

**BOROUGH OF RED BANK  
COUNTY OF MONMOUTH  
STATE OF NEW JERSEY**

**ORDINANCE NO. 2025-18**

**ORDINANCE AUTHORIZING THE LEASING OF CERTAIN CAPITAL EQUIPMENT BY THE BOROUGH OF RED BANK, NEW JERSEY FROM THE MONMOUTH COUNTY IMPROVEMENT AUTHORITY AND THE EXECUTION OF A LEASE AND AGREEMENT RELATING THERETO**

**BE IT ORDAINED** by the Borough Council, of the Borough of Red Bank, New Jersey (not less than two-thirds of all members thereof affirmatively concurring) as follows:

Section 1. Pursuant to Section 78 of the County Improvement Authorities Law, N.J.S.A. 40:37A-44, et seq., the Borough of Red Bank (the "Municipality") is hereby authorized to unconditionally and irrevocably lease certain items of capital equipment from The Monmouth County Improvement Authority (the "Authority") pursuant to a Lease and Agreement, substantially in the form submitted to this meeting (the "Lease"), a copy of which is on file in the office of the Clerk to the Municipality. The Mayor is hereby authorized to execute the Lease on behalf of the Municipality in substantially such form as submitted to this meeting and with such changes as may be approved by the Mayor, which approval shall be conclusively evidenced by the execution thereof, and the Clerk to the Municipality is hereby authorized to affix and attest the seal of the Municipality.

Section 2. The following additional matters are hereby determined, declared, recited and stated:

- (a) In recognition of the fact that the lease payment of the Municipality under the Lease will be based, in part, on the amount of bonds issued by the Authority to finance the acquisition of the leased equipment and the interest thereon, the maximum amount of bonds which the Authority shall issue to finance the acquisition of the equipment to be leased to the Municipality shall not exceed \$1,353,000 and the interest rate on said bonds shall not exceed Six and Zero Hundredths percent (6.00%) per annum. The Municipality's obligation under the Lease to make rental payments is a direct and general obligation of the Municipality, payable, unless paid from some other source, from the levy of ad valorem taxes upon all the taxable property within the jurisdiction of the Municipality, without limitation as to rate or amount;
- (b) The items to be leased from the Authority shall be as set forth in Schedule A hereto; provided that the Mayor or any Authorized Municipal Representative (as defined in the Lease) may substitute or add items of equipment in accordance with the provisions of the Lease; and
- (c) The lease term applicable to a particular item of leased equipment shall not exceed the useful life of such item.

Section 3. This ordinance shall take effect twenty (20) days after the first publication thereof after final adoption as provided by law.

**BOROUGH OF RED BANK  
COUNTY OF MONMOUTH  
STATE OF NEW JERSEY**

## **ORDINANCE NO. 2025-18**

INTRODUCTION						COUNCILMEMBER	FINAL ADOPTION				
Moved	Sec.	Aye	Nay	Abs.	NP		Moved	Sec.	Aye	Nay	Abs.
		X				KRISTINA BONATAKIS			X		
		X				DAVID CASSIDY					X
		X				NANCY FACEY-BLACKWOOD			X		
X	X					BEN FOREST		X	X		
		X				LAURA JANNONE	X		X		
X	X					KATE TRIGGIANO			X		
		X				MAYOR WILLIAM PORTMAN			X		

**BOROUGH OF RED BANK  
COUNTY OF MONMOUTH  
STATE OF NEW JERSEY**

**ORDINANCE NO. 2025-18**

**STATEMENT**

The Ordinance published herewith has been finally adopted on July 24, 2025 and the 20-day period of limitation within which a suit, action or proceeding questioning the validity of such Ordinance can be commenced, as provided in the Local Bond Law, has begun to run from the date of the first publication of this statement.

Mary Moss , RMC  
Borough Clerk

**BOROUGH OF RED BANK  
COUNTY OF MONMOUTH  
STATE OF NEW JERSEY**

**ORDINANCE NO. 2025-18**

**SCHEDULE A – EQUIPMENT LIST**

Borough of Red Bank

<b>Equipment</b>	<b>Useful Life (Years)</b>	<b>Lease Term (Years)</b>	<b>Estimated Cost</b>
Backhoe with Attachments	10	10	208,000
3 Ford F250 Pickup Trucks with Plows	5	5	187,500
2 Ford F550 Mason Dump trucks	10	10	200,000
ford explorer	5	5	45,000
2 Ford Transit Vans	5	5	120,000
portable radios and pagers	5	5	50,000
2 utility body pickup trucks with plow	5	5	153,000
thermo laser paint machine	5	5	26,500
portable air compressor	5	5	30,000
2 2025 ford utility interceptor	5	5	90,000
ver-mac sign board	5	5	24,000
portable outdoor hd video surveillance system	5	5	56,000
flock system two camera automated license plate reader	5	5	40,000
<b>Total</b>			<b>1,230,000</b>

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LEASE AND AGREEMENT

BETWEEN

THE MONMOUTH COUNTY IMPROVEMENT AUTHORITY

AND

\_\_\_\_\_ OF \_\_\_\_\_

DATED AS OF OCTOBER 1, 2025

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## TABLE OF CONTENTS

	<u>Page</u>	
<b>ARTICLE I</b>		
<b>DEFINITIONS AND GENERAL PROVISIONS</b>		
Section 1.1	Definitions.....	2
<b>ARTICLE II</b>		
<b>LEASE OF EQUIPMENT; TERM OF LEASE; ACQUISITION OF EQUIPMENT</b>		
Section 2.1	Lease of Equipment .....	6
Section 2.2	Term of Lease .....	6
Section 2.3	Acquisition of Items of Equipment.....	6
Section 2.4	Issuance of Bonds .....	7
Section 2.5	Acquisition Fund.....	7
Section 2.6	Municipality's Liability .....	8
Section 2.7	Possession and Enjoyment.....	8
Section 2.8	Authority Access to Equipment.....	8
Section 2.9	Disclaimer of Warranties .....	8
Section 2.10	Manufacturers' Warranties .....	8
<b>ARTICLE III</b>		
<b>RENTALS AND OTHER PAYMENTS</b>		
Section 3.1	Payment of Rentals .....	10
Section 3.2	Indemnification of Authority .....	10
Section 3.3	Nature of Obligations of the Municipality.....	11
Section 3.4	Return of Equipment.....	11
Section 3.5	Nature of Obligations of the Authority.....	12
Section 3.6	Assignment of Agreement by Authority.....	12
<b>ARTICLE IV</b>		
<b>TERMINATION; RENEWAL</b>		
Section 4.1	Termination of Lease Term for an Item of Equipment.....	13
Section 4.2	Effect of Termination.....	13
Section 4.3	Termination of Entire Agreement.....	13

