successor Escrow Agent shall, without any further act or deed, be fully vested with all the trusts, powers, rights, duties and obligations of the Escrow Agent under this Escrow Agreement, and the predecessor Escrow Agent shall deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent. Lessor may at any time remove the Escrow Agent as the Escrow Agent under this Agreement upon written notice. Such removal or resignation shall be effective on the date set forth in the applicable notice. Upon the effective date of resignation or removal, the Escrow Agent will transfer the Escrow Fund then held by it to the successor Escrow Agent selected by Lessor.

10. This Escrow Agreement and the escrow established hereunder shall terminate upon disbursement by the Escrow Agent of all amounts contained in the Escrow Fund in accordance with Section 5a. or 5b. hereof.

11. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other parties; and shall be effective on the date of receipt.

12. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of the Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor.

13. This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification or change of terms hereof shall bind any party unless in writing signed by all parties.



**SCHEDULE B**

**PAYMENT REQUEST FORM NO. \_\_\_\_\_**

**SECTION I - PAYMENT REQUEST**

«EscrowAgent», Escrow Agent under the Escrow Agreement dated as of «LeaseDate» by and among said Escrow Agent, «Lessor» ("Lessor"), and «Lessee» ("Lessee"), is hereby requested to pay, from the Escrow Fund held under said Escrow Agreement, to the persons, firms, or corporations designated below as payee, the amount set forth opposite each such name, in payment of the invoice cost of the Equipment designated opposite such payee's name and account. The Equipment comprises all or a portion of the Equipment described in the Description of Equipment - Exhibit D of the Agreement.

Payee

Amount

Equipment

The undersigned hereby certifies that the attached manufacturer's or dealer's invoice is a duplicate original or certified copy of the order, delivery and acceptance of the Equipment described in this Payment Request Form.

*Proprietary to Saulsbury Hill Financial, LLC*

Dated: \_\_\_\_\_, 199\_\_.

Received and Approved:

«Lessee»  
Lessee

«Lessor»  
Lessor

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

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

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

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

**SECTION II - PARTIAL ACCEPTANCE**

If the above payment is a progress payment and if the payment is for less than all of the Equipment of the Description of Equipment - Exhibit D and is not the final payment with respect to the Equipment covered by the Description of Equipment - Exhibit D, then Lessee hereby acknowledges that the Equipment listed above has been delivered to, tested and inspected, and accepted by Lessee.

Dated: \_\_\_\_\_, 199\_\_.

Received and Approved:

«Lessee»  
Lessee

«Lessor»  
Lessor

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

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

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

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

**NOTE - Please execute both of the above signature blocks if this is a *Partial Payment* and Acceptance of a portion of the Equipment. If this is the *Final Payment* with respect to the Equipment Description - Exhibit D -- Do Not Complete Section II. Please forward an executed Acceptance Certificate - Exhibit F.**

## SCHEDULE A

### ARBITRAGE AND TAX CERTIFICATE

I, the undersigned, hereby certify that I am the duly qualified and acting \_\_\_\_\_ of «Lessee» ("Lessee"), and that in my official capacity as such officer, I am responsible for executing and delivering on behalf of Lessee the Municipal Lease and Option Agreement dated as of «LeaseDate», (the "Agreement"), by and between Lessee and «Lessor» ("Lessor"). This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations, Sections 1.103-13, 1.103-14 and 1.103-15 (the "Regulations") The following facts, estimates and circumstances are in existence on the date of this Certificate or are reasonably expected to occur hereafter.

1. The Agreement provides for the lease of certain Equipment described in the Description of Equipment - Exhibit D thereto (the "Equipment") by Lessor to Lessee and the lease of the Equipment by Lessee from Lessor. Pursuant to the Agreement, Lessee is required to make Rental Payments with respect to the Equipment comprising principal and interest, on the dates and in the amounts set forth in the Schedule of Payments - Exhibit E to the Agreement.

2. Pursuant to the Agreement and for the purpose of meeting its obligations under the Agreement and assuring Lessee of the availability of moneys needed to pay the cost of the Equipment when due, Lessee, Lessor and «EscrowAgent» as escrow agent ("Escrow Agent") have executed an escrow agreement dated as of «LeaseDate», (the "Escrow Agreement").

3. The Escrow Agreement provides that Lessor shall deposit \$ \_\_\_\_\_ into escrow, to be credited to the Escrow Fund created by the Escrow Agreement and held, invested and disbursed with respect to the Equipment as provided therein. Interest earnings on amounts held in escrow shall be paid the Lessee.

4. A contract dated as of \_\_\_\_\_, 19 \_\_\_\_, providing for the acquisition and delivery of the Equipment has been executed between Lessee and \_\_\_\_\_.

5. The Equipment will be acquired and installed with due diligence and, based upon the provisions of the contract described in paragraph 4 hereof, the Equipment will be acquired and installed on or before \_\_\_\_\_, 19 \_\_\_\_.

6. All of the spendable proceeds of the Agreement will be expended on the Equipment and related expenses within three years from the date of execution of the Agreement and Escrow Agreement.

7. The original proceeds of the Agreement, and the interest to be earned thereon, do not exceed the amount necessary for the purpose for which the Agreement is issued.

8. The interest of Lessee in the Equipment has not been and is not expected during the term of the Agreement to be sold or disposed of by Lessee.

9. No sinking fund is expected to be created by Lessee with respect to the Agreement and the Rental Payments.

10. Lessee hereby covenants to comply with all requirements of the Code and Regulations relating to the rebate of arbitrage profit to the United States of America. It is expected that all gross proceeds of the Agreement will be expended on the Equipment no later than the day which is six months after the date of issuance of the Agreement.

11. To the best of the knowledge and belief of the undersigned, the expectations of Lessee, as set forth above, are reasonable; and there are no present facts, estimates and circumstances which would change the foregoing expectations.

12. Lessee has not been notified of the listing or proposed listing of it by the Internal Revenue Service as an issuer whose arbitrage certificates may not be relied upon.

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

«Lessee»  
Lessee

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

**SCHEDULE C**  
**INVESTMENT INSTRUCTIONS**

*Proprietary to Saulsbury Hill Financial, LLC*