

# CITY OF CAYCE

*MAYOR*  
ELISE PARTIN

*MAYOR PRO-TEM*  
JAMES E. JENKINS

*COUNCIL MEMBERS*  
TARA S. ALMOND  
PHIL CARTER  
EVA CORLEY

*CITY MANAGER*  
REBECCA VANCE

*ASSISTANT CITY MANAGER*  
SHAUN M. GREENWOOD

**City of Cayce  
Regular Council Meeting  
Tuesday, September 6, 2016  
6:00 p.m. – Cayce City Hall – 1800 12<sup>th</sup> Street  
[www.cityofcayce-sc.gov](http://www.cityofcayce-sc.gov)**

**I. Call to Order**

- A. Invocation and Pledge of Allegiance
- B. Approval of Minutes  
August 2, 2016 Regular Meeting  
August 17, 2016 Special Meeting

**II. Public Comment Regarding Items on the Agenda**

**III. Presentation**

- A. Presentation by Mr. Mike Pazery re the City's budget
- B. Presentation by Ms. Nancy Chapman re the City's Rental Registration Program

**IV. Resolutions**

- A. Discussion and Approval of Resolution Approving Finance Terms for General Fund Vehicle Lease Purchases
- B. Discussion and Approval of Resolution Committing the City of Cayce to Provide a Local Match for a Municipal Association of South Carolina Hometown Economic Development Grant

**V. Other**

- A. Discussion and Approval of RFP Award for General Contracting Services for the Thomas Newman Boat Landing Dock Replacement
- B. Discussion and Approval of Bid Award for Sanitation Rear Loader Garbage Truck
- C. Discussion and Approval of Hospitality Tax Fund Request Application Amendment – Cayce Serves Tennis Tournament

**VI. City Manager's Report**

**VII. Committee Matters**

- A. Approval to enter the following approved Committee Minutes into the City's Record  
Events Committee – July 14, 2016

**VIII. Council Comments**

**IX. Executive Session**

- A. Receipt of legal advice relating to claims and potential claims by the City and other matters covered by the attorney-client privilege
- B. Discussion of negotiations incident to proposed contractual arrangement concerning a possible economic development project and discussion of matters relating to proposed location and provision of services encouraging location of business in the City
- C. Discussion of negotiations incident to proposed contractual arrangements regarding the funding of a waterline project
- D. Discussion of negotiations incident to proposed contractual arrangements concerning possible property access to Riverwalk

**X. Reconvene**

**XI. Possible Actions by Council in follow up to Executive Session**

**XII. Adjourn**

**SPECIAL NOTE: Upon request, the City of Cayce will provide this document in whatever form necessary for the physically challenged or impaired.**



## CITY OF CAYCE

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SHAUN M. GREENWOOD

### CITY OF CAYCE Regular Council Meeting August 2, 2016

The August Regular Council Meeting was held this evening at 6:00 p.m. in Council Chambers. Those present included Mayor Elise Partin, Council Members Tara Almond, Phil Carter, Eva Corley and James Jenkins. City Manager Rebecca Vance, Assistant City Manager Shaun Greenwood, Municipal Clerk Mendy Corder, Municipal Treasurer Garry Huddle, City Attorney Danny Crowe, and Director of Public Safety Byron Snellgrove were also in attendance.

Mayor Partin asked if members of the press and the public were duly notified of the Council Meeting in accordance with the FOIA. Ms. Corder confirmed they were notified.

#### Call to Order

Mayor Partin called the meeting to order. Council Member Jenkins gave the invocation and Mayor Partin led the assembly in the Pledge of Allegiance.

#### Approval of Minutes

Council Member Almond stated that the July 20, 2016 Special Council Meeting minutes had the incorrect dates for the upcoming election's filing period. Ms. Corder stated she would correct the minutes and place them on the August 17, 2016 Council Meeting agenda for Council's approval.

Council Member Almond made a motion to approve the July 5, 2016 Regular Council Meeting minutes as written. Council Member Corley seconded the motion which was unanimously approved by roll call vote.

#### Public Comment Regarding Items on the Agenda

No one signed up for Public Comment.

#### Presentations

##### A. Presentation of Whole Sole Awards

Mayor Partin asked Public Safety Dispatcher Tony Nelson to join her in front of the assembly. She stated that Sgt. Evan Antley nominated Mr. Nelson for the Whole Sole Award. Sgt. Antley stated in the nomination that Mr. Nelson has extensive knowledge of his duties and performs them flawlessly. He arrives 30-45 minutes early

every day and does not leave until his shift is complete. His work performance shows that he takes his job seriously and wants to do his best. He stated that Mr. Nelson is deserving of the Whole Sole Award because he always goes above and beyond in every aspect of his duties. Mr. Nelson covers 90% of the staffing issues in Dispatch and goes above and beyond to make sure Dispatch has proper coverage on a day to day basis. He also comes in early and stays late to make sure all personnel stay current with their NCIC certification. Another Dispatcher recently retired and once again Mr. Nelson volunteered to do "whatever was needed" to ensure seamless service to the citizens that call into the dispatch center. Mayor Partin thanked Mr. Nelson for his excellent service to the City and its citizens.

Mayor Partin next asked Animal Control Officer Leigh Summers to join her in front of the assembly. She stated that Sgt. Paul Dufault had nominated Ms. Summers for the Whole Sole Award. In the nomination he stated that Ms. Summers recently responded to an animal at large call. She responded to the location and immediately recognized the animal as Hank the dog and knew that he belonged to an elderly couple. She knew from previous contact with the couple that they are in bad health and the male is diagnosed with Alzheimer's. ACO Summers made contact with the female and she stated she had put Hank on the porch because he kept getting out of the fence. The resident stated she was trying to get the fence fixed but she and her husband had been ill lately. ACO Summers took it upon herself to call a patrol officer to help her construct a temporary barrier so Hank could not get off the porch. Hank's owner was very grateful to ACO Summers for helping her with the situation. Sgt. Dufault went on to say that ACO Summers is very passionate about her job and consistently does her best to help the citizens of Cayce with their animals. He stated that you can call her anytime day or night and describe an animal to her and 9 out of 10 times she knows where the dog belongs and most of the time can tell you the exact address. ACO Summers is committed to her job in a way that goes above and beyond her duties. She not only cares about the animals but she also cares about the owners of the animals and works hard to build relationships with them to solve the issues she encounters. ACO Summers is a great asset to the City of Cayce and its citizens.

Mayor Partin asked Gwen Brunson and Sarah Johnson to join her in front of the assembly. She stated that Mr. Shaun Greenwood nominated them both for the Whole Sole Award. Mr. Greenwood stated in the nomination that last fall Ms. Brunson and Ms. Johnson went above and beyond to bring fun, team and morale building events to City staff members in the form of "Employee Game Night". Over the course of several months, Ms. Brunson and Ms. Johnson arranged a variety of game nights including an evening of Kickball, Softball, Volleyball, Bowling and even a game of Family Feud.

He stated that having opportunities such as these go a very long way towards improving working relationships between the many City departments. Without hesitation, Ms. Brunson and Ms. Johnson dedicated their time, effort and sometimes their own money, to make these nights possible. From the conception of the game night ideas, to securing a location and supplies, spreading the word to staff and providing refreshments to those who attended, these two staff members truly went out of their way to arrange for these fun-filled events.

### **Ordinances and Resolutions**

**A. Discussion and Approval of Ordinance 2016-10 Amending Section 4-11 of the Cayce City Code Relating to Drinking in Public – First Reading**

Ms. Vance stated that a recent review of the City Code revealed some technical issues that needed to be resolved in regards to alcohol consumption at events and festivals. Section 4-11 needs to be amended to ensure there are no conflicts with consuming alcohol at outdoor festivals and events. She stated that the wording in the current Ordinance would technically not allow for the consumption of alcohol outside of a building or structure. The Public Safety Director and City Attorney have reviewed the suggested amendment and believe the changes will serve the best interests of the City and the public. Additionally, language was removed that would not allow alcohol to be consumed at establishments where the alcohol was produced. This in effect places significant burden on certain businesses like craft breweries.

Council Member Corley made a motion to approve on First Reading Ordinance 2016-10 amending Section 4-11. Council Member Almond seconded the motion which was unanimously approved by roll call vote.

**B. Discussion and Approval of Ordinance 2016-11 Annexing Properties Located at 1416 Alex Street (TMS#005750-09004), 1418 Alex Street (TMS#005750-09-005), and Naples Avenue (TMS#005750-09-015) into the City Limits Under the Provisions of South Carolina Code Sec. 5-3-150 (3) – First Reading**

Ms. Vance stated that Council approval was needed for the First Reading of an Ordinance to annex .70 acres of land located at 1416 Alex Street, 1418 Alex Street and a property located at Naples Avenue. The properties were purchased by the City in hopes to use the land for a new water tower and they will be consolidated with the successful annexation of the properties. The properties are currently under Lexington County jurisdiction and contiguous to one parcel under the City's jurisdiction.

Ms. Vance stated that the recommended zoning for the property is RS-4 (Single Family, Small Lots) which would be consistent with the contiguous zoning of the

surrounding area. Water supply systems is a permitted use in the RS-4 zoning district. She stated that the Planning Commission considered the request for annexation at its regular meeting on May 16, 2016. A public hearing was held at the meeting for public input. One member of the public was present to inquire about the annexation request. The Planning Commission unanimously recommended Council approve the requested annexation and RS-4 zoning designation.

Council Member Almond made a motion to approve annexing the properties into the City limits on First Reading. Council Member Carter seconded the motion which was unanimously approved by roll call vote.

- C. Discussion and Approval of Ordinance 2016-12 Amending Zoning Map and Rezoning Property Located at 331 Clark Street (TMS#004655-02-001) from C-3 to RG-2 – First Reading
- D. Discussion and Approval of Ordinance 2016-13 Amending Zoning Map and Rezoning Property Located at 1225 G Avenue (TMS#004633-05-006) from C-1 to RS-3 – First Reading
- E. Discussion and Approval of Ordinance 2016-14 Amending Zoning Map and Rezoning Property Located at 1222 H Avenue (TMS#004633-05-012) from C-1 to RS-3 – First Reading
- F. Discussion and Approval of Ordinance 2016-15 Amending Zoning Map and Rezoning Property Located at 1211 G Avenue (TMS#004633-05-007) from C-1 to RS-3 – First Reading

Mayor Partin stated that Council could vote on agenda items IV. C – IV. F together or separately. Council Member Almond made a motion to approve the rezoning of Items IV. C. – IV. F. on First Reading. Council Member Carter seconded the motion.

Council Member Carter asked which end of Clark Street 331 Clark Street was on. Ms. Vance stated that it was on the end of Clark Street closest to the Congaree River. She stated that two of the applicants came to City Hall to get building permits to perform work on their property and discovered that the property was zoned commercial instead of residential. Staff researched the issue and could not find where either property was ever rezoned to commercial. She stated that staff thinks it was an error on the map that needs to be corrected. Council Member Almond's motion to rezone the properties from C-1 to the requested zoning was unanimously approved by roll call vote.

- G. Discussion and Approval of Ordinance 2016-09 Amending the Land Use Plan (2019) Map of the City of Cayce Comprehensive Plan: 2010-2020 –

## Second Reading

Council Member Almond made a motion to approve the Second Reading of an Ordinance amending the Land Use Plan (2019) Map of the City of Cayce Comprehensive Plan: 2010-2020. Council Member Carter seconded the motion which was unanimously approved by roll call vote.

### H. Consideration and Approval of Resolution Approving Multijurisdictional Task Force Mutual Aid Agreement to Combat Narcotics throughout Lexington County

Ms. Vance stated that the Multijurisdictional Task Force Mutual Aid Agreement is one that the City enters into every year. Council Member Almond made a motion to approve the Mutual Aid Agreement. Council Member Corley seconded the motion which was unanimously approved by roll call vote.

## City Manager's Report

Ms. Vance stated that the City's new Grants Coordinator/Special Projects staff member, Rachelle Moody, has started. She stated that Ms. Moody has ten years of experience in grants and staff is excited to have her on board. She stated that Public Safety requested new bay doors and the paving of the parking lot in front of the Fire Department in the FY16/17 budget. These items were not included in the final budget but were taken care of with funds from the FY15/16 budget. Ms. Vance stated that the shell of the new Parks and Sanitation building has been installed and the interior construction work has begun.

Ms. Vance stated that the improvements to Guignard Park are still ongoing. She stated that the Kelley H. Jones Park in Riverland Park is almost complete. Staff will have events to celebrate the opening of each park. She stated Mr. Greenwood was nominated and accepted into the Leadership South Carolina class for 2016.