**TABLE OF CONTENTS**  
(continued)

	<u>Page</u>
<b>ARTICLE V</b>	
<b>COVENANTS OF MUNICIPALITY</b>	
Section 5.1	Maintenance of Equipment by Municipality .....
Section 5.2	Taxes, Other Governmental Charges and Utility Charges.....
Section 5.3	Provisions Regarding Insurance .....
Section 5.4	Damage, Destruction or Condemnation.....
Section 5.5	Insufficiency of Net Proceeds .....
Section 5.6	Advances.....
Section 5.7	Financial Reports .....
Section 5.8	Performance Bonds and other Guaranty .....
Section 5.9	Net Lease .....
Section 5.10	Compliance with Laws .....
Section 5.11	Covenant Not to Affect the Tax Exempt Status of the Bonds.....
Section 5.12	Representations and Warranties of Municipality.....
Section 5.13	Secondary Market Disclosure.....
Section 5.14	Third Party Beneficiaries .....
<b>ARTICLE VI</b>	
<b>TITLE</b>	
Section 6.1	Title to Equipment .....
Section 6.2	Liens.....
Section 6.3	Personal Property .....
Section 6.4	Use of the Equipment.....
<b>ARTICLE VII</b>	
<b>EVENTS OF DEFAULT AND REMEDIES</b>	
Section 7.1	Events of Default .....
Section 7.2	Remedies.....
Section 7.3	Reinstatement.....
Section 7.4	No Remedy Exclusive.....
Section 7.5	No Additional Waiver Implied by One Waiver.....
<b>ARTICLE VIII</b>	
<b>SALE, ASSIGNMENT, SUBLEASING AND SUBSTITUTION; CONVEYANCE OF EQUIPMENT TO MUNICIPALITY</b>	
Section 8.1	Sale, Assignment, Subleasing or Substitution by Municipality.....

**TABLE OF CONTENTS**  
(continued)

	<u>Page</u>
Section 8.2	Option to Purchase Equipment .....
Section 8.3	Date of Settlement.....

**ARTICLE IX**

**MISCELLANEOUS**

Section 9.1	Surrender of Possession .....
Section 9.2	Successors and Assigns.....
Section 9.3	Severability .....
Section 9.4	Amendments, Changes and Modifications .....
Section 9.5	Amounts Remaining under Bond Resolution .....
Section 9.6	Counterparts.....
Section 9.7	Notices and Demands .....
Section 9.8	Headings .....
Section 9.9	Non-Waiver.....
Section 9.10	Governing Law .....

THIS LEASE AND AGREEMENT, dated as of October 1, 2025, by and between The Monmouth County Improvement Authority (hereinafter referred to as the "Authority") and the \_\_\_\_\_ of \_\_\_\_\_ (hereinafter referred to as the "Municipality").

WITNESSETH:

WHEREAS, the Authority is authorized by the County Improvement Authorities Law, Chapter 183 of the Pamphlet Laws of 1960 of the State of New Jersey, as amended and supplemented (N.J.S.A. 40:37A-44 et seq.) (the "Act"), to provide within Monmouth County, New Jersey, public facilities for use by the State, the Municipality, or any municipality in the County, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes; and

WHEREAS, the Authority is authorized by the Act to lease to any governmental unit or person, all or any part of any public facility, including but not limited to capital equipment, for such consideration and for such period or periods of time upon such other terms and conditions as it may fix and agree upon; and

WHEREAS, the Authority has determined pursuant to the Act to finance the acquisition and installation of certain capital equipment (the "Equipment") which will be leased by the Authority to the Municipality; and

WHEREAS, all actions necessary and required under the Act have been taken by the Authority; and

WHEREAS, the Municipality has determined to lease the Equipment from the Authority pursuant to the terms and conditions set forth in this Agreement, and

WHEREAS, the Authority will, pursuant to the Act, provide for the financing of the cost of the acquisition and installation of the Equipment by the issuance of its revenue bonds payable from rentals to be received from the Municipality pursuant to this Agreement;

NOW, THEREFORE, the parties hereto mutually agree as follows:

## ARTICLE I

### DEFINITIONS AND GENERAL PROVISIONS

**Section 1.1 Definitions.** The terms set forth in this section shall have the meanings ascribed to them for all purposes of this Agreement unless the context clearly indicates some other meaning. Terms used herein and not defined herein shall have the meanings ascribed thereto in the Bond Resolution. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

**“Acceptance Certificate”** shall mean a certificate substantially in the form set forth in Exhibit B to this Agreement.

**“Act”** shall mean the County Improvement Authorities Law, Chapter 183 of the Pamphlet Laws of 1960 of the State of New Jersey (N.J.S.A. 40:37A-44 et seq.), as amended from time to time.

**“Acquisition Fund”** shall mean the fund so entitled created pursuant to the Bond Resolution.

**“Additional Rent”** shall have the meaning assigned thereto in Section 3.1(b) hereof.

**“Agreement”** shall mean this Lease and Agreement, dated as of October 1, 2025, between the Authority and the Municipality, and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof and the Bond Resolution.

**“Applicable Basic Rent”** shall mean the amount of Basic Rent payable on a given payment date with respect to a particular Item of Equipment as set forth in Exhibit A hereto.

**“Authority”** shall mean The Monmouth County Improvement Authority, a public body corporate and politic organized and existing under the Act and created pursuant to a resolution of the Board of Chosen Freeholders (currently known as the Board of County Commissioners) of Monmouth County adopted on June 5, 1986, and any successor to its duties and functions.

**“Authority Administrative Expenses”** shall mean the expenses of the Authority and its agents and employees incurred or to be incurred by or on behalf of the Authority in the administration of its responsibilities under the Bond Resolution, this Agreement and the County Guaranty including, but not limited to, (i) all fees and expenses, including but not limited to indemnification expenses, if any, incurred in connection with the issuance of any Bonds, (ii) all fees and expenses, including but not limited to indemnification expenses, if any, of counsel, fiduciaries and others, and (iii) any fees and expenses, including but not limited to indemnification expenses, if any, incurred by the Paying Agent, the Bond Registrar or the Trustee in connection with the performance of their respective fiduciary responsibilities under

the Bond Resolution or this Agreement, all to the extent not capitalized pursuant to the requirements of the Bond Resolution.

**“Authorized Authority Representative”** shall mean any person or persons authorized to act on behalf of the Authority by a written certificate signed on behalf of the Authority by the Chairman or Vice Chairman of the Authority containing the specimen signatures of each such person.

**“Authorized Municipal Representative”** shall mean any person or persons authorized to act on behalf of the Municipality by a written certificate signed on behalf of the Municipality by the Mayor or Deputy Mayor of the Municipality containing the specimen signature of each such person.

**“Basic Rent”** shall have the meaning assigned thereto in Section 3.1(a) hereof.

**“Bond” or “Bonds”** shall mean the Authority’s Capital Equipment Lease Revenue Bonds, Series 2025 (\_\_\_\_\_ Project) authenticated and delivered under and pursuant to the Bond Resolution.

**“Bond Resolution”** shall mean the resolution adopted by the Authority entitled “Capital Equipment Lease Revenue Bond Resolution (\_\_\_\_\_ Project)”, as the same may be amended, modified or supplemented in accordance with the provisions thereof.

**“Cost”** shall mean and be deemed to include, with respect to any Item of Equipment, but on a pro-rata basis with respect thereto, together with any other proper item of cost not specifically mentioned herein, whether incurred prior to or after the date of this Agreement, (a) the costs of payment of, or reimbursement for, acquisition, installation and financing of such Item of Equipment, including, but not limited to, advances or progress payments, installation costs, administrative costs and capital expenditures relating to installation, financing payments, sales taxes, excise taxes, costs of feasibility, environmental and other reports, inspection costs, permit fees, filing and recording costs, printing costs, reproduction and binding costs, fees and charges of the Trustee pursuant to the Bond Resolution, financing documents, legal fees and charges, financial, accounting and other professional consultant fees, costs of rating agencies or credit ratings, fees for the printing, execution, transportation and safekeeping of the Bonds, and charges and fees in connection with the foregoing; (b) all other costs which the Municipality or the Authority shall be required to pay under the terms of any contract or contracts for the acquisition of any Item of Equipment, including, but not limited to the cost of insurance; (c) any sums required to reimburse the Municipality for advances made for any of the above items, or for any other costs incurred and for work done, which is properly chargeable to any Item of Equipment thereof; (d) deposits in any fund or account under the Bond Resolution, all as shall be provided in the Bond Resolution; and (e) such other expenses not specified herein as may be necessary or incidental to the acquisition of any Item of Equipment, the financing thereof and the placing of the same in use and operation. Cost as defined herein shall be deemed to include the cost and expenses incurred by (i) any agent of the Municipality for any of the above mentioned items and (ii) any agent of the County in connection with the adoption or administration of the County Guaranty.

**“Debt Service”** for any period shall mean, as of any date of calculation and with respect to the Outstanding Bonds, an amount equal to the sum of (i) the interest accruing during such period on such Bonds except to the extent such interest is to be paid from deposits made from Bond proceeds into the Debt Service Fund, and (ii) that portion of each Principal Installment which would accrue during such period if such Principal Installment were deemed to accrue daily in equal amounts from the next preceding Principal Installment due date or, if there should be no preceding Principal Installment due date, from a date one year (or such lesser period as shall be appropriate if Principal Installments shall become due more frequently than annually) preceding the due date of such Principal Installment or from the date of issuance of the Bonds, whichever is later. Such interest and Principal Installments shall be calculated on the assumption that no Bonds Outstanding at the date of calculation will cease to be Outstanding except by reason of the payment of each Principal Installment on the due date thereof. The calculations in the preceding sentence shall be made on the basis of a 30-day month and 360-day year.

**“Debt Service Fund”** shall mean the fund created pursuant to the Bond Resolution.

**“Equipment”** or **“Item of Equipment”** shall mean the capital equipment described in Exhibit A hereto.

**“Fiscal Year”** shall mean the twelve month fiscal period of the Municipality which commences on January 1 in every year and ends on the succeeding December 31.

**“Interest Payment Date”** shall mean, with respect to all Bonds, each April 1 and October 1, commencing October 1, 2026. In the event that an Interest Payment Date is not a Business Day, interest shall be paid on the next succeeding Business Day for interest accrued to the Interest Payment Date.

**“Lease Term”** shall mean the period during which this Agreement or the Lease Term of any Item of Equipment, as the case may be, is in effect as specified in Section 2.2 hereof.

**“Net Proceeds”** shall mean any insurance, condemnation, performance bond, or any other financial guaranty proceeds paid with respect to any Item of Equipment, remaining after payment therefrom of all expenses incurred in the collection thereof; and, with respect to insurance, if and at such time as the Municipality elects to provide self-insurance under Section 5.3 of this Agreement, any moneys payable from any self-insurance fund of the Municipality which may lawfully be expended for the purposes for which such self-insurance is provided.

**“Net Proceeds Account”** shall mean the account so entitled established in the Debt Service Fund pursuant to the Bond Resolution.

**“Outstanding,”** when used with reference to Bonds, shall mean, as of any date, Bonds theretofore or thereupon being authenticated and delivered under the Bond Resolution except:

- (i) Bonds cancelled by the Trustee at or prior to such date;
- (ii) Bonds (or portions of Bonds) for the payment of which moneys, equal to the principal amount thereof, as the case may be, with interest to the date of maturity, shall be held in trust under the Bond Resolution and set aside for such payment (whether at or prior to the maturity date);
- (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to Article III of the Bond Resolution or Section 409 or 1006 of the Bond Resolution; and
- (iv) Bonds deemed to have been paid as provided in subsection 2 or 3 of Section 1101 of the Bond Resolution.

**“Permitted Encumbrances”** shall mean and include with respect to any Item of Equipment and as of any particular time: (i) liens for taxes and assessments not then delinquent; (ii) this Agreement; (iii) any mechanic’s, laborer’s, materialmen’s, supplier’s or vendor’s lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a manufacturer or supplier of any Item of Equipment.

**“Principal Installment”** shall mean, as of any date of calculation, the principal amount of Bonds due on a certain future date.

**“Principal Installment Date”** shall mean any date on which any Principal Installment shall become due.

**“Rentals”** shall mean the sum of Basic Rent and Additional Rent set forth in Section 3.1 hereof.

**“State”** shall mean the State of New Jersey or any successor to its duties and functions.

**“Trustee”** shall mean the bank, trust company or national banking association appointed Trustee pursuant to the Bond Resolution.

## ARTICLE II

### LEASE OF EQUIPMENT; TERM OF LEASE; ACQUISITION OF EQUIPMENT

**Section 2.1 Lease of Equipment.** The Authority hereby agrees to lease to the Municipality, and the Municipality hereby agrees to take and hire from the Authority, each Item of Equipment on the terms and conditions set forth in this Agreement.

**Section 2.2 Term of Lease.** The Lease Term for the Equipment shall commence on the date of issuance and delivery of the Bonds by the Authority and shall terminate on the first date upon which no Bonds remain Outstanding, the Bond Resolution shall have been defeased in accordance with its terms and all Rentals due and owing hereunder have been paid in full, unless sooner terminated in accordance with the provisions of the Agreement. The Lease Term for any Item of Equipment shall be deemed to commence on the date of issuance and delivery of the Bonds and end on the date specified in Exhibit A hereto with respect to such Item of Equipment.

**Section 2.3 Acquisition of Items of Equipment.** The Authority agrees to acquire each of the Items of Equipment pursuant to the specifications prepared by the Municipality. The Municipality agrees that it will be responsible for the letting of contracts for the purchase and installation of the Items of Equipment and supervising the installation and acceptance of the Items of Equipment. The Municipality agrees that it will use its best efforts to cause such purchase and installation to be completed on or before October 1, 2027, including delivery to the Trustee of the items required by the terms of the Bond Resolution in order for the Trustee to make the respective payments therefor. In the event that the Municipality fails to complete the purchase and installation of all items of Equipment by October 1, 2027, the Trustee shall, upon thirty (30) days prior written notice to the Municipality, transfer the moneys remaining on deposit in the Acquisition Fund to the Debt Service Fund, all in accordance with Section 403(3) of the Bond Resolution; provided, however, that if the Municipality delivers a certificate substantially in the form set forth in Exhibit C hereto, together with all required supporting documentation, to the Trustee prior to October 1, 2027, the Trustee shall retain the amount set forth in said certificate in the Acquisition Fund until the date set forth therein, unless extended by the Municipality, and transfer the balance therein to the Debt Service Fund.