## Committee Matters

### A. Approval to Enter the Following Approved Committee Minutes into the City's Official Record

Mayor Partin stated that the dates for the Events Committee and the Planning Commission were incorrect on the agenda but the correct minutes were in the agenda packet. Ms. Corder stated that the April 12, 2016 Cayce Housing Authority minutes were corrected after Council Member Almond noted at the July Council Meeting that the minutes stated that a member was absent but also stated in the minutes that the

member made a motion at the meeting. Council Member Almond made a motion to approve entering the following Committee minutes into the City's official record:

Cayce Housing Authority – April 12, 2016  
Events Committee – June 9, 2016  
Planning Commission – June 23, 2016

Council Member Corley seconded the motion which was unanimously approved by roll call vote.

#### **B. Appointments and Reappointments**

Mayor Partin stated that the Events Committee currently has two open positions. The Committee received a potential member application from Ms. Teresa Mitchell and recommended her for appointment. Council Member Corley made a motion to appoint Ms. Mitchell to the Events Committee. Council Member Almond seconded the motion which was unanimously approved by roll call vote.

Mayor Partin stated that there are currently four open positions on the Public Safety Foundation. The City has received a potential member application from Ms. Terri Camp. Ms. Camp previously served on the Foundation for three years. Council Member Almond made a motion to appoint Ms. Camp to the Public Safety Foundation and welcomed her back. Council Member Carter seconded the motion which was unanimously approved by roll call vote.

Mayor Partin stated that the Committees below have openings and asked the assembly to let their friends and neighbors know in case they are interested in serving on one.

#### **ACCOMMODATIONS TAX COMMITTEE - THREE (3) POSITIONS**

Two positions must be filled by someone from the motel industry in Cayce. One position must be filled by someone from the restaurant industry in Cayce.

#### **BEAUTIFICATION BOARD – THREE (3) POSITIONS**

#### **BEAUTIFICATION FOUNDATION – TWO (2) POSITIONS**

There are currently two open positions on the Beautification Foundation. One open position is in District 1 and the other open position is in District 4.

#### **CONSOLIDATED BOARD OF APPEALS – TWO (2) POSITIONS**

Members who serve on this Board must be either an Engineer, Contractor, Architect or Design Professional. There are no recommendations at this time.

## **PUBLIC SAFETY FOUNDATION – THREE (3) POSITIONS**

### **Council Comments**

Council Member Jenkins stated that a sign was installed on the fence of the Housing Authority development at Lee and Lucas Streets that stated it was a non-smoking community. He stated that the signs were misleading and seemed to imply that the entire area, not just the housing development, was smoke free. Ms. Vance stated that staff would contact the Columbia Housing Authority regarding the sign.

Mayor Partin thanked Parks staff for doing a great job of maintaining the trees in the Riverwalk and cutting dead limbs so they don't fall in the park. She stated they do a great job of keeping the Riverwalk safe.

### **Executive Session**

- A. Receipt of legal advice relating to claims and potential claims by the City and other matters covered by the attorney-client privilege
- B. Discussion of negotiations incident to proposed contractual arrangements with MPA Strategies
- C. Discussion of negotiations incident to proposed contractual arrangements for the funding of a waterline project
- D. Discussion of negotiations incident to proposed contractual arrangements Regarding Phase 2 – 6 of the Knox Abbott Drive Pedestrian Safety and Traffic Calming Project
- E. Discussion of negotiations incident to proposed contractual arrangement concerning a possible economic development project and discussion of matters relating to proposed location and provision of services encouraging location of businesses in the City of Cayce
- F. Discussion of negotiations incident to proposed contractual arrangements relating to the City's Tax Increment Finance District

Council Member Jenkins made a motion to move into Executive Session. Council Member Almond seconded the motion which was unanimously approved by roll call vote.

### **Reconvene**

After the Executive Session was concluded, Council Member Almond made a motion to reconvene the Regular meeting. Council Member Corley seconded the motion which was unanimously approved by roll call vote. Mayor Partin announced that no vote was taken in Executive Session other than to adjourn and resume the Regular meeting.

**Possible Actions by Council in follow up to Executive Session**

**VIII. B**

Council Member Almond made a motion to approve the contract for MPA Strategies and authorize the City Manager to sign the contract. Council Member Carter seconded the motion which was unanimously approved by roll call vote.

**VIII. D.**

Council Member Corley made a motion to approve the LandPlan Group's agreement and authorize the City Manager to sign the agreement. Council Member Jenkins seconded the motion which was unanimously approved by roll call vote. Council Member Corley amended her motion to add that the project would be funded with TIF Funds. Council Member Jenkins seconded the amended motion which was unanimously approved by roll call vote.

**Adjourn**

There being no further business, Council Member Carter made a motion to adjourn the meeting. Council Member Jenkins seconded the motion which was unanimously approved by roll call vote. The meeting adjourned at 7:47 p.m.

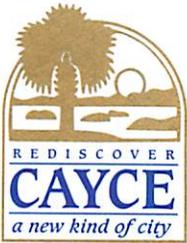
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Elise Partin, Mayor

ATTEST:

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Mendy C. Corder, Municipal Clerk



## CITY OF CAYCE

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REBECCA VANCE

*ASSISTANT CITY MANAGER*  
SHAUN M. GREENWOOD

### City of Cayce Special Council Meeting August 17, 2016

A Special Council Meeting was held this afternoon at 5:00 p.m. in Council Chambers. Those present included Mayor Elise Partin, Council Members Tara Almond, Phil Carter, Eva Corley and James Jenkins. City Manager Rebecca Vance, Assistant City Manager Shaun Greenwood, Municipal Clerk Mendy Corder, City Treasurer Garry Huddle and Director of Public Safety Bryon Snellgrove were also in attendance.

Mayor Partin asked if members of the press and the public were duly notified of the meeting in accordance with the FOIA. Ms. Corder confirmed they were notified.

#### **Call to Order**

Mayor Partin called the meeting to order and Council Member Carter gave the invocation. Mayor Partin led the assembly in reciting the Pledge of Allegiance.

#### **Approval of Minutes**

Ms. Corder stated that she had corrected the July 20, 2016 Council Meeting minutes that previously had the incorrect filing period dates for the City's November Election. Council Member Almond made a motion to approve the corrected minutes. Council Member Corley seconded the motion which was unanimously approved by roll call vote.

#### **Public Comment Regarding Items on the Agenda**

Ms. Corder stated no one had signed up for public comment.

#### **Ordinances and Other**

- A. Discussion and Approval of Match Funding for Phase 1 and 2 of the Julius Felder Sidewalk Improvement Project

Ms. Vance stated that staff was requesting matching funds for the SC DOT TAP Funding project that will install sidewalks on Julius Felder Street. She stated that the City was awarded Phase I, Phase II and Phase IIB. DOT would like to combine the three phases for bidding and match purposes. She stated that the City has already paid DOT \$44,297 of match funds that were paid for with C Funds from Lexington County. She stated that DOT needed \$92,847.63 from the City for this project to move forward. Ms. Vance stated that DOT is planning to bid out the project soon. She stated that the sidewalk project on Julius Felder Street cost a total of \$605,000.

Council Member Jenkins made a motion to approve utilizing \$92,847.63 from the General Fund fund balance for this project. Council Member Carter seconded the motion which was unanimously approved by roll call vote.

- B. Discussion and Approval of Ordinance 2016-10 Amending Section 4-11 of the Cayce City Code Relating to Drinking in Public – Second Reading

Council Member Almond made a motion to approve the Ordinance on Second Reading. Council Member Corley seconded the motion which was unanimously approved by roll call vote.

- C. Discussion and Approval of Ordinance 2016-11 Annexing Properties Located at 1416 Alex Street (TMS#005750-09-004), 1418 Alex Street (TMS#005750-09-005), and Naples Avenue (TMS#005750-09-015) into The City Limits Under the Provisions of South Carolina Code Sec. 5-3-150 (3) – Second Reading

Council Member Almond made a motion to approve the Ordinance annexing properties located at 1416 and 1418 Alex Street and property on Naples Avenue on Second Reading. Council Member Jenkins seconded the motion which was unanimously approved by roll call vote.

- D. Discussion and Approval of Ordinance 2016-12 Amending Zoning Map and Rezoning Property Located at 331 Clark Street (TMS#004655-02-001) from C-3 to RS-3 – Second Reading

Mayor Partin stated that the applicant withdrew his request for 331 Clark Street to be rezoned so no action was needed by Council.

- E. Discussion and Approval of Ordinance 2016-13 Amending Zoning Map and Rezoning Property Located at 1225 G Avenue (TMS#004633-05-006) from C-1 to RS-3 – Second Reading

Council Member Corley made a motion to approve Ordinance 2016-13 on Second Reading. Council Member Almond seconded the motion which was unanimously approved by roll call vote.

- F. Discussion and Approval of Ordinance 2016-14 Amending Zoning Map and Rezoning Property Located at 1222 H Avenue (TMS#004633-05-012) from C-1 to RS-3 – Second Reading

Council Member Almond made a motion to approve Ordinance 2016-14 on Second Reading. Council Member Corley seconded the motion which was unanimously approved by roll call vote.

- G. Discussion and Approval of Ordinance 2016-15 Amending Zoning Map and Rezoning Property Located at 1211 G Avenue (TMS#004633-05-007) from C-1 to RS-3 – Second Reading

Council Member Almond made a motion to approve Ordinance 2016-15 on Second Reading. Council Member Corley seconded the motion which was unanimously approved by roll call vote.

### **City Manager's Report**

Ms. Vance stated that staff has sent out over 500 letters to property owners that have failed to register their rental, vacant or non-owner occupied property. She stated that approximately fifty people have paid the late fees to date. She stated that there have been individuals who are not pleased about having to pay the late fee.

### **Committee Matters**

- A. Appointments and Reappointments

Mayor Partin stated that there is currently one open position on the Events Committee. The City has received a potential member application from Ms. Rachel Scurry and the Committee recommends her for appointment. Mayor Partin stated that Council and staff were thrilled that Ms. Scurry was able to serve on the Events Committee again. Council Member Corley made a motion to appoint Ms. Scurry to the Events Committee. Council Member Jenkins seconded the motion which was unanimously approved by roll call vote.

Mayor Partin stated that there are currently two open positions on the Beautification Foundation. The City has received a potential member application from Mr. Darryn Bouknight. Council Member Almond made a motion to appoint Mr. Bouknight to the Foundation. Council Member Jenkins seconded the motion which was unanimously approved by roll call vote.

### **Council Comments**

Council Member Jenkins stated that staff was doing a good job of staying safe and hydrated in the extremely hot weather. Council Member Carter thanked Chief Snellgrove for the professionalism he and his staff have displayed while dealing with the many issues they have faced recently.

### **Executive Session**

- A. Discussion of negotiations incident to proposed contractual arrangements regarding the funding of a waterline project

**B. Discussion of negotiations incident to proposed contractual arrangements relating to the City's Tax Increment Finance District**

Mayor Partin stated that Council would not be discussing Item VII. A. in Executive Session. Council Member Almond made a motion to move into Executive Session to discuss Item VII. B. Council Member Jenkins seconded the motion which was unanimously approved by roll call vote.

**Reconvene**

After the Executive Session was concluded, Council Member Jenkins made a motion to reconvene the Regular meeting. Council Member Almond seconded the motion which was unanimously approved by roll call vote. Mayor Partin announced that no vote was taken in Executive Session other than to adjourn and resume the Regular meeting.

**Possible Actions by Council in follow up to Executive Session**

There was no action taken in follow up to Executive Session.

**Adjourn**

Council Member Almond made a motion to adjourn the meeting. Council Member Jenkins seconded the motion which was unanimously approved by roll call vote. There being no further business, the meeting adjourned at 6:03 p.m.

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Elise Partin, Mayor

ATTEST:

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Mendy Corder, Municipal Clerk

<b>STATE OF SOUTH CAROLINA</b>	)	<b>RESOLUTION</b>
	)	
<b>COUNTY OF LEXINGTON</b>	)	<b>APPROVING FINANCING TERMS</b>
	)	<b>FOR GENERAL FUND</b>
<b>CITY OF CAYCE</b>	)	<b>VEHICLE LEASE PURCHASES</b>

**WHEREAS**, the City of Cayce (“City”) has previously determined to undertake a project for The General Fund Lease Purchases (“the Project”), and the City Manager has now presented a proposal for the financing of such Project.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the City of Cayce, in Council, duly assembled, that:

1. The City hereby determines to finance the Project through Branch Banking and Trust Company (“BB&T”), in accordance with the proposal dated August 12, 2016. The amount financed shall not exceed \$519,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.330%, and the term shall not exceed four (4) years.
  