Contracts in connection with the purchase and installation of each Item of Equipment shall be let in accordance with all applicable competitive bidding laws. All such contracts shall have the same general form and content as similar contracts let by the Municipality.

Upon delivery of each Item of Equipment to the Municipality, the Municipality will either (a) cause an Authorized Municipal Representative to inspect the same and, if such Item of Equipment is found to be in good condition, to accept such Item of Equipment and to execute and deliver an Acceptance Certificate with respect thereto to the Trustee, or (b) if the Municipality, acting in good faith, should find that such Item of Equipment is not in good condition, return the same to the manufacturer or supplier thereof. Upon presentation of an Acceptance Certificate, and the requisition required by the terms of the Bond Resolution, the

Trustee will pay the Cost of such Item of Equipment pursuant to the terms of the Bond Resolution.

**Section 2.4 Issuance of Bonds.** In order to provide funds for payment of the Cost of the Equipment, the Authority will use its best efforts to issue, sell and deliver Bonds. The proceeds of the Bonds shall be applied as provided for in the Bond Resolution.

**Section 2.5 Acquisition Fund.** The Authority has in the Bond Resolution authorized and directed the Trustee to make payments from the Acquisition Fund to pay the Cost upon receipt of a requisition signed by an Authorized Municipality Representative and approved by an Authorized Authority Representative (which approval shall not be unreasonably withheld) stating with respect to each payment to be made: (1) the requisition number, (2) the name and address of the person, firm, corporation or agency to whom payment is due or has been made, (3) the amount to be paid, (4) the Item(s) of Equipment to which the requisition relates and (5) that each obligation, item of cost or expense mentioned therein has been properly incurred, is an item of Cost and is a proper charge against the Acquisition Fund and has not been the basis of any previous withdrawal.

In connection with the approval of requisitions by the Authority, nothing herein contained shall prevent the Municipality, in acting on behalf of and as agent for the Authority in connection with the acquisition and installation of the Equipment, from making all final determinations in connection with the interpretation and performance of any contracts for the acquisition and installation of the Equipment.

The Authority agrees to cooperate with the Municipality in furnishing to the Trustee any documents that are required to effect payments out of the Acquisition Fund in accordance with this Section. Such obligation is subject to any provisions of the Bond Resolution requiring additional documentation with respect to such payments and shall not extend beyond the moneys in the Acquisition Fund available for payment under the terms of the Bond Resolution.

If at any time the Municipality determines that it will not be able to acquire one or more Items of Equipment, it shall file with the Authority and the Trustee a certificate of an Authorized Municipal Representative identifying the Item or Items of Equipment listed in Exhibit A hereto and containing a statement that it will not acquire such Item(s) of Equipment nor will it seek to acquire substitute Equipment in accordance with Section 8.1 hereof.

The completion of the acquisition and installation of all Items of Equipment shall be evidenced by a certificate or certificates of an Authorized Municipal Representative, substantially in the form set forth in Exhibit D hereto, approved by an Authorized Authority Representative (which approval shall not be unreasonably withheld), which shall be filed with the Trustee, stating (1) that the acquisition and installation of all Items of Equipment has been completed substantially in accordance with specifications applicable thereto and that such Equipment is ready for use, (2) the date of such completion and (3) the amount, if any, required, in the opinion of the signer or signers, for the payment of any remaining part of the Cost of Equipment.

**Section 2.6 Municipality's Liability.** As between the Authority and the Municipality, the Municipality assumes liability for all risks of loss during the acquisition, delivery and installation of each Item of Equipment. The Municipality shall maintain, or require each manufacturer or supplier of each Item of Equipment to maintain, in force during the entire acquisition, delivery and installation period of each Item of Equipment, property damage insurance in an amount not less than the full value of all work done and materials and equipment provided or delivered by each such manufacturer or supplier, comprehensive liability insurance, worker's compensation insurance and other insurance required by law or customarily maintained with respect to like equipment. In the event the Municipality receives any damages or other moneys from any manufacturer or supplier of equipment or its surety pursuant to this Section 2.6, such moneys shall be paid to the Trustee for deposit in the Acquisition Fund to the extent necessary to complete the acquisition of such Item of Equipment.

**Section 2.7 Possession and Enjoyment.** From and after the installation and acceptance by the Municipality of each Item of Equipment in accordance with the terms of this Agreement, during the Lease Term of such Item of Equipment, the Municipality shall have the quiet use and enjoyment of such Item of Equipment, and the Municipality shall during such Lease Term peaceably and quietly have and hold and enjoy such Item of Equipment, without suit, trouble or hindrance from the Authority, except as expressly set forth in this Agreement. The Authority will, at the request of the Municipality and at the Municipality's cost, join in any legal action in which the Municipality asserts its right to such possession and enjoyment to the extent the Authority lawfully may do so.

**Section 2.8 Authority Access to Equipment.** The Municipality agrees that the Authority shall have the right during the Municipality's normal working hours on the Municipality's normal working days to examine and inspect each Item of Equipment for the purpose of assuring that such Item of Equipment is being properly maintained, preserved, and kept in good repair, working order and condition. The Municipality further agrees that the Authority shall have such rights of access to each Item of Equipment as may be reasonably necessary to cause the proper maintenance of such Item of Equipment in the event of failure by the Municipality to perform its obligations hereunder. If the Authority obtains any confidential information as a result of its access to any Item of Equipment, the Authority hereby agrees not to disclose such information to any person, firm or corporation.

**Section 2.9 Disclaimer of Warranties.** THE AUTHORITY, BY DELIVERY OF THIS AGREEMENT, MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF ANY ITEM OF EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. In no event shall the Authority be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or the Municipality's use of any item or products or services provided for in this Agreement.

**Section 2.10 Manufacturers' Warranties.** The Authority hereby appoints the Municipality its agent and attorney-in-fact during the Lease Term of each Item of Equipment, so long as the Municipality shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of such Item of Equipment, which the Authority may

have against the manufacturer or supplier of such Item of Equipment. The Municipality's sole remedy for the breach of such warranty, indemnification or representation shall be against the manufacturer or supplier of such Item of Equipment, and not against the Authority, nor shall such matter have any effect whatsoever on the rights of the Authority with respect to this Agreement, including the right to receive full and timely payments hereunder. The Municipality expressly acknowledges that the Authority does not make, nor has made, any representation or warranty whatsoever as to the existence or availability of such warranties of the manufacturer or supplier of any Item of Equipment.