2. All financing contracts and all related documents for the closing of the financing (the “Financial Documents”) shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and an Escrow Agreement as BB&T may request.
  
3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer’s satisfaction. The Financing Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer’s release of any Financing Document for delivery constituting conclusive evidence of such officer’s final approval of the Document’s final form.
  
4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing

Documents as “qualified tax-exempt obligations” for the purpose of Internal Revenue Code Section 265 (b)(3).

5. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Elise Partin, Mayor

**ATTEST:**

\_\_\_\_\_  
Mendy C. Corder, Municipal Clerk

5130 Parkway Plaza Boulevard  
Charlotte, North Carolina 28217  
(704) 954-1700  
Fax (704) 954-1799

[agsmith@bbandt.com](mailto:agsmith@bbandt.com)  
direct dial: 803-251-1328

[redwards@bbandt.com](mailto:redwards@bbandt.com)  
direct dial: 704-954-1708

### VIA ELECTRONIC DELIVERY

[ghuddle@cityofcayce-sc.gov](mailto:ghuddle@cityofcayce-sc.gov)

August 12, 2016

Mr. Garrett Huddle  
Treasurer  
City of Cayce  
P.O. Box 2004  
Cayce, SC 29171

Dear Mr. Huddle:

We at Branch Banking and Trust Company are pleased that we will be working with you to provide financing for various vehicles. By this letter we want to provide you with our proposed draft financing documents (please forward these to your attorney for review, also), and to outline the additional documentation we will need from you to close the financing.

We have enclosed the following draft documents for this financing:

1. **Lease Agreement.** This is the main document for the financing. The Lease Agreement sets out the loan and repayment terms, provides for the security interest that secures the loan and contains other provisions related to the City's care and use of the property being financed.
2. **Project Fund Agreement.** The Project Fund Agreement provides for the custody of financing proceeds pending their use on project costs. At closing, the loan proceeds will be disbursed into a project fund escrow account, from which the City may draw down funds as needed. Once a closing date has been established, we will provide by e-mail a requisition form and instructions for requesting funds.
3. **Closing Certificate.** This certificate, among other things, identifies the officials authorized to sign financing documents.
4. **Use of Proceeds Certificate.** This certificate provides information regarding the City's planned use and expenditure of financing proceeds, to document compliance with federal rules for tax-exempt financing. You will see that there are some blanks in paragraph four; we need information from you to complete these blanks. *The federal tax rules applicable to local government financings can be tricky and technical; please contact your attorney to discuss any aspect of the applicable tax rules.*

5. **Attorney's legal opinion.** The attorney's opinion must be on his or her letterhead, dated the day of closing and delivered at closing. **The opinion will not be valid if it is dated prior to the closing.**
6. **IRS Form 8038-G.** This form is used to provide the required notification to the IRS regarding the tax-exempt financing. We have partially completed this form based on information currently in our file. Please review this form and the companion instructions with your attorney and complete the remainder of the form, as well as make any required revisions.
7. **Invoicing Information Sheet.** We have also enclosed a form requesting invoicing instructions. Please complete and return this form along with the other documents so that we will know where to send reminder invoices for your payments.

At your earliest convenience prior to closing, please e-mail to us a copy of the Resolution approving the financing.

We appreciate your attention to these items. After reviewing the enclosed documents, please contact Andy Smith at 803-251-1328 to review this package in detail, so he can answer your questions about the documents and ensure everyone's full understanding of what has to be done for the closing. When you call, he will also determine a convenient day and time for closing.

Sincerely,

**BB&T GOVERNMENTAL FINANCE**



Regina Edwards  
Documentation Specialist

Attachments

## **Branch Banking and Trust Company**

### **Financing for the City of Cayce, South Carolina -- Document Checklist**

1. Lease Agreement, with Exhibits:
  - A) Project/Equipment description
  - B) Payment schedule
2. Project Fund Agreement
3. Closing Certificate
4. Copy of Resolution approving financing
5. Use of Proceeds Certificate
6. City Attorney's closing opinion
7. Internal Revenue Service Form 8038-G
8. Invoicing Information Sheet

Note: Copies of Certificate of Insurance, Invoices, Certificates of Origin listing BB&T as 1<sup>st</sup> lienholder to be provided by the City post-closing with requisitions for funds from project fund escrow account.

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (this "Agreement") is dated as of August \_\_\_\_, 2016, and is between the **CITY OF CAYCE, SOUTH CAROLINA**, a public body of the State of South Carolina (the "City"), and **BRANCH BANKING AND TRUST COMPANY** ("BB&T").

### RECITALS:

The City 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 BB&T to make available to the City the sum of \$519,000.00 to enable the City to acquire the Equipment (as defined below) by lease, and provides for securing the City's obligations under this Agreement by creating certain security interests in favor of BB&T.

**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 BB&T's reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of BB&T's expenses (including attorneys' fees) in prosecuting or defending any action or proceeding in connection with this Agreement, any required license or permit fees, state and local sales and use or ownership taxes or property taxes which BB&T is required to pay as a result of this Agreement, inspection and re-inspection fees, and any other amounts payable by the City (or paid by BB&T on the City's behalf) as a result of its covenants under this Agreement (together with interest that may accrue on any of the above if the City shall fail to pay the same, as set forth in this Agreement).

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

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

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

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

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

"City" means City of Cayce, South Carolina.

"City Representative" means the City's Finance Officer or such other person or persons at the time designated, by a written certificate furnished to BB&T and signed on the City's behalf by the presiding officer of the City's Governing Board, to act on the City's behalf for any purpose (or any specified purpose) under this Agreement.

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

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

"Equipment" has the meaning assigned in Section 2.03, and is generally expected to include the personal property described in Exhibit A.

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

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

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

"Governing Board" means the City's governing board as from time to time constituted.

"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 City or BB&T 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 Branch Banking & Trust Company of North Carolina (whether or not such Bank, or any affiliate thereof, is at any time the counterparty to this Agreement) as its "Prime Rate," as in effect from time to time.

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

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

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

"Required Payments" means Base Payments and Additional Payments.

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

“State” means the State of South Carolina.

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

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

## ARTICLE II

### LEASE; ADVANCE; SECURITY

**2.01. Lease.** BB&T hereby leases to the City, and the City hereby leases from BB&T, the Equipment, for a term beginning on the Closing Date and ending upon final payment of all Required Payments, unless this Lease is earlier terminated. The City 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.** BB&T advances \$519,000.00 (the "Amount Advanced") to the City on the Closing Date, and the City hereby accepts the Amount Advanced from BB&T. BB&T is advancing the Amount Advanced by making a deposit to a Project Fund (the "Project Fund") as provided in a Project Fund Agreement of even date (the “Project Fund Agreement”) between the City and BB&T. All amounts on deposit from time to time in the Project Fund, including the Amount Advanced and

all investment earnings, shall be used only for Project Costs until the Project Fund is terminated as provided under the Project Fund Agreement.

**2.03. UCC Security Agreement.**

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

- (i) all moneys on deposit from time to time in the Project Fund; and
- (ii) all property acquired by the City with funds advanced by BB&T pursuant to this Agreement, all personal property obtained in substitution or replacement therefore and all personal property obtained in substitution or replacement for any portion of the Security Property, and all proceeds of the foregoing (collectively, the "Equipment").

The City hereby grants to BB&T a security interest in the Equipment and in the moneys on deposit from time to time in the Project Fund to secure the Required Payments.

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

**2.04. City's Limited Obligation.** (a) No provision of this Agreement shall be construed or interpreted as creating a pledge of the City'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 City'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 City's moneys (other than the funds held under the Project Fund Agreement or this Agreement), nor shall any provision of this Agreement restrict the future issuance of any of the City's bonds or obligations payable from any class or source of the City's moneys (except to the extent this Agreement restricts the incurrence of additional obligations secured by the Security Property).

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

**2.05. City's Continuing Obligations.** The City 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) BB&T'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 City, 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 BB&T (but this section provision does not relieve BB&T of any of its obligations under this Agreement or the Project Fund Agreement);

(e) The sale of all or any part of the Security Property; or

(f) Another party's assumption of the City's obligations under this Agreement.

### ARTICLE III

#### CITY'S PAYMENT OBLIGATION AND RELATED MATTERS

**3.01. Rental; Purchase Option.** (a) As rental for the Equipment, the City shall make Base Payments to BB&T 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 City may, at its option, purchase all of BB&T's interest in the Equipment, on an as-is, where-is basis, upon payment to BB&T of the sum of Ten Dollars. This option to purchase the Equipment is personal to the City and is not assignable.

**3.02. Additional Payments.** The City 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, on any scheduled Payment Date, the City 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 BB&T's security interest in the Equipment, by paying (a) all Additional Payments then due and payable, (b) all interest accrued and unpaid to the prepayment date, and (c) 100% of the outstanding principal component of the Amount Advanced.

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

**3.05. Appropriations.** (a) The Budget Officer shall include in the initial proposal for each of the City's annual budgets the amount of all Base Payments and estimated Additional Payments coming due during the Fiscal Year to which such budget applies. Notwithstanding that

the Budget Officer includes such an appropriation for Required Payments in a proposed budget, the Governing Board may determine not to include such an appropriation in the City's final budget for such Fiscal Year.

(b) The Budget Officer shall deliver to BB&T, 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 City in such budget for such purposes.

(c) The actions required of the City 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 City 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 City 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 City.

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

(e) The City 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 City to replace the Equipment with other substantially identical or functionally equivalent property. The City, 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 City 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 City's obligation to make Base Payments is terminated as otherwise provided in this Agreement.

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

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

(c) The City 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 City 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

### CITY'S COVENANTS, REPRESENTATIONS AND WARRANTIES

**4.01. Indemnification.** To the extent permitted by law, the City shall indemnify, protect and save BB&T and its officers and directors harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Security Property or the transactions contemplated by this Agreement, including without limitation the possession, condition or use of the Equipment. The indemnification arising under this Section shall survive the Agreement's termination.

**4.02. Covenant as to Tax Exemption.** (a) The City shall not take or permit, or omit to take or cause to be taken, any action that would cause its obligations under this Agreement to be "arbitrage bonds" or "private activity bonds" within the meaning of the Code, or otherwise adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Base Payments to which such components would otherwise be entitled. If the City should take or permit, or omit to take or cause to be taken, any such action, the City 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 City covenants that it shall not permit the Amount Advanced, plus the investment earnings thereon (the "Proceeds"), to be used in any manner that would result in 5% or more of the Base Payments being directly or indirectly secured by an interest in property, or derived from payments in respect of property or borrowed money, being in either case used in a trade or business carried on by any person other than a governmental unit, as provided in Code Section 141(b), or result in 5% or more of the Proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Code Section 141(c); provided, however, that if the City 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 City need not comply with such covenant.

(c) Unless the City qualifies for one or more exceptions to the arbitrage rebate requirement with respect to this financing, the City 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 City 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 City shall provide BB&T 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 City'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 BB&T. The City 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 City acknowledges that its personnel must be familiar with the arbitrage rebate rules, because the tax-exempt status of the interest on the Obligations depends upon continuing compliance with such rules. The City therefore covenants to take all reasonable action to assure that City personnel responsible for the investment of and accounting for financing proceeds comply with such rules.

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

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

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

**4.06. No Breach of Law or Contract.** Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement, nor the fulfillment of or compliance with the terms and conditions of this Agreement, (a) to the best of the City's knowledge, constitutes a violation of any provision of law governing the City 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 City is a party or by which the City is bound.

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

other City officer, (e) any authority or proceedings relating to the City's execution or delivery of this Agreement, or (f) the undertaking of the transactions contemplated by this Agreement.

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

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

**4.10. Environmental Warranties and Indemnification.** (a) The City warrants and represents to BB&T that, to the best of the City'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 City 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 City shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the City 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 City 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 City receives any notices from any governmental agency or any lessee with regard to Hazardous Materials on, from or affecting the Equipment, the City shall immediately notify BB&T. The City 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 BB&T'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 City shall indemnify and hold BB&T 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 BB&T as a direct or indirect result of any warranty or representation made by the City 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 BB&T or the City or any transferee or assignee BB&T or the City.

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

**4.11. Further Instruments.** Upon BB&T's request, the City shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by BB&T 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.