## ARTICLE III

### RENTALS AND OTHER PAYMENTS

**Section 3.1 Payment of Rentals.** (a) The Municipality shall pay to the Authority, as Basic Rent for the Equipment during the Lease Term, on each March 1 and September 1, commencing September 1, 2026, the sum which, together with other moneys available therefor in the Debt Service Fund, will equal the Debt Service due on the next succeeding Interest Payment Date; provided, however, that the amount of Basic Rent payable on each such payment date shall be reduced to the extent set forth in Section 4.2.

(b) The Municipality shall pay to the Trustee, as the same shall become due and payable during the Lease Term as Additional Rent for the Equipment, such sum or sums of Authority Administrative Expenses as shall have been submitted by the Authority to an Authorized Municipality Representative, with a copy to the Trustee, not less than thirty days prior to such due date.

(c) Any Rentals pursuant to this Section 3.1 which are not paid by the Municipality on or before the due date thereof shall, from and after said due date, bear interest (to the extent permitted by law) at the highest rate per annum borne by any of the Bonds of the Authority until paid, time being of the absolute essence of this obligation. Any moneys owed by the Municipality pursuant to this paragraph shall constitute Additional Rent.

**Section 3.2 Indemnification of Authority.** Both during the Lease Term and thereafter, the Municipality shall indemnify and hold the Authority harmless against, and the Municipality shall pay any and all, liability, loss, cost, damage, claims, judgment or expense, of any and all kinds or nature and however arising, other than as a result of the gross negligence or willful misconduct of the Authority, its members, officers, agents, servants or employees, imposed by law, which the Authority may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, or upon or arising out of contracts entered into by the Municipality relating to the Equipment, or arising out of the Authority's ownership of the Equipment or the leasing thereof to the Municipality, or out of the acquisition or installation of the Equipment, pursuant to this Agreement. It is mutually agreed by the Municipality and the Authority that neither the Authority nor its members, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement and that the Municipality shall save the Authority harmless from any claim or suit of whatsoever nature arising hereunder except for such claims or suits arising as a result of the Authority's gross negligence or willful misconduct.

The Municipality, at its own cost and expense, shall defend any and all such claims, suits and actions which may be brought or asserted against the Authority, its members, officers, agents, servants or employees; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend the Municipality, the Authority and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy.

The Authority agrees that it:

- (i) shall give the Authorized Municipal Representative prompt notice in writing of the filing of each such claim and the institution of each such suit or action,
- (ii) shall not adjust, settle or compromise any such claim, suit or action; and
- (iii) shall permit the Municipality to assume full control of the adjustment, settlement, compromise or defense of each such claim, suit or action.

Any cost for attorneys' fees in situations where it is necessary for the Authority to engage its own attorneys, experts' testimony costs and all costs to defend the Authority or any of its directors, officers, agents, servants, or employees with respect to matters arising hereunder shall be paid to it by the Municipality as an Authority Administrative Expense constituting Additional Rent.

**Section 3.3 Nature of Obligations of the Municipality.** The obligation of the Municipality to pay Rentals and to pay all other amounts provided for in this Agreement and to perform its obligations under this Agreement shall be absolute and unconditional, and such Rentals and other amounts shall be payable without any rights of set-off, recoupment or counterclaim it might have against the Authority, the Trustee or any other person and whether or not the Equipment is used by the Municipality or available for use by the Municipality. The Municipality's obligation under this Agreement to pay Rentals, is a general obligation of the Municipality payable, unless paid from some other source, from the levy of ad valorem taxes upon all the taxable property within the jurisdiction of the Municipality, without limitation as to rate or amount. If the Municipality is not in default under this Agreement and if the Municipality shall have paid all amounts required by this Agreement as of such date and shall have performed all its obligations under this Agreement as of such date as provided in the preceding sentence and continues to pay and perform, it shall not be precluded from bringing any action it may otherwise have against the Authority.

The Municipality will not terminate this Agreement (other than such termination as is provided for hereunder) or be excused from performing its obligations hereunder or be entitled to any abatement of its obligation to pay Rentals or any other amounts hereunder for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Equipment, or the taking by eminent domain of title to or the right of temporary use of all or any part of the Equipment, or the failure of the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

**Section 3.4 Return of Equipment.** Upon the termination of the Lease Term for any Item of Equipment in the possession of the Municipality prior to the payment of all the Applicable Basic Rent, the Municipality shall return the applicable Item of Equipment to the Authority at the location specified by the Authority, at the Municipality's expense, in the

condition, repair, appearance and working order required under this Agreement within ten days of such termination in accordance with the instructions of the Authority. Upon the Authority's receipt of such Item of Equipment, the Authority may sell the same in such manner as it sees fit, and the Municipality shall have no further rights whatsoever with respect thereto. Any proceeds of such sale shall be applied by the Authority to reimburse the County for any amounts the County paid under the County Guaranty and for which the County has not been otherwise reimbursed. Any remaining proceeds of such sale may be applied by the Authority to any lawful purpose.

**Section 3.5    Nature of Obligations of the Authority.** The cost and expense of the performance by the Authority of any of its obligations under this Agreement shall be limited to the availability of the proceeds of Bonds of the Authority issued for such purposes or from other funds received by the Authority under this Agreement and available for such purposes.

**Section 3.6    Assignment of Agreement by Authority.** It is understood that all of the Authority's rights to receive Rentals under this Agreement (except its right to payments pursuant to Section 3.2 hereof) are to be assigned by the Authority to the Trustee pursuant to the Bond Resolution for the benefit of the Bondholders.

The Municipality agrees to pay to the Trustee at its principal corporate trust office all Rentals payable by the Municipality to the Authority pursuant to this Agreement (except payments to the Authority pursuant to Section 3.2 hereof). Except as provided in this Section 3.6 or in the Bond Resolution, the Authority shall not assign this Agreement or any payments under this Agreement. Except as provided in Section 7.2 or 8.2 of this Agreement, the Authority shall not sell, assign or otherwise encumber its interest in the Equipment.

## ARTICLE IV

### TERMINATION; RENEWAL

**Section 4.1 Termination of Lease Term for an Item of Equipment.** The Lease Term for any Item of Equipment will terminate upon the earliest of any of the following events:

- (a) a default by the Municipality with respect to such Item of Equipment and the Authority's election to terminate the Lease Term for such Item of Equipment pursuant to Section 7.2 of this Agreement; or
- (b) the end of the Lease Term applicable to such Item of Equipment.

**Section 4.2 Effect of Termination.** Upon the termination of the Lease Term for any Item of Equipment for the reason stated in Section 4.1(a) hereof, the Municipality shall be responsible for the payment of an amount equal to the excess of the sum of the Applicable Basic Rent payable with respect to such Item of Equipment for the then current Lease Term as of the effective date of such termination over the net amount received from the sale of such Item of Equipment (as contemplated by Section 3.5 hereof). If the Municipality has not delivered possession of such Item of Equipment to the Authority in accordance with Section 3.5 hereof, the termination of such Lease Term shall nevertheless be effective, but the Municipality shall be additionally responsible for the payment of damages in an amount equal to the amount of the Applicable Basic Rent payments which would have accrued, when calculated on a daily basis, for the period during which the Municipality fails to return such Item of Equipment and for any other loss suffered by the Authority as a result of the Municipality's failure to take such actions as required. In the event of termination of the Lease Term for any Item of Equipment for the reason referred to in Section 4.1(a) hereof, there shall be applied as a reduction against the Applicable Basic Rent payment to become due after such termination an amount equal to the net amount received from the sale of such Item of Equipment.

**Section 4.3 Termination of Entire Agreement.** This Agreement will terminate upon the occurrence of the following:

- (a) there shall have occurred the termination of all the Lease Terms applicable to all Items of Equipment; and
- (b) the Municipality shall have paid to the Trustee all amounts which the Municipality is obligated under the terms of this Agreement to pay.

## ARTICLE V

### COVENANTS OF MUNICIPALITY

**Section 5.1 Maintenance of Equipment by Municipality.** The Municipality agrees that at all times during each Lease Term for each Item of Equipment, the Municipality will, at the Municipality's own cost and expense, maintain, preserve and keep such Item of Equipment in good repair, working order and condition, and that the Municipality will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals thereto. The Authority shall have no responsibility in any of these matters, or for the making of improvements or additions to such Item of Equipment.

**Section 5.2 Taxes, Other Governmental Charges and Utility Charges.** In the event that the ownership, leasing, use, possession or acquisition of any Item of Equipment is found to be subject to taxation in any form, the Municipality will pay during the related Lease Term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to any Item of Equipment and any equipment or other property acquired by the Municipality as permitted under this Agreement in substitution for, as a renewal or replacement of, or a modification, improvement or addition to, any Item of Equipment, as well as all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of any Item of Equipment; provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, the Municipality shall be obligated to pay only such installments as have accrued during the time the related Lease Term is in effect.

**Section 5.3 Provisions Regarding Insurance.** At its own expense, the Municipality shall cause casualty, public liability and property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of the Authority that adequate self-insurance is provided with respect to each Item of Equipment sufficient in each case to replace such Item of Equipment and to protect the Authority from liability in all events. The Municipality agrees to maintain and the Authority agrees to accept evidence of blanket insurance coverage which applies automatically to all lease purchase agreements and which does not require lessors or trustees to be specifically named by endorsement. The Municipality will provide a copy of a blanket insurance policy or policies to the Authority as evidence of such coverage. If the Municipality maintains a program of self-insurance for similar properties, the Municipality may insure each Item of Equipment in its self-insurance program and provide an adequate insurance fund to pay losses.

Any insurance policy maintained pursuant to this Section 5.3 shall be so written or endorsed as to make losses, if any, payable to the Municipality, the Authority and the Trustee as their respective interests may appear. The Net Proceeds of the insurance required in this Section 5.3 shall be applied as provided in Section 5.4 and Section 5.5 hereof.

**Section 5.4 Damage, Destruction or Condemnation.** If prior to the termination of the Lease Term for any Item of Equipment, such Item of Equipment is destroyed or is damaged by fire or other casualty, or title to, or the temporary use of, such Item of Equipment shall be taken under the exercise of the power of eminent domain, the Municipality

shall within 60 days after such damage, destruction or condemnation elect one of the following two options by written notice of such election to the Authority, with a copy to the Trustee:

(a) **Option A - Repair, Restoration or Replacement.** The Municipality and the Authority will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt repair, restoration, or replacement (in which case such replacement of any Item of Equipment shall become subject to the provisions of this Agreement as fully as if it were the originally leased Item of Equipment) of such Item of Equipment. Any Net Proceeds received by the Authority shall be deposited in the Acquisition Fund and be applied by the Trustee to complete the payment of the Cost of such repair, restoration or replacement, in the same manner and upon the same conditions as set forth in the Bond Resolution for the payment of the Cost of the Equipment from the Acquisition Fund. Any balance of the Net Proceeds remaining after the repair, restoration or replacement shall be paid to the Municipality.

(b) **Option B - Deposit to Net Proceeds Account.** The Municipality and the Authority will cause the Net Proceeds of any insurance claim or condemnation award to be deposited in the Net Proceeds Account and applied in accordance with the provisions of the Bond Resolution relating thereto.

**Section 5.5 Insufficiency of Net Proceeds.** If the Municipality elects to repair, restore or replace any Item of Equipment under the terms of Section 5.4(a) hereof and the Net Proceeds therefor are insufficient to pay in full the Cost of such repair, restoration or replacement, the Municipality shall complete the work and pay any Cost in excess of the amount of the Net Proceeds, and the Municipality agrees that, if by reason of any such insufficiency of the Net Proceeds, the Municipality shall make any payments pursuant to the provisions of this Section 5.5, the Municipality shall not be entitled to any reimbursement therefor from the Authority nor shall the Municipality be entitled to any diminution of the amounts payable under this Agreement.

**Section 5.6 Advances.** In the event the Municipality shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep any Item of Equipment in good repair and operating condition, the Authority may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same, or make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Authority shall become immediately due and payable as Additional Rent, which amounts, together with interest at the highest rate permitted by law until paid, the Municipality agrees to pay.

**Section 5.7 Financial Reports.** The Municipality covenants to provide annually to the Authority and the Trustee in a reasonable time after the same become available (i) current financial statements, budgets and proof of appropriation for the ensuing Fiscal Year and (ii) such other financial information relating to the ability of the Municipality to continue to meet its obligations under this Agreement as may be reasonably requested by the Authority.

**Section 5.8 Performance Bonds and other Guaranty.** In the event that an advance or progress payment is to be made with respect to any Item of Equipment, the Municipality shall cause the contractor or subcontractor for such Item of Equipment to provide a

performance bond or bonds, a letter of credit or any other form of financial guaranty covering with respect to such Item of Equipment (1) performance of the contract and (2) payment for labor and materials.

Any performance bond or bonds, letter of credit or other form of financial guaranty shall be executed by a responsible surety company qualified to do business in New Jersey and shall in each case be in an amount not less than 100% of the contract price. Any performance financial guaranty provided pursuant to this Section 5.8 shall be made payable to the Municipality, the Authority and the Trustee as their respective interest may appear. The Net Proceeds of any performance bond provided pursuant to this Section 5.8 shall be paid over to the Trustee for deposit to the Net Proceeds Account in the Debt Service Fund.

**Section 5.9 Net Lease.** This Agreement shall be deemed and construed to be a "net lease", and the Municipality shall pay absolutely net during the Lease Term the Rentals and all other payments required under this Agreement, free of all deductions, without abatement, diminution and set-off, except as otherwise specifically provided in Section 4.2.

**Section 5.10 Compliance with Laws.** The parties to this Agreement agree to comply with all laws of the State applicable to the performance of this Agreement.