**4.12. BB&T's Advances for Performance of City's Obligations.** If the City fails to perform any of its obligations under this Agreement, BB&T is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by BB&T (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 City promises to pay all such amounts to BB&T immediately upon demand.

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

**4.14. Financial Information.** (a) The City shall send to BB&T a copy of the City's audited financial statements for each Fiscal Year within 30 days of the City's acceptance of such statements, but in any event within 270 days of the completion of such Fiscal Year.

(b) The City shall furnish BB&T, at such reasonable times as BB&T shall request, all other financial information (including, without limitation, the City's annual budget as submitted or approved) as BB&T may reasonably request. The City shall permit BB&T or its agents and representatives to inspect the City's books and records and make extracts therefrom.

**4.15. Taxes and Other Governmental Charges.** The City shall pay, as Additional Payments, the full amount of all taxes, assessments and other governmental charges lawfully made by any governmental body during the term of this Agreement. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the City shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the Agreement term. The City 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 BB&T's interest, or the rentals and revenues derived therefrom or hereunder).

**4.16. City's Insurance.** (a) The City shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to all Equipment in an amount equal to the actual cash value of the Equipment. Such property damage insurance shall include BB&T as loss payee. The City shall provide evidence of such coverage to BB&T promptly upon installation of the Equipment. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 5.14.

(b) The City shall, at its own expense, acquire, carry and maintain comprehensive general tort liability insurance (and auto liability insurance, if applicable) in an amount not less than \$600,000 for personal injury or death and \$600,000 for property damage.

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

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

(e) No City 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 BB&T's prior written consent.

(f) BB&T 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 BB&T.

(g) The City shall deliver to BB&T annually by June 30 of each year a certificate stating that the risk coverages required by this Agreement are in effect, and stating the carriers, policy numbers, coverage limits and deductible or risk-retention amounts for all such coverages.

## ARTICLE V

### THE EQUIPMENT

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

**5.02. Changes in Location.** The City shall promptly inform BB&T if any component of the Equipment shall be moved from the location designated for such Equipment at the time of its acquisition.

**5.03. Acquisition and Installation within Funds Available.** The City represents that, based upon its examination of the plans and specifications for the Equipment, estimated installation costs and the Equipment's anticipated configuration, the Equipment can be acquired and installed for a total price within the total amount of funds to be available therefor in the Project Fund, income anticipated to be derived from the investment thereof and other funds previously identified and designated for such purposes. If the total amount available for such purposes in the Project Fund shall be insufficient to pay the entire cost of acquiring and installing the Equipment, the City promises to pay any such excess costs, with no resulting reduction or offset in the amounts otherwise payable by the City under this Agreement.

**5.04. Disclaimer of Warranties.** The City agrees that BB&T has not designed the Equipment, that BB&T has not supplied any plans or specifications with respect thereto and that BB&T (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 City intends therefor, or (iii) is safe in any manner or respect.

BB&T 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 City is to bear all risks relating to the Equipment, the installation thereof and the transactions contemplated by this Agreement, and the City hereby waives the benefits of any and all implied warranties and representations of BB&T.

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

**5.05. Right of Entry and Inspection.** BB&T and its representatives and agents shall have the right to enter upon the City's property and inspect the Equipment from time to time during installation and after the completion of installation, and the City shall cause any vendor, contractor or sub-contractor to cooperate with BB&T and its representatives and agents during such inspections.

No right of inspection or approval granted in this Section shall be deemed to impose upon BB&T any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by BB&T shall be deemed to impose upon BB&T 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 BB&T, and no warranties (either express or implied) are made by BB&T as to the quality or fitness of any improvement, any such inspection and approval being made solely for BB&T's benefit.

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

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

(d) The City 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 City shall use and operate the Equipment and related property as set forth in Exhibit A hereto, and for no other purpose unless required by law. The City 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 City 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 City 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 City 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 BB&T'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 City 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 City's sole property in which BB&T 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 BB&T 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 City 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 City's personal property that is not subject to this Agreement.

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

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

**5.12. Condemnation.**

(a) The City shall immediately notify BB&T if any governmental authority shall institute, or shall notify the City 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 City 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 BB&T, and to the extent permitted by law hereby irrevocably authorizes and empowers BB&T, in the City's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the City receives any Net Proceeds arising from any such action, the City shall apply such Net Proceeds as provided in Section 5.14.

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

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

(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 City 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 BB&T 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 City 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 City shall thereafter provide for the application of all Net Proceeds to the prompt completion, repair or restoration of the Equipment, as the case may be. The escrow agent shall disburse Net Proceeds for the payment of such costs upon receipt of requisitions in substantially the form of Exhibit A to the Project Fund Agreement. If the Net Proceeds shall be insufficient to pay in full the cost of completion, repair or restoration, the City 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 City'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 City's failing to make any Base Payment when due.

(b) The City's breaching or failing to perform or observe any term, condition or covenant of this Agreement or of the Project Fund Agreement on its part to be observed or

performed, other than as provided in subsection (a) above, including payment of any Additional Payment, for a period of 15 days after written notice specifying such failure and requesting that it be remedied shall have been given to the City by BB&T, unless BB&T shall agree in writing to an extension of such time prior to its expiration.

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

(d) Any warranty, representation or statement made by the City in this Agreement or the Project Fund Agreement is found to be incorrect or misleading in any material respect on the Closing Date (or, if later, on the date made).

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

(f) The City'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, BB&T 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 City's performance of the applicable covenants of this Agreement or to recover for the breach thereof;

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

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

**6.03. Execution on Personal Property.** Upon the continuation of any Event of Default and in addition to all other remedies granted in this Agreement, BB&T 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 City shall have no further obligation to pay Base Payments beyond the end of the Fiscal Year for which amounts have been appropriated for Base Payments. This Agreement shall terminate on the last day of the Fiscal Year for which amounts have been appropriated for Base Payments without any penalty to the Borrower whatsoever. The City agrees to peaceably surrender possession the Equipment to BB&T or its assignees on the first day of the Fiscal Year to which the

Event of Nonappropriation applies, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States or Canada designated by BB&T.

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

**6.05. Possession of Equipment.** Upon the continuation of an Event of Default or the occurrence of an Event of Nonappropriation, the City 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 BB&T), and thereupon the City (a) shall pay monthly in advance to BB&T a fair and reasonable rental value for the use and possession of the Equipment (in an amount BB&T shall determine in its reasonable judgment), and (b) upon BB&T's demand, shall deliver possession of the Equipment to BB&T or, at BB&T'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, BB&T, 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 City's account and in reduction of the City's corresponding Required Payments in such fashion as BB&T shall reasonably deem appropriate. BB&T 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 BB&T, 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 BB&T employs an attorney to assist in the enforcement or collection of Required Payments, or if BB&T 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 City with any of the provisions of this Agreement, the City 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 City, to P.O. Box 2004 Cayce, South Carolina 29171, Attention: Finance Officer; or

(ii) If to BB&T, to BB&T Governmental Finance, 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217, Attention: Account Administration/Municipal.

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

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

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

The City agrees that this Agreement may become part of a pool of obligations at BB&T's or its assignee's option. BB&T 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 BB&T's interest in the Equipment or this Agreement shall be effective unless and until the City 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 City further agrees that BB&T'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 City 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 City agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the City, and the City shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the City shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

**7.04. Amendments.** No term or provision of this Agreement may be amended, modified or waived without the prior written consent of the City and BB&T.

**7.05. Governing Law.** The City and BB&T intend that State law shall govern this Agreement.

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

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

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

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

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

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

**(SEAL)**

**ATTEST:**

**CITY OF CAYCE,  
SOUTH CAROLINA**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

**BRANCH BANKING AND  
TRUST COMPANY**

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

Printed Name: \_\_\_\_\_

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

*[Lease Agreement between the City of Cayce, South Carolina, and Branch Banking and Trust Company]*

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

Various vehicles, (approximately 12), as may be more particularly described in documentation submitted with requisitions pursuant to the Project Fund Agreement.

**EXHIBIT B -- PAYMENT SCHEDULE**

**Payment Schedule to Lease Agreement dated as of August \_\_, 2016 (the "Lease Agreement"), between City of Cayce, South Carolina, and Branch Banking and Trust Company**

Contract Number: 9940000316-00006

The payments required to repay the advance made pursuant to the Lease Agreement call for an amortization period of approximately four (4) years. Payments are monthly in arrears in the amount of \$11,108.65. A portion of each payment is paid as and represents payment of interest at an annual interest rate of 1.33%.

Payments are due beginning on September \_\_, 2016, and monthly thereafter, with a final payment of all outstanding principal and accrued and unpaid interest due on August \_\_, 2020, all as set forth in the attached amortization schedule.

City of Cayce, South Carolina  
 \$519,000.00 Various Vehicles  
 9940000316-00006

**DRAFT AMORITZATION SCHEDULE-TO BE UPDATED TO REFLECT FUNDING DATE**

Compound Period: Monthly

Nominal Annual Rate: 1.330 %

**CASH FLOW DATA**

	<b>Event</b>	<b>Date</b>	<b>Amount</b>	<b>Number</b>	<b>Period</b>	<b>End Date</b>
1	Loan	08/11/2016	519,000.00	1		
2	Payment	09/11/2016	11,108.65	48	Monthly	08/11/2020

**AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year**

	<b>Date</b>	<b>Payment</b>	<b>Interest</b>	<b>Principal</b>	<b>Balance</b>
Loan	08/11/2016				519,000.00
1	09/11/2016	11,108.65	575.23	10,533.42	508,466.58
2	10/11/2016	11,108.65	563.55	10,545.10	497,921.48
3	11/11/2016	11,108.65	551.86	10,556.79	487,364.69
4	12/11/2016	11,108.65	540.16	10,568.49	476,796.20
5	01/11/2017	11,108.65	528.45	10,580.20	466,216.00
6	02/11/2017	11,108.65	516.72	10,591.93	455,624.07
7	03/11/2017	11,108.65	504.98	10,603.67	445,020.40
8	04/11/2017	11,108.65	493.23	10,615.42	434,404.98
9	05/11/2017	11,108.65	481.47	10,627.18	423,777.80
10	06/11/2017	11,108.65	469.69	10,638.96	413,138.84
2017 Totals		111,086.50	5,225.34	105,861.16	
11	07/11/2017	11,108.65	457.90	10,650.75	402,488.09
12	08/11/2017	11,108.65	446.09	10,662.56	391,825.53
13	09/11/2017	11,108.65	434.27	10,674.38	381,151.15
14	10/11/2017	11,108.65	422.44	10,686.21	370,464.94
15	11/11/2017	11,108.65	410.60	10,698.05	359,766.89
16	12/11/2017	11,108.65	398.74	10,709.91	349,056.98
17	01/11/2018	11,108.65	386.87	10,721.78	338,335.20
18	02/11/2018	11,108.65	374.99	10,733.66	327,601.54
19	03/11/2018	11,108.65	363.09	10,745.56	316,855.98
20	04/11/2018	11,108.65	351.18	10,757.47	306,098.51
21	05/11/2018	11,108.65	339.26	10,769.39	295,329.12
22	06/11/2018	11,108.65	327.32	10,781.33	284,547.79
2018 Totals		133,303.80	4,712.75	128,591.05	

23	07/11/2018	11,108.65	315.37	10,793.28	273,754.51
24	08/11/2018	11,108.65	303.41	10,805.24	262,949.27
25	09/11/2018	11,108.65	291.44	10,817.21	252,132.06
26	10/11/2018	11,108.65	279.45	10,829.20	241,302.86
27	11/11/2018	11,108.65	267.44	10,841.21	230,461.65
28	12/11/2018	11,108.65	255.43	10,853.22	219,608.43
29	01/11/2019	11,108.65	243.40	10,865.25	208,743.18
30	02/11/2019	11,108.65	231.36	10,877.29	197,865.89
31	03/11/2019	11,108.65	219.30	10,889.35	186,976.54
32	04/11/2019	11,108.65	207.23	10,901.42	176,075.12
33	05/11/2019	11,108.65	195.15	10,913.50	165,161.62
34	06/11/2019	11,108.65	183.05	10,925.60	154,236.02
2019 Totals		133,303.80	2,992.03	130,311.77	
35	07/11/2019	11,108.65	170.94	10,937.71	143,298.31
36	08/11/2019	11,108.65	158.82	10,949.83	132,348.48
37	09/11/2019	11,108.65	146.69	10,961.96	121,386.52
38	10/11/2019	11,108.65	134.54	10,974.11	110,412.41
39	11/11/2019	11,108.65	122.37	10,986.28	99,426.13
40	12/11/2019	11,108.65	110.20	10,998.45	88,427.68
41	01/11/2020	11,108.65	98.01	11,010.64	77,417.04
42	02/11/2020	11,108.65	85.80	11,022.85	66,394.19
43	03/11/2020	11,108.65	73.59	11,035.06	55,359.13
44	04/11/2020	11,108.65	61.36	11,047.29	44,311.84
45	05/11/2020	11,108.65	49.11	11,059.54	33,252.30
46	06/11/2020	11,108.65	36.85	11,071.80	22,180.50
2020 Totals		133,303.80	1,248.28	132,055.52	
47	07/11/2020	11,108.65	24.58	11,084.07	11,096.43
48	08/11/2020	11,108.65	12.22	11,096.43	0.00
2021 Totals		22,217.30	36.80	22,180.50	
Grand Totals		533,215.20	14,215.20	519,000.00	

## **PROJECT FUND AGREEMENT**

**THIS PROJECT FUND AGREEMENT** is dated as of August \_\_\_, 2016, and is by and between **CITY OF CAYCE, SOUTH CAROLINA**, a public body of the State of South Carolina (the "City"), and **BRANCH BANKING AND TRUST COMPANY** ("BB&T").

### **RECITALS**

The City is, simultaneously with the execution and delivery of this Project Fund Agreement, executing and delivering a Lease Agreement dated as of August \_\_\_, 2016 (the "Lease Agreement"), by and between the City and BB&T. The purpose of the Lease Agreement is to provide for BB&T's advance of \$519,000.00 to the City to finance the City's acquisition of equipment, as defined in the Lease Agreement. In partial consideration for BB&T's entering into the Lease Agreement, the City has agreed to provide for financing proceeds to be deposited and disbursed pursuant to this Project Fund Agreement.

**NOW, THEREFORE**, the parties agree as follows:

### **SECTION 1. DEFINITIONS**

In this Project Fund Agreement, the term "*Project Costs*" means all costs of the design, planning, acquiring, installing of the Equipment as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable by the City under the Lease Agreement, including (a) sums required to reimburse the City or its agents for advances made for any such costs, (b) interest during the installation process and for up to six months thereafter, and (c) all costs related to the financing of the Equipment through the Lease Agreement and all related transactions.

In addition, any capitalized terms used in this Project Fund Agreement and not otherwise defined shall have the meanings assigned thereto in the Lease Agreement.

### **SECTION 2. PROJECT FUND.**

**2.1. Project Fund.** On the Closing Date, BB&T will deposit \$519,000.00 into a special account of the City at Branch Banking and Trust Company to be designated "2016-00006 City of Cayce Project Fund" (the "Project Fund"). This account shall be held separate and apart from all other funds of the City. The Project Fund is the City's property, but the City will withdraw amounts on deposit in the Project Fund only as provided in the Project Fund Agreement and only for application from time to time to the payment of Project Costs. Pending such application, such amounts shall be subject to a lien and charge in favor of BB&T to secure the City's obligations under the Lease Agreement.

**2.2. Requisitions from Project Fund.** The City may withdraw funds from the Project Fund only after authorization from BB&T. BB&T will disburse funds from the Project Fund only to the City and only upon its receipt of written requisitions from one of the designated City Representatives named in the Certificate of Authorized Representatives contained herein and substantially in the form of Exhibit A attached hereto.

**2.3. Disposition of Project Fund Balance.**

(a) *Upon completion* -- Promptly after the acquisition and installation of the Equipment has been completed, the City shall deliver to BB&T a certificate to such effect signed by a City Representative.

(b) *Upon default* -- Upon the occurrence of an Event of Default, BB&T may withdraw any balance remaining in the Project Fund and apply such balance against outstanding Required Payments.

(c) *Upon event of nonappropriation* -- Upon an event of nonappropriation, BB&T may withdraw any balance remaining in the Project Fund and apply such balance against outstanding Required Payments.

(d) *After delay or inactivity* -- If (i) more than two years have elapsed from the Closing Date or (ii) at least six months has passed from BB&T's most recent receipt of a requisition for Project Costs, then BB&T, upon 30 days' notice from BB&T to the City, may withdraw any balance remaining in the Project Fund and apply such balance against outstanding Required Payments.

(e) *Application of Project Fund balance* -- BB&T will apply any amounts paid to it pursuant to this section (i) first against all Additional Payments then due and payable, (ii) then to interest accrued and unpaid to the prepayment date, and (iii) then to the prepayment, in inverse order of maturity and without premium (notwithstanding any contrary provisions of Section 3.03 of the Lease Agreement), of the outstanding principal components of Installment Payments. Such prepayment, however, will not affect any other City payment obligation under the Lease Agreement. BB&T will notify the City of any withdrawal from the Project Fund made under this Section 2.3, and in the notice will describe its application of the funds withdrawn.

**2.4. Investment.** (a) The City and BB&T agree that money in the Project Fund will be continuously invested and reinvested in a public funds money rate savings account.

(b) From and after the date that is three years from the Closing Date, the City will not purchase or hold any investment which has a "yield," as determined under the Code, in excess of the "yield" on the City's obligations under the Lease Agreement, unless the City has supplied BB&T with a Bond Counsel Opinion to the effect that such investment will not adversely affect the exclusion from gross income for federal income tax purposes to which the interest components of Installment Payments would otherwise be entitled.

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

(d) All earnings on moneys in the Project Fund must be used for Project Costs.

### **SECTION 3. MISCELLANEOUS.**

**3.1. Notices.** Any notice or other communication required or contemplated by this Project Fund Agreement shall be deemed to be delivered if in writing, addressed as provided below and if (a) actually received by such addressee, or (b) in the case of mailing, when indicated to have been delivered by a signed receipt returned by the United States Postal Service after deposit in the United States mails, postage and registry fees prepaid, and clearly directed to be transmitted as registered or certified mail:

(i) If intended for the City, addressed to it at the following address: City of Cayce, Attention: Finance Officer, P.O. Box 2004 Cayce, South Carolina, 29171.

(ii) If intended for BB&T, addressed to it at the following address: BB&T Governmental Finance, Attention: Account Administration/Municipal – Project Fund Agreement Notice, 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217.

Any party may designate a different or alternate address for notices by notice given under this Project Fund Agreement.

**3.2. Survival of Covenants and Representations.** All covenants, representations and warranties made by the City in this Project Fund Agreement and in any certificates delivered pursuant to this Project Fund Agreement shall survive the delivery of this Project Fund Agreement.

**3.3. Choice of Law.** The parties intend that South Carolina law shall govern this Project Fund Agreement.

**3.4. Amendments.** This Project Fund Agreement may not be modified or amended unless such amendment is in writing and signed by BB&T and the City.

**3.5. No Third-Party Beneficiaries.** There are no parties intended to be or which shall be deemed to be third-party beneficiaries of this Project Fund Agreement.

**3.6. Successors and Assigns.** All of the covenants and conditions of this Project Fund Agreement shall be binding upon and inure to the benefit of the parties to this Project Fund Agreement and their respective successors and assigns.

**3.7. Severability.** If any court of competent jurisdiction shall hold any provision of this Project Fund Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Project Fund Agreement.

**3.8. Counterparts.** This Project Fund Agreement may be executed in any number of counterparts, including separate counterparts, each executed counterpart constituting an original but all together only one agreement.

**3.9. Termination.** Except as otherwise provided in this Project Fund Agreement, this Project Fund Agreement shall cease and terminate upon payment of all funds (including investment proceeds) from the Project Fund.

*The remainder of this page has been left blank intentionally; signature page follows.*

**CERTIFICATE DESIGNATING CITY REPRESENTATIVES**

In accordance with the terms herein, the City designates the following persons as City Representatives authorized to sign requisitions to withdraw funds from the Project Fund account:

Printed Name:

Signature:


The City may designate additional Representatives to sign requisitions upon written notification to BB&T.

**IN WITNESS WHEREOF**, each of the parties has caused this Project Fund Agreement to be signed and delivered by a duly authorized officer, all as of the date first above written.

**ATTEST**

**CITY OF CAYCE,  
SOUTH CAROLINA**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

SEAL

**BRANCH BANKING AND  
TRUST COMPANY**

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

Printed Name: \_\_\_\_\_

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

*[Project Fund Agreement dated as of August \_\_\_\_, 2016*

**EXHIBIT A**

*[to be prepared on City's letterhead for submission]*

**PROJECT FUND REQUISITION**

[Date] \_\_\_\_\_

**E-MAIL REQUISITIONS TO: GFProjectfunds@bbandt.com**

Ms. Trina Britt direct dial: 704-954-1873 fax: 704-954-1799  
BB&T Governmental Finance

RE: Request for disbursement of funds from the Project Fund related to Contract No. 9940000316-00006 with the City of Cayce, dated August \_\_, 2016.

Dear Ms. Britt,

Pursuant to the terms and conditions of the Project Fund Agreement dated as of August \_\_, 2016, City of Cayce (the "City"), requests the disbursement of funds from the Project Fund established under the Project Fund Agreement for the following Project Costs:

This is requisition number \_\_\_\_ from the Project Fund.

**Disbursements will be to the City of Cayce**

Amount: \$

**Attach the following to this requisition**

- **Copies of vendor invoices;**
- **Copies of the certificates of origin listing *BB&T Governmental Finance, 5130 Parkway Plaza Blvd., Charlotte, NC 28217* as 1<sup>st</sup> lienholder OR a copy of the lien recording application listing *BB&T Governmental Finance, 5130 Parkway Plaza Blvd., Charlotte, NC 28217* as 1<sup>st</sup> lienholder and a copy of the vehicle title**
- **Certificate of Insurance showing:**
  - **automobile liability and property coverage with BB&T Governmental Finance listed as loss payee and certificate holder;**
  - **year, make model, VIN number;**
  - **loan contract number 9940000316-00006.**

Project Description: Various Vehicles

Location of Equipment/Facilities:

To receive funds via wire transfer please include:

ABA Routing Number:

Account Number:

Physical address of City:

The City of Cayce makes this requisition pursuant to the following representations:

1. The City has appropriated in its current fiscal year funds sufficient to pay the Installment Payments and estimated Additional Payments due in the current fiscal year.
2. The purpose of this disbursement is for partial payment on the project provided for under the Contract referenced above.
3. The requested disbursement has not been subject to any previous requisition.
4. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.
5. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.
6. No Event of Default is continuing under the Lease Agreement, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.
7. The City authorizes BB&T to complete and file Uniform Commercial Code financing statements with respect to the equipment that is the subject of this requisition.
8. The City has in place insurance on this portion of the Facilities that complies with the insurance provisions of the above-referenced Contract.

Each amount requested for payment in this requisition either (a) represents reimbursement to the City for a Project Cost expenditure previously made, or (b) will be used by the City promptly upon the receipt of funds from BB&T to make the payments to third parties described in this requisition.

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

**CITY OF CAYCE, SOUTH CAROLINA**

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

Printed Name: \_\_\_\_\_

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

**CLOSING CERTIFICATE**

The undersigned officers of the City of Cayce, South Carolina (the "City"), hereby certify as follows:

1. The City's governing board (the "Board") adopted the attached resolution (the "Resolution"), authorizing and providing for a lease financing with Branch Banking and Trust Company. The Resolution was duly adopted at a meeting duly called and held at which a quorum was present and acting throughout. The Resolution has not been repealed, revoked, rescinded or amended, but remains in full effect as of today.

2. The signatures set forth below are the true and genuine signatures of the persons holding the indicated offices. The indicated persons have held such offices at all times since the Resolution was adopted.

<b><u>Printed Name</u></b>	<b><u>Title</u></b>	<b><u>Signature</u></b>
_____	Mayor or City Manager	_____
_____	Finance Officer	_____
_____	Clerk	_____

3. The City has duly authorized, executed and delivered the Lease Agreement and the Project Fund Agreement provided for by the Resolution. We have reviewed the City's representations as set forth in such Agreements, and all of such representations are correct and complete in all material respects as if made today. The City has appropriated at least \$111,086.50 for Base Payments under the Lease Agreement coming due between today and the end of the City's current fiscal year.

4. The seal impressed below is the City's official seal, and has been the City's official seal since prior to the adoption of the Resolution.

**WITNESS** our signatures and the seal of City of Cayce, South Carolina, this \_\_\_\_ day of August, 2016.

(SEAL)

By: \_\_\_\_\_ By: \_\_\_\_\_ By: \_\_\_\_\_  
Mayor or City Manager Finance Officer Clerk

## **USE OF PROCEEDS CERTIFICATE**

The undersigned Finance Officer of the City of Cayce, South Carolina (the "City"), is among the City officers charged with responsibility for the City's entering into a Lease Agreement dated as of August \_\_\_\_, 2016 (the "Agreement"), with Branch Banking and Trust Company ("BB&T"). This Certificate is delivered as part of the official record of the proceedings for the delivery of the Agreement. I am executing and delivering this Certificate on behalf of the City to set forth in good faith the City's reasonable expectations concerning the use and investment of financing proceeds and other related matters, in order to assure that interest on the Obligations, as defined below, will be excluded from gross income for federal income tax purposes. I understand that I have an obligation to make the representations in this Certificate both correct and complete.

All capitalized terms used in this Certificate and not otherwise defined have the meanings assigned to such terms under the Treasury Regulations applicable to tax-exempt bonds.

### **PURPOSE OF AGREEMENT**

1. The City is executing and delivering the Agreement today to provide funds to finance the acquisition (the "Project") of the equipment set forth in the Agreement (the "Equipment"), and to pay certain financing costs. BB&T will advance funds to the City pursuant to the Agreement for the Project. BB&T is entering into the Agreement for its own account with no current intention of reselling its rights under the Agreement or any interest therein, except that BB&T may make an assignment of payment rights to an affiliate, in whole, at par and without recourse.

### **PROCEEDS; PAYMENT OBLIGATIONS**

2. (a) BB&T will today pay directly to the City the full principal amount to be advanced under the Agreement of \$519,000.00 (the "Proceeds") by making a deposit into a Project Fund created under an Project Fund Agreement between the City and BB&T.

(b) Under the Agreement, the City is obligated to pay Base Payments, as defined in the Agreement, on the dates and in the amounts set forth in the Agreement (the City's obligations to pay Base Payments are referred to in this Certificate as the "Obligations"), subject to prepayment as provided in the Agreement.

(c) The Base Payments reflect the repayment of the Proceeds and include a designated interest component corresponding to an annual interest rate as set forth in the Agreement. The City does not expect to prepay any of the Obligations prior to the scheduled payment dates.

## **USE OF PROCEEDS; REIMBURSEMENT**

3. (a) All of the Proceeds and all investment earnings thereon will be used to pay Project Costs, including costs incurred in connection with the execution and delivery of the Agreement and interest on the Obligations during the Project period.

(b) All of such costs will be incurred and expenditures made subsequent to today, except for reimbursement to the City for amounts (i) paid not more than 60 days prior to today, (ii) representing engineering, design and similar preliminary expenses in an aggregate amount not exceeding 20% of the principal amount of the Obligations, or (iii) otherwise in an amount not exceeding 5% percent of the Proceeds.

(c) All expenditures to be reimbursed occurred not more than 18 months prior to today. None of the Equipment was placed in service more than one year before today.

(d) All of the costs to be paid or reimbursed from Proceeds will be Capital Expenditures, and none will be Working Capital Expenditures. No portion of the Gross Proceeds will be used, directly or indirectly, to make or finance loans to two or more ultimate borrowers.

## **QUALIFICATION FOR TEMPORARY PERIOD**

4. The Equipment will be placed in service beginning on or about \_\_\_\_\_. Within 90 days of today (if it has not already done so), the City will enter into substantial binding obligations to third parties to spend Proceeds on Project Costs that are Capital Expenditures in an amount exceeding 5% of the amount financed. The City estimates that all the Proceeds and all the investment earnings thereon will be fully expended within \_\_\_\_\_ months from today.

## **INVESTMENT PROCEEDS**

5. (a) Any earnings or net profit derived from the investment of the Proceeds will be used to pay additional Project Costs or interest on the Obligations not later than the date that is the later of (i) three years from today or (ii) twelve months from the date of the receipt of such earnings.

(b) After the date that is three years from today, the City will not invest any of the Gross Proceeds at a Yield in excess of the Yield on the Obligations.

(c) No investment will be acquired or disposed of at a cost or price that exceeds its Fair Market Value as of the acquisition date, or which is less than its Fair Market Value as of the disposition date. No portion will be invested in any investment as to which the economic return is substantially guaranteed for more than three years.

(d) No portion of the Gross Proceeds will be used, directly or indirectly, to replace funds that the City used (directly or indirectly) to acquire securities or obligations producing (or expected to produce) a Yield higher than the Yield on the Obligations.

## **NO OVER-ISSUANCE OR EXCESSIVE MATURITY**

6. (a) The sum of the Proceeds and the reasonably expected investment earnings thereon does not exceed the amount reasonably expected to be required to pay Project Costs, including interest on the Obligations during the Project period and financing costs.

(b) The term of the Obligations is not longer than reasonably necessary for the governmental purposes thereof, and is not longer than the expected useful life of the Equipment.

(c) In connection with the issuance of the Obligations, the City has not utilized any device (not described in this Certificate) which attempts to circumvent the restrictions of the Code to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage. The City has not attempted to increase improperly the burden on the market for tax-exempt securities (for example, by selling its obligations in larger amounts or with longer maturities, or selling them sooner, than would otherwise be necessary).

## **COMPLIANCE WITH REBATE REQUIREMENT**

7. In the Agreement, the City has agreed to comply with provisions of the Code which in some circumstances require the City to pay some of its investment earnings to the United States, as provided in Code Section 148.

## **PRIVATE ACTIVITY TESTS**

8. No payment on the Obligations is secured by property to be used in any private business. None of the Proceeds are to be used for any such private business use. The City has no leases, management contracts or other agreements with private entities or the federal government for either (a) management or operation of the Equipment, or (b) the use of designated portions of the Equipment.

## **QUALIFIED TAX-EXEMPT OBLIGATIONS**

9. (a) None of the Obligations are "private activity bonds" within the meaning of Code Section 141. The aggregate amount of tax-exempt obligations, including the Obligations, issued and reasonably expected as of today to be issued in calendar year 2016 by (i) the City, (ii) all entities on behalf of which the City issues tax-exempt obligations, (iii) all governmental units that are "subordinate" to the City, within the meaning of Code Section 265(b)(3), and (iv) all entities that issue tax-exempt obligations on behalf of the same such entities, does not exceed \$10,000,000. The City has no reason to believe that the City and such other entities will issue tax-exempt obligations in 2016 in an aggregate amount that will exceed such \$10,000,000 limit.

(b) In making the statements in subparagraph (a) above, I have taken into account (i) all the City's departments and agencies and (ii) all political subdivisions or other entities (x) which have the power to borrow money or enter into contracts and (y) of which the City is a member or over which it has legal or practical control. For all of such entities, I have taken into account all bonds, bond anticipation notes, installment or lease-purchase contracts and all other

obligations to pay money (excluding only current accounts payable and private activity bonds) issued or to be issued or contracted by such entities in calendar year 2016. I have not included those private activity bonds or those refunding obligations excluded from the annual \$10,000,000 calculation by Code Section 265(b)(3).

**INVESTED SINKING FUNDS**

10. There are no funds (a) to be held under the Agreement or (b) which are pledged as security for the Obligations (including by way of negative pledges), or which will be used to pay the Obligations, or which could be reasonably be expected to be available to pay the Obligations if the City were to encounter financial difficulty, other than the Project Fund referenced above. The City will pay the Obligations from its general funds, with there being no obligation (or expectation) on the part of the City or any other entity to segregate or identify any particular funds or accounts for the payment of or security for the Obligations.

**MISCELLANEOUS**

11. (a) No substantial part of the Equipment will be sold, no arrangement has been or will be entered into with respect to the Equipment that would be treated as a sale for federal income tax purposes, and the City expects to use the Equipment for its currently-intended purpose at least until the stated date for final payment of the Obligations, in all cases other than such insubstantial portions as may be disposed of in the ordinary course of business due to normal wear or obsolescence.

(b) There are no other tax-exempt bonds, notes or obligations of the City which have been or are expected to be issued or contracted within 20 days before or after today.

(c) None of the Proceeds will be used to make any payment on any other City obligation that was contracted in the exercise of the City's borrowing power.

(d) No portion of the Obligations is Federally Guaranteed.

**REASONABLENESS; BINDING EFFECT**

12. To the best of my knowledge and belief, the expectations set forth above are reasonable and the statements set forth above are correct. The City's covenants made as described in this Certificate are intended as binding covenants of the City.

WITNESS my signature this \_\_\_\_ day of August, 2016.

By: \_\_\_\_\_  
Finance Officer  
City of Cayce, South Carolina

**Information Return for Tax-Exempt Governmental Obligations**

► Under Internal Revenue Code section 149(e)  
 ► See separate instructions.  
**Caution:** If the issue price is under \$100,000, use Form 8038-GC.

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>
1 Issuer's name		2 Issuer's employer identification number (EIN)
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only)
6 City, town, or post office, state, and ZIP code		7 Date of issue
8 Name of issue		9 CUSIP number
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a

<b>Part II Type of Issue (enter the issue price).</b> See the instructions and attach schedule.		
11 Education . . . . .		11
12 Health and hospital . . . . .		12
13 Transportation . . . . .		13
14 Public safety . . . . .		14
15 Environment (including sewage bonds) . . . . .		15
16 Housing . . . . .		16
17 Utilities . . . . .		17
18 Other. Describe ►		18
19 If obligations are TANs or RANs, check only box 19a . . . . .	<input type="checkbox"/>	
If obligations are BANs, check only box 19b . . . . .	<input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box . . . . .	<input type="checkbox"/>	

<b>Part III Description of Obligations.</b> Complete for the entire issue for which this form is being filed.					
	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$	\$	years	%

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>		
22 Proceeds used for accrued interest . . . . .		22
23 Issue price of entire issue (enter amount from line 21, column (b)) . . . . .		23
24 Proceeds used for bond issuance costs (including underwriters' discount) . . . . .	24	
25 Proceeds used for credit enhancement . . . . .	25	
26 Proceeds allocated to reasonably required reserve or replacement fund . . . . .	26	
27 Proceeds used to currently refund prior issues . . . . .	27	
28 Proceeds used to advance refund prior issues . . . . .	28	
29 Total (add lines 24 through 28) . . . . .		29
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) . . . . .		30

<b>Part V Description of Refunded Bonds.</b> Complete this part only for refunding bonds.	
31 Enter the remaining weighted average maturity of the bonds to be currently refunded . . . . .	years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded . . . . .	years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) . . . . .	
34 Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)	

**Part VI Miscellaneous**

<b>35</b> Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .	<b>35</b>		
<b>36a</b> Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .	<b>36a</b>		
<b>b</b> Enter the final maturity date of the GIC ▶ _____			
<b>c</b> Enter the name of the GIC provider ▶ _____			
<b>37</b> Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .	<b>37</b>		
<b>38a</b> If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:			
<b>b</b> Enter the date of the master pool obligation ▶ _____			
<b>c</b> Enter the EIN of the issuer of the master pool obligation ▶ _____			
<b>d</b> Enter the name of the issuer of the master pool obligation ▶ _____			
<b>39</b> If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . .			<input type="checkbox"/>
<b>40</b> If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . .			<input type="checkbox"/>
<b>41a</b> If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:			
<b>b</b> Name of hedge provider ▶ _____			
<b>c</b> Type of hedge ▶ _____			
<b>d</b> Term of hedge ▶ _____			
<b>42</b> If the issuer has superintegrated the hedge, check box . . . . .			<input type="checkbox"/>
<b>43</b> If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . .			<input type="checkbox"/>
<b>44</b> If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . .			<input type="checkbox"/>
<b>45a</b> If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement . . . . . ▶ _____			
<b>b</b> Enter the date the official intent was adopted ▶ _____			

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed
	Firm's name ▶	Firm's EIN ▶		PTIN
	Firm's address ▶	Phone no.		

# Instructions for Form 8038-G

(Rev. September 2011)

## Information Return for Tax-Exempt Governmental Obligations



Department of the Treasury  
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

### General Instructions

#### Purpose of Form

Form 8038-G is used by issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

#### Who Must File

IF the issue price (line 21, column (b)) is...	THEN, for tax-exempt governmental obligations issued after December 31, 1986, issuers must file...
\$100,000 or more	A <b>separate</b> Form 8038-G for <b>each</b> issue
Less than \$100,000	Form 8038-GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales



*For all build America bonds and recovery zone economic development bonds use Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds. For tax credit bonds and specified tax credit bonds use Form 8038-TC, Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.*

#### When To File

File Form 8038-G on or before the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bond is issued. Form 8038-G may not be filed before the issue date and must be completed based on the facts as of the issue date.

**Late filing.** An issuer may be granted an extension of time to file Form 8038-G under Section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, if it is determined that the failure to file timely is not due to willful neglect. Type or print at the top of the form "Request for Relief under section 3 of Rev. Proc. 2002-48" and attach a letter explaining why Form 8038-G was not submitted to the IRS on time. Also indicate whether the bond issue in question is under examination by the IRS. Do not submit copies of the trust

indenture or other bond documents. See *Where To File* next.

#### Where To File

File Form 8038-G, and any attachments, with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201.

**Private delivery services.** You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

#### Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

For build America bonds (Direct Pay), build America bonds (Tax Credit), and recovery zone economic development bonds, complete Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.

For qualified forestry conservation bonds, new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, qualified school construction bonds, clean renewable energy bonds, Midwestern tax credit bonds, and all other qualified tax credit bonds (except build America bonds), file Form 8038-TC, Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.

#### Rounding to Whole Dollars

You may show amounts on this return as whole dollars. To do so, drop amounts less than 50 cents and increase amounts from 50 cents through 99 cents to the next higher dollar.

#### Questions on Filing Form 8038-G

For specific questions on how to file Form 8038-G send an email to the IRS at [TaxExemptBondQuestions@irs.gov](mailto:TaxExemptBondQuestions@irs.gov) and put "Form 8038-G Question" in the subject line. In the email include a description of your question, a return email address, the name of a contact person, and a telephone number.

#### Definitions

**Tax-exempt obligation.** This is any obligation, including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

**Tax-exempt governmental obligation.** A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

**Private activity bond.** This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, **and**
- More than 10% of the payment of principal or interest of the issue is **either (a)** secured by an interest in property to be used for a private business use (or payments for such property) **or (b)** to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which **(a)** are to be used directly or indirectly to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and **(b)** exceeds the lesser of 5% of the proceeds **or** \$5 million.

**Issue price.** The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the first price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

**Issue.** Generally, obligations are treated as part of the same issue if they are issued by the same issuer, on the same date, and in a single transaction, or a series of related transactions. However, obligations issued during the same calendar year **(a)** under a loan agreement under which amounts are to be advanced periodically (a “draw-down loan”) or **(b)** with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meet the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

**Arbitrage rebate.** Generally, interest on a state or local bond is not tax-exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

**Construction issue.** This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds are to be used for construction expenditures with respect to property to be owned by a governmental unit or a section 501(c)(3) organization, **and**
2. All the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a section 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1½% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

## Specific Instructions

### Part I—Reporting Authority

**Amended return.** An issuer may file an amended return to change or add to the information reported on a previously filed

return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the *Amended Return* box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new or corrected information. Attach an explanation of the reason for the amended return and write across the top, “Amended Return Explanation.” Failure to attach an explanation may result in a delay in processing the form.

**Line 1.** The issuer’s name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. For a lease or installment sale, the issuer is the lessee or the purchaser.

**Line 2.** An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. You can get this form on the IRS website at IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676). You may receive an EIN by telephone by following the instructions for Form SS-4.

**Line 3a.** If the issuer wishes to authorize a person other than an officer or other employee of the issuer (including a legal representative or paid preparer) to communicate with the IRS and whom the IRS may contact about this return (including in writing or by telephone), enter the name of such person here. The person listed in line 3a must be an individual. Do not enter the name and title of an officer or other employee of the issuer here (use line 10a for that purpose).

**Note.** By authorizing a person other than an authorized officer or other employee of the issuer to communicate with the IRS and whom the IRS may contact about this return, the issuer authorizes the IRS to communicate directly with the individual entered on line 3a and consents to disclose the issuer’s return information to that individual, as necessary, to process this return.

**Lines 4 and 6.** If you listed an individual on line 3a to communicate with the IRS and whom the IRS may contact about this return, enter the number and street (or P.O. box if mail is not delivered to street address), city, town, or post office, state, and ZIP code of that person. Otherwise, enter the issuer’s number and street (or P.O. box if mail is not delivered to street address), city, town, or post office, state, and ZIP code.

**Note.** The address entered on lines 4 and 6 is the address the IRS will use for all written communications regarding the processing of this return, including any notices.

**Line 5.** This line is for IRS use only. Do not make any entries in this box.

**Line 7.** The date of issue is generally the date on which the issuer physically

exchanges the bonds that are part of the issue for the underwriter’s (or other purchaser’s) funds. For a lease or installment sale, enter the date interest starts to accrue in a MM/DD/YYYY format.

**Line 8.** If there is no name of the issue, please provide other identification of the issue.

**Line 9.** Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number of the bond with the latest maturity. If the issue does not have a CUSIP number, write “None.”

**Line 10a.** Enter the name and title of the officer or other employee of the issuer whom the IRS may call for more information. If the issuer wishes to designate a person other than an officer or other employee of the issuer (including a legal representative or paid preparer) whom the IRS may call for more information about the return, enter the name, title, and telephone number of such person on lines 3a and 3b.



Complete lines 10a and 10b even if you complete lines 3a and 3b.

### Part II—Type of Issue



Elections referred to in Part II are made on the original bond documents, not on this form.

Identify the type of obligations issued by entering the corresponding issue price (see *Issue price* under *Definitions* earlier). Attach a schedule listing names and EINs of organizations that are to use proceeds of these obligations, if different from those of the issuer, include a brief summary of the use and indicate whether or not such user is a governmental or nongovernmental entity.

**Line 18.** Enter a description of the issue in the space provided.

**Line 19.** If the obligations are short-term tax anticipation notes or warrants (TANs) or short-term revenue anticipation notes or warrants (RANs), check box 19a. If the obligations are short-term bond anticipation notes (BANs), issued with the expectation that they will be refunded with the proceeds of long-term bonds at some future date, check box 19b. Do not check both boxes.

**Line 20.** Check this box if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a “municipal lease.”) Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. **Do not** check this box if the proceeds of the obligation are received in the form of cash, even if the term “lease” is used in the title of the issue.

### Part III—Description of Obligations

**Line 21.** For column (a), the final maturity date is the last date the issuer must redeem the entire issue.

For column (b), see *Issue price* under *Definitions* earlier.

For column (c), the stated redemption price at maturity of the entire issue is the sum of the stated redemption prices at maturity of each bond issued as part of the issue. For a lease or installment sale, write "N/A" in column (c).

For column (d), the weighted average maturity is the sum of the products of the issue price of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory redemptions), divided by the issue price of the entire issue (from line 21, column (b)). For a lease or installment sale, enter instead the total number of years the lease or installment sale will be outstanding.

For column (e), the yield, as defined in section 148(h), is the discount rate that, when used to compute the present value of all payments of principal and interest to be paid on the obligation, produces an amount equal to the purchase price, including accrued interest. See Regulations section 1.148-4 for specific rules to compute the yield on an issue. If the issue is a variable rate issue, write "VR" as the yield of the issue. For other than variable rate issues, carry the yield out to four decimal places (for example, 5.3125%). If the issue is a lease or installment sale, enter the effective rate of interest being paid.

### Part IV—Uses of Proceeds of Bond Issue

For a lease or installment sale, write "N/A" in the space to the right of the title for Part IV.

**Line 22.** Enter the amount of proceeds that will be used to pay interest from the date the bonds are dated to the date of issue.

**Line 24.** Enter the amount of the proceeds that will be used to pay bond issuance costs, including fees for trustees and bond counsel. If no bond proceeds will be used to pay bond issuance costs, enter zero. Do not leave this line blank.

**Line 25.** Enter the amount of the proceeds that will be used to pay fees for credit enhancement that are taken into account in determining the yield on the issue for purposes of section 148(h) (for example, bond insurance premiums and certain fees for letters of credit).

**Line 26.** Enter the amount of proceeds that will be allocated to such a fund.

**Line 27.** Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds within 90 days of the date of issue.

**Line 28.** Enter the amount of the proceeds that will be used to pay

principal, interest, or call premium on any other issue of bonds after 90 days of the date of issue, including proceeds that will be used to fund an escrow account for this purpose.

### Part V—Description of Refunded Bonds

Complete this part only if the bonds are to be used to refund a prior issue of tax-exempt bonds. For a lease or installment sale, write "N/A" in the space to the right of the title for Part V.

**Lines 31 and 32.** The remaining weighted average maturity is determined without regard to the refunding. The weighted average maturity is determined in the same manner as on line 21, column (d).

**Line 34.** If more than a single issue of bonds will be refunded, enter the date of issue of each issue. Enter the date in an MM/DD/YYYY format.

### Part VI—Miscellaneous

**Line 35.** An allocation of volume cap is required if the nonqualified amount for the issue is more than \$15 million but is not more than the amount that would cause the issue to be private activity bonds.

**Line 36.** If any portion of the gross proceeds of the issue is or will be invested in a guaranteed investment contract (GIC), as defined in Regulations section 1.148-1(b), enter the amount of the gross proceeds so invested, as well as the final maturity date of the GIC and the name of the provider of such contract.

**Line 37.** Enter the amount of the proceeds of this issue used to make a loan to another governmental unit, the interest of which is tax-exempt.

**Line 38.** If the issue is a loan of proceeds from another tax-exempt issue, check the box and enter the date of issue, EIN, and name of issuer of the master pool obligation.

**Line 40.** Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of arbitrage rebate with this form. See Rev. Proc. 92-22, 1992-1 C.B. 736 for rules regarding the "election document."

**Line 41a.** Check this box if the issuer has identified a hedge on its books and records according to Regulations sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5) that permit an issuer of tax-exempt bonds to identify a hedge for it to be included in yield calculations for computing arbitrage.

**Line 42.** In determining if the issuer has super-integrated a hedge, apply the rules of Regulations section 1.148-4(h)(4). If the hedge is super-integrated, check the box.

**Line 43.** If the issuer takes a "deliberate action" after the issue date that causes

the conditions of the private business tests or the private loan financing test to be met, then such issue is also an issue of private activity bonds. Regulations section 1.141-2(d)(3) defines a deliberate action as any action taken by the issuer that is within its control regardless of whether there is intent to violate such tests. Regulations section 1.141-12 explains the conditions to taking remedial action that prevent an action that causes an issue to meet the private business tests or private loan financing test from being treated as a deliberate action. Check the box if the issuer has established written procedures to ensure timely remedial action for all nonqualified bonds according to Regulations section 1.141-12 or other remedial actions authorized by the Commissioner under Regulations section 1.141-12(h).

**Line 44.** Check the box if the issuer has established written procedures to monitor compliance with the arbitrage, yield restriction, and rebate requirements of section 148.

**Line 45a.** Check the box if some part of the proceeds was used to reimburse expenditures. Figure and then enter the amount of proceeds that are used to reimburse the issuer for amounts paid for a qualified purpose prior to the issuance of the bonds. See Regulations section 1.150-2.

**Line 45b.** An issuer must adopt an official intent to reimburse itself for preissuance expenditures within 60 days after payment of the original expenditure unless excepted by Regulations section 1.150-2(f). Enter the date the official intent was adopted. See Regulations section 1.150-2(e) for more information about official intent.

### Signature and Consent

An authorized representative of the issuer must sign Form 8038-G and any applicable certification. Also print the name and title of the person signing Form 8038-G. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that have been designated in Form 8038-G.

**Note.** If the issuer in Part 1, lines 3a and 3b authorizes the IRS to communicate (including in writing and by telephone) with a person other than an officer or other employee of the issuer, by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

### Paid Preparer

If an authorized officer of the issuer filled in this return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the

return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer Use Only* area of the return.

The paid preparer must:

- Sign the return in the space provided for the preparer's signature (a facsimile signature is acceptable),
- Enter the preparer information, and
- Give a copy of the return to the issuer.

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**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us

the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form varies depending on individual circumstances. The estimated average time is:

<b>Learning about the law or the form</b> . . . . .	2 hr., 41 min.
<b>Preparing, copying, assembling, and sending the form to the IRS</b> . . . . .	3 hr., 3 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the form to this office. Instead, see *Where To File*.

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**CITY OF CAYCE, SOUTH CAROLINA**  
**INVOICING INFORMATION SHEET**

CONTRACT NUMBER: 9940000316-00006

CONTRACT DATE: August \_\_\_\_, 2016

INVOICING ADDRESS:

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CONTACT PERSON: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

CONTACT PERSON'S E-MAIL ADDRESS: \_\_\_\_\_

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# Memorandum

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**To:** Mayor and Council

**From:** Rebecca Vance, City Manager  
Rachelle Moody, Special Projects/Grants Manager

**Date:** September 6, 2016

**Subject:** Resolution in support of a grant application from the City of Cayce to the Municipal Association of South Carolina

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## Issue

The City of Cayce plans to submit a grant application to the Municipal Association of South Carolina (MASC) for the Hometown Economic Development Grant opportunity. As part of the grant application, the city is required to include a resolution of council in support of the application.

## Discussion

MASC has opened a grant opportunity for cities and towns in South Carolina to implement economic development projects that will make a positive impact on the quality of life in their communities. The City of Cayce plans to apply for a grant and request \$18,000 in funding. Grant funds would be used to retain professional services to design and implement a targeted retail recruitment project. The goal of this project is to identify and recruit quality retail stores and restaurants to targeted areas of the city. In this project, the city will continue its work with The Retail Coach for retail strategy continuation. Earlier this year, The Retail Coach performed a full retail analysis for the city and prepared a general market profile.

This grant requires a minimum 15% match by the city. The total project will be \$21,000 to implement, of which \$18,000 would be grant funds and \$3,000 would be city match. The grant application is currently in development and will be submitted by the due date of September 30, 2016.

## Recommendation

Staff recommends Council approve the resolution in support of the city's grant application to MASC for the Hometown Economic Development Grant opportunity.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
CITY OF CAYCE )

**RESOLUTION  
COMMITTING THE CITY OF CAYCE  
TO PROVIDE A LOCAL MATCH  
FOR A MASC HOMETOWN  
ECONOMIC DEVELOPMENT  
GRANT**

**BE IT RESOLVED**, by the Mayor and Council of the City of Cayce, in Council, duly assembled, that:

1. The Council hereby commits to provide a local match of at least \$3,000, which exceeds the minimum 15% local match required by the Municipal Association of South Carolina, to support the City of Cayce's application for a \$18,000 Hometown Economic Development Grant.

2. These grant and local matching funds will be used to retain professional services to design and implement the Cayce Targeted Retail Recruitment Project. The goal of this project is to identify and recruit quality restaurants and retail stores to targeted areas of the city. This resolution is made regarding the submission of an application for Hometown Economic Development Grant funds to the Municipal Association of South Carolina on or before September 30, 2016.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Elise Partin, Mayor

**ATTEST:**

\_\_\_\_\_  
Mendy C. Corder, Municipal Clerk

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# Memorandum

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**To:** Mayor and Council

**From:** Rebecca Vance, City Manager  
Rachelle Moody, Special Projects/Grants Manager

**Date:** September 6, 2016

**Subject:** Bid Approval, Approval of a Contract for General Contracting Services for the Thomas Newman Boat Landing Dock Replacement, and Spending Approval

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## Issue

Council's approval is needed to accept the bid from R.L. Morrison & Sons, authorize the City Manager to execute the contract for general contracting services for the Thomas Newman Boat Landing Replacement Project, and to spend up to \$200,000 from TIF funds for the repairs.

## Discussion

During the October 2015 flood event, the Thomas Newman boat landing dock sustained severe damage requiring full closure until repairs are complete. The City of Cayce originally estimated repair costs at \$309,763 and was approved for up to \$232,322 in public assistance grant funding from FEMA for the repairs. This is a reimbursable grant, and the city can request up to 75% of the total project costs as a reimbursement from FEMA.

Professional general contractor services are needed to complete this project; a request for proposals was placed in SCBO on July 25, 2016 and two (2) firms responded:

1. R.L. Morrison & Sons, Inc.
2. The Belk Company, LLC

R.L. Morrison & Sons, Inc. was the lowest responsive responsible bidder with a bid of \$179,997. Due to the bid coming in below original estimated repair costs, the city's grant amount from FEMA is projected to be \$134,997.

## Recommendation

Staff recommends Council accept the bid from R.L. Morrison & Sons, authorize the City Manager to execute the contract for general contracting services for the Thomas Newman Boat Landing Replacement Project, and to spend up to \$200,000 from TIF funds for the repairs.

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# Memorandum

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**To:** Mayor and Council

**From:** Rebecca Vance, City Manager  
Thomas White, Sanitation Manager

**Date:** September 6, 2016

**Subject:** Bid Award – Sanitation Equipment Rear Loader Garbage Truck

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## ISSUE

Council approval is needed to accept the bid from Shealy's Truck Center for the purchase of a new Rear loader garbage truck for the Sanitation Department as included in the FY 2016- 2017 budget.

## DISCUSSION

The FY 2016-2017 budget includes an appropriation for a capital lease-purchase of a new Rear loader garbage truck to replace vehicle #1081, a 2007 Mack rear loader, as a main front line garbage truck.

A "Request for Bids" was prepared along with specifications and sent to various equipment dealers who handle this type of equipment. Sealed bids were received and publicly opened August 12, 2016. Garage and Sanitation staff reviewed each bid and compared them to the specifications.

The received bids are below. Multiple quotes were received from the vendors depending on the body and chassis types. However, some of the bids did not meet the specifications. Staff has reviewed all bids and has selected the following based on the needs of the City.

Company	Quote	Chassis	Body
Peterbilt of Cola	\$193,065	2017 Peterbilt /367	Loadmaster
	\$174,784	2017 Peterbilt/348	Loadmaster
Worldwide Equipment	\$183,895	2017 Kenworth/T880	Loadmaster
Carolina International	\$182,895	International/7600	Loadmaster
Shealy's Truck	\$180,357	Western Star/4700	Loadmaster
Nulife Environment	\$178,964	Western Star/ 4700	Wayne
Excel Truck Grp	\$169,478	Freightliner/114SD	Loadmaster

Although Shealy's is not the lowest bid, staff feels that their quote provides the type of body that is more reliable, meets the City's specifications, and the truck itself exceeds the specifications. Warranty on this truck's engine is 2 years, 250,000 miles. Delivery on the Shealy's quote is approximately 120 to 150 days, which means that it should be ordered now to ensure delivery by mid-February.

### **RECOMMENDATION**

Staff recommends that Council accept the bid from Shealy's Truck Center in the amount of \$180,357 for the Western Star/Loadmaster Rear loader.

## ITEM V. C.

This is an amendment to the original 2016 Cayce Serves Tennis Tournament Grant Application dated 11/13/2015. The budgeted amount requested was \$3725.00. Expenses fell below budget by \$452.72 at \$3272.28 (see spreadsheet). The Cayce Public Safety Foundation is asking approval to change the itemization of project costs. No additional funds are being requested. Liability Insurance was under budget by \$587.00. Please move \$393.30 from Liability Insurance to:

\$137.86 (T-Shirts)

\$140.25 + \$113.87 = \$254.12 (Food)

\$1.32 (Balls).

T-Shirts, Food and Balls were over budget due to an increase in players. There were ninety eight players in this year's tournament, which was an increase of twenty six players from last year. Only one player was from Cayce.

After the Hospitality Tax Adjustment, net profit from the tournament will be \$6,623. The foundation has approved \$7500 of these and previous profits to be given in equipment as follows to the Cayce Public Safety Department:

\$5000 for Radios

\$1500 for the Taser Program

\$1000 for food for the Officers

Four Cases of Smoke Detectors donated by Shealy Electric.

2016 Cayce Serves Revenue / Expense  
for H-Tax

DONOR	REVENUE	EXPENSES	H Tax Reim.	
SCE&G	\$1,000.00			
Otarre Pointe Apartments	\$350.00			
Sub Station II	\$300.00			
CMC Steel				
Love Mitsubishi	\$250.00			
Burkett, Burkett & Burkett	\$300.00			
Mr. Burkett	\$300.00			
American Security	\$250.00			
Shealy Electric	\$250.00			
Woman's Club of Cayce	\$100.00			
Cayce Avenues Association	\$100.00			
Dickey Law Firm	\$100.00			
HealthSource	\$100.00			
Southern First	\$300.00			
Jennie Jordan	\$100.00			
Pamme Eades	\$100.00			
Sheri Dovell	\$100.00			
Sarah Johnson	\$10.00			
Gwen Brunson	\$10.00			
Rebecca Vance	\$20.00			
JoAn Roland	\$20.00			
Judy Hall	\$25.00			
Boot Donations	\$3.00			
<b>TOTAL DONOR REVENUE</b>	<b>\$4,088.00</b>			
REGISTRATION FEES	\$2,511.00			
late Cash REGISTRATION FEE	\$30.00			
late Check REGISTRATION FEE	\$54.00			
<b>TOTAL REGISTRATION FEES</b>	<b>\$2,595.00</b>			
REGISTRATION FEE REFUNDS	\$60.00			
<b>NET REGISTRATION FEES</b>	<b>\$2,535.00</b>			
<b>TOTAL REVENUE</b>	<b>\$6,623.00</b>		Budget	
Russell Massey Ins.		\$ 413.00	\$1,000.00	H Tax Liability Ins
Threads		\$ 937.86	\$800.00	H Tax T-Shirts
Lexington Printing		\$ 308.16	\$500.00	H Tax Flyers, Sponsor Board
Maurice's Piggie Park		\$ 640.25	\$500.00	H Tax Boxed Lunches
Sub Station II		\$ 413.87	\$300.00	H Tax Subs
Cayce Tennis & Fitness Ctr		\$ 150.00	\$150.00	H Tax Court Fees
Total Tennis		\$ 101.32	\$100.00	H Tax Balls
USTA		\$ 73.00	\$75.00	H Tax Membership, Tourn. Fee
Prizes/Awards		\$ 234.82	\$300.00	H Tax Cash Drawing/Medals
Facebook boosts				
Postage, envelopes, office sup				
<b>TOTAL EXPENSES</b>		\$ 3,272.28		
H Tax Budget			\$3,725.00	

2016 Cayce Serves Revenue / Expense  
for H-Tax

<b>NET PROFIT</b>	<b>\$3,350.72</b>			
H Tax Reimb.	<b>\$ 3,272.28</b>			
<b>NET Profit after HTAX</b>	<b>\$ 6,623.00</b>			

**CITY OF CAYCE  
EVENTS COMMITTEE MEETING MINUTES  
Council Chambers  
July 14, 2016**

**Present:** Dave Capps, Kimberly Christ, Danny Creamer, Maxine Creamer, Theresa Mitchell, Robert Myers, Cindy Pedersen, Amy Roper, Brandon Young, Susanna Young

**Absent, Excused:** Jason Munsell, Frankie Newman

**City Representatives Present:** Kara Carmine and James Denny

**Consultants:** Sheila Starkey

Chairperson Danny Creamer called the meeting to order.

The minutes of the June 9, 2016 meeting were reviewed and approved as written.

**Committee Matters**

The committee was sad to learn that Dr. Jason Munsell would not be able to renew his seat on the committee. The committee welcomed new members Robert Myers, Brandon Young and Susanna Young. Upon learning of Dr. Munsell's decision, the committee voted to accept the impressive application of Ms. Theresa Mitchell. This will be the first time that the committee has had the full contingent of 11 members.

A motion and second was made and the committee voted to appoint Cindy Pedersen as Secretary for the remainder of the year.

Cindy Pedersen made the motion that discussion of the Committee's By-Laws be tabled until the August meeting when all members have had a chance to review the current Committee By-Laws.

**Congaree Bluegrass Festival, Saturday, October 1, and Sunday, October 2, 2016**

Kara Carmine reported that all band contracts have been signed. Vendor applications are being received. Artists are registering to participate in the "Artists' Village." The Military Re-enactors have also confirmed their participation.

The issues surrounding online tickets sales have not been resolved.

All Committee members are encouraged to find as many volunteers as possible. Every event is enhanced by the number of volunteers participating to make an event a success.

The committee discussed the goal and barriers to festival financial self-sufficiency. All members are encouraged to recruit sponsors at all levels. Kara Carmine distributed electronic Sponsor Packets to the committee members with the announcement that printed packets were available at City Hall on July 21<sup>st</sup>.

### **Christmas in Cayce, December 2016**

Kara Carmine and James Denny reported on the status and issues with the selected replacement light displays.

Christmas in Cayce will now be called “Cayce Shines”

The committee voted to table the appointment of a subcommittee for Carols on the Riverwalk.

Sheila Starkey reported on the activities completed and in progress by John Banks and her.

- Ms. Starkey are working on social media and web page.
- Ms. Carmine continues her work with vendors, social media, etc.
- Committee members were encouraged to seek volunteers from various community and service clubs.

There being no further business, the meeting was adjourned.

Respectfully submitted,

*Cindy Pedersen*