**Section 5.11 Covenant Not to Affect the Tax Exempt Status of the Bonds.**

(1) The Municipality covenants and agrees that it shall not take any action or omit to take any action which would result in the loss of the exclusion of the interest on any Bonds from gross income for purposes of federal income taxation as that status is governed by Section 103(a) of the Internal Revenue Code of 1986 (as the same may be amended from time to time, the "Code") but only to the extent that the Authority intended at the time of the original issuance of such Bonds that the interest thereon be so excludable from gross income for purposes of federal income taxation.

(2) Unless the Municipality receives the prior written approval of the Authority, the Municipality shall neither (A) permit any of either (x) the proceeds (such term shall have the same meaning as when used in Section 141(a) of the Code) of the Bonds paid to the Municipality for the Equipment or (y) the Equipment financed (or refinanced) with the proceeds of the Bonds paid to the Municipality, to be used (directly or indirectly) in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, nor (B) use (directly or indirectly) any of the proceeds of the Bonds paid to the Municipality, to make or finance loans to persons other than governmental units (as such term is used in Section 141(c) of the Code).

(3) Neither the Municipality nor any of its members shall, pursuant to any arrangement, formal or informal, purchase Bonds in an amount related to the amount of the Municipality's Rentals for the Equipment.

**Section 5.12 Representations and Warranties of Municipality.** The Municipality represents and warrants as follows:

(a) It is a public body corporate and politic duly organized and existing under the laws of the State of New Jersey, and is authorized and empowered to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action of its members, it has duly authorized the execution and delivery of this Agreement.

(b) The execution and delivery of this Agreement, and the compliance with the provisions hereof, will not conflict with or constitute on the part of the Municipality a violation of, breach of or default under its by-laws or any statute, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Municipality is bound, or, to the knowledge of the Municipality, any order, rule, or regulation of any court or governmental agency or body having jurisdiction over the Municipality or any of its activities or properties; and all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the consummation of the transactions contemplated hereby have been obtained.

(c) There is no action, suit, proceeding or investigation at law or in equity against the Municipality by or before any court or public agency, or, to the best of the knowledge of the Municipality, any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby, or which in any way would adversely affect the validity of this Agreement, or any agreement or instrument to which the Municipality is a party and which is used or contemplated for use in consummation of the transactions contemplated hereby.

(d) No legislation has been enacted which in any way adversely affects the execution and delivery of this Agreement, or the creation, organization or existence of the Municipality or the titles to office of any officers thereof, or the power of the Municipality to carry out its obligations under this Agreement.

(e) The Municipality is not a party to any indenture, loan or credit agreement or any other agreement, resolution, contract, instrument, pension plan, pension trust, employee benefit or welfare plan, or subject to any restriction which may reasonably be expected to have an adverse affect on its properties, assets, operations or conditions, financial or otherwise, or on its ability to carry out its obligations under this Agreement.

**Section 5.13 Secondary Market Disclosure.** The Municipality recognizes that the proceeds of the Bonds issued by the Authority to finance the acquisition of the Equipment to be leased to the Municipality hereunder will be derived from the purchase of the Bonds with a portion of the proceeds of the Pooled Bonds. The Municipality further recognizes that it will lower the cost of financing the Equipment hereunder if, in connection with the issuance of the Pooled Bonds, the Authority and certain obligated persons (as that term is defined in said Rule 15c2-12) comply with the applicable ongoing disclosure provisions of Rule 15c2-12 promulgated by the Securities and Exchange Commission. Therefore, the Municipality agrees that, simultaneously with the execution and delivery of this Agreement, if requested to do so by the Authority, it will enter into an undertaking to provide ongoing disclosure relating to the Municipality in accordance with the applicable provisions of said Rule 15c2-12, the form of which undertaking shall be approved by a resolution of the Municipality.

**Section 5.14 Third Party Beneficiaries.** The Municipality agrees that the covenants, representations and warranties set forth herein are for the sole benefit of the Authority and the Trustee.

## ARTICLE VI

### TITLE

**Section 6.1 Title to Equipment.** During the term of this Agreement, title to the Equipment and any and all additions, repairs, replacements or modifications shall be in the name of the Authority.

**Section 6.2 Liens.** During the Lease Term of each Item of Equipment, the Municipality shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to such Item of Equipment, other than Permitted Encumbrances, including the respective rights of the Authority and the Municipality as herein provided. The Municipality shall reimburse the Authority for any expense incurred by the Authority in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

**Section 6.3 Personal Property.** Each Item of Equipment is and shall at all times be and remain personal property notwithstanding that such Item of Equipment or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any improvement thereon.

**Section 6.4 Use of the Equipment.** The Municipality will not install, use, operate or maintain any Item of Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. The Municipality shall provide all permits and licenses, if any, necessary for the installation and operation of each Item of Equipment. In addition, the Municipality agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Item of Equipment) with all laws of the jurisdictions in which its operations involving any Item of Equipment may extend and with all regulations, orders and decrees of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over any Item of Equipment; provided, however, that the Municipality may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not adversely affect the estate of the Authority in and to any Items of Equipment or its interest or rights under this Agreement.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.1 Events of Default.** An “event of default” or a “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (a) Failure by the Municipality to pay or cause to be paid when due the payments to be paid under Section 4.1(a) hereof;
- (b) Failure by the Municipality to pay when due any payment to be made under this Agreement other than payments under Section 3.1(a) hereof which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by the Authority or the Trustee; or
- (c) Failure by the Municipality to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsections (a) and (b) of this Section 7.1, which failure shall continue for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by the Authority or the Trustee, unless the notifying party shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the notifying party will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Municipality within the applicable period and diligently pursued until the default is remedied.

The foregoing provisions of subsection (c) of this Section 7.1 are subject to the following limitations: If by reason of acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the Government of the United States or of the State or any department, agency, political subdivision or official of either of them, or any civil or military authority; insurrections; riots; epidemics; landslides; lightening; earthquakes; fires; hurricanes; tornadoes; blizzards; or other storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery; partial or entire failure of utilities; or any cause or event not reasonably within the control of the Municipality, the Municipality is unable in whole or in part to carry out its agreements herein contained, the Municipality shall not be deemed in default during the continuance of such inability. The Municipality agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided, that the settlement of strikes, lockouts and other disturbances shall be entirely within the discretion of the Municipality, and the Municipality shall not be required to make settlement of strikes, lockouts and other disturbances by acceding to the demands of opposing party or parties when such course is in the judgment of the Municipality unfavorable to the Municipality.

Notwithstanding anything contained in this Section 7.1 to the contrary, a failure by the Municipality to pay when due any payment required to be made under this Agreement or a failure by the Municipality to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, resulting from a failure by the

Municipality's governing body to appropriate moneys as contemplated by Section 3.4 hereof, shall not constitute an event of default under this Section 7.1.

**Section 7.2 Remedies.** Whenever any event of default referred to in Section 7.1 hereof shall have happened and be subsisting, any one or more of the following remedial steps may be taken, provided that written notice of the default has been given to the Municipality by the Authority or by the Trustee and the default has not been cured: (a) the Authority may terminate the Lease Term for each Item of Equipment with respect to which the default applies; and (b) the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Municipality under this Agreement.

Any amounts collected pursuant to action taken under this Section shall be applied in accordance with the provisions of the Bond Resolution, or if the Bond Resolution has been discharged, to the Municipality.

**Section 7.3 Reinstatement.** Notwithstanding any termination of this Agreement in accordance with the provisions of Section 7.2 hereof, if, after the maturity of the Outstanding Bonds shall have been accelerated by the Trustee upon occurrence of an event of default under the Bond Resolution, all arrears of interest on such Outstanding Bonds and interest on overdue installments of principal, premium, if any, and (to the extent permitted by law) interest on such Bonds, at a rate per annum equal to the highest rate per annum borne by any of the Bonds, and the principal and premium (if any) on all Bonds then Outstanding which have become due and payable otherwise than by acceleration, and all other sums payable under the Bond Resolution, as the case may be, except the principal of and the interest on such Bonds which by such acceleration shall have become due and payable, shall have been paid, all other things shall have been performed in respect of which there was a default and there shall have been paid the reasonable fees and expenses, including Authority Administrative Expenses, of the Trustee and the holders of such Bonds (including reasonable attorneys' fees paid or incurred) and such acceleration under the Bond Resolution is rescinded, then the Municipality's default hereunder shall be waived without further action by the Trustee or the Authority. Upon such payment and waiver, this Agreement shall be fully reinstated as if it had never been terminated.

**Section 7.4 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Authority or Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**Section 7.5 No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Agreement should be breached by either party and thereafter waived

by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE VIII

### SALE, ASSIGNMENT, SUBLEASING AND SUBSTITUTION; CONVEYANCE OF EQUIPMENT TO MUNICIPALITY

#### **Section 8.1 Sale, Assignment, Subleasing or Substitution by Municipality.**

(A) Neither this Agreement nor the interest of the Municipality in any Item of Equipment, other than Permitted Encumbrances, may be sold, assigned or subleased by the Municipality.

(B) The Municipality is hereby granted the following options of substitution:

(1) If the Municipality is unable to arrange for the delivery and acceptance of one or more Items of Equipment as contemplated in this Agreement, the Municipality, with the prior written consent of the Authority and the County (which consent shall not be unreasonably withheld), may elect to substitute one or more other items of equipment for such Items of Equipment, provided that the Cost thereof shall not exceed the aggregate of the estimated Cost of such Items of Equipment as set forth in Exhibit A hereto. The Municipality may arrange for the delivery and acceptance of one or more additional Items of Equipment to the extent that the Cost of Items of Equipment acquired is less than estimated. If the Municipality is not able to deliver an Item of Equipment or make arrangements for substitution or addition as provided herein on or before October 1, 2027 or subsequent date, if the Municipality delivers a certificate substantially in the form set forth in Exhibit C hereto, the Lease Term with respect to such Item of Equipment shall terminate as of the next occurring Rental payment date. In the event of substitution or addition as provided herein, the Municipality and the Authority shall execute appropriate amendments to the Exhibits hereto to reflect such substitution or addition. In no event shall any substitution be made if the estimated useful life of the equipment being substituted is less than the estimated useful life of the Items of Equipment for which such substitution or addition is being made.

(2) The Municipality may elect to substitute or exchange equipment for an Item of Equipment delivered pursuant to this Agreement provided that, (a) the equipment to be substituted or exchanged for such Item of Equipment has been acquired by the Municipality in accordance with the laws of the State governing the acquisition of equipment by the Municipality, (b) the value and the remaining useful life of the equipment to be substituted for such Item of Equipment shall be equal to or greater than the value and the remaining useful life of such Item of Equipment, and (c) the Municipality shall provide the Trustee with a certificate of an Authorized Municipal Representative certifying that the requirement contained in (a) above has been satisfied and stating that the requirement set forth in (b) above has been satisfied together with the basis for such conclusions.

**Section 8.2 Option to Purchase Equipment.** The Municipality shall have and may exercise, at the time of the expiration of the Lease Term applicable to any Item of Equipment if the end of such Lease Term shall be co-terminus with the end of the stated useful

life of such Item of Equipment and if the Municipality shall have cured any and all defaults under this Agreement, the option to purchase such Item of Equipment under the provisions of this Section upon payment to the Authority of the purchase price therefor. The purchase price payable for any Item of Equipment shall be the sum of Ten Dollars (\$10.00). The Municipality may exercise such option by giving written notice thereof to the Authority at least thirty (30) days before the date that the purchase is to be consummated.

**Section 8.3 Date of Settlement.** The purchase price of any Item of Equipment under Section 8.2 of this Agreement shall be paid on a date of settlement and at a place to be mutually agreed upon by the Authority and the Municipality. Upon payment of the purchase price, the Authority shall contemporaneously convey to the Municipality all of the Authority's right, title and interest in and to such Item of Equipment by a good and sufficient quit-claim deed and such other legal instruments required therefor. The Municipality shall bear all costs and expenses in connection with the preparation of the documents of conveyance and the delivery thereof and all fees, assessments, taxes and charges payable in connection with the conveyance of title to such Item of Equipment.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.1 Surrender of Possession.** Except as otherwise expressly provided in this Agreement and except in the event of purchase of the Equipment by the Municipality, at the expiration or sooner termination of the Lease Term, the Municipality agrees to surrender possession of the Equipment peacefully and promptly to the Authority in as good condition as at the commencement of the Lease Term, loss by fire or other casualty covered by insurance, condemnation and ordinary wear, tear and obsolescence only excepted.

**Section 9.2 Successors and Assigns.** This Agreement shall inure to the benefit of and shall be binding upon the Municipality, the Authority and their respective successors and assigns.

**Section 9.3 Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 9.4 Amendments, Changes and Modifications.** Except as otherwise provided in this Agreement or in the Bond Resolution, subsequent to the issuance of the Bonds and prior to payment or provision for the payment of all Bonds in full and any other obligations incurred by the Authority to pay the Cost of Equipment, including interest, premiums and other charges, if any, thereon, and payment or provision for the payment of Authority Administrative Expenses, this Agreement may not be amended, changed, modified, altered or terminated so as adversely to affect the interests of the holders of the Bonds without the prior written consent of the holders of at least fifty-one percent (51%) in aggregate principal amount of the Bonds then outstanding; provided, further, that no such amendment, change, modification, alteration or termination will reduce the percentage of the aggregate principal amount of the Outstanding Bonds the consent of the holders of which is required for any such amendment, change, modification, alteration or termination or decrease the amount of any payment required to be made under this Agreement or extend the time of payment thereof. This Agreement may be amended, changed, modified and altered without the consent of the holders of Bonds to provide necessary changes to cure any ambiguity, correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions contained herein, to provide for additions to or deletions from the Equipment set forth in Exhibit A or to provide other changes which will not adversely affect the interest of such holders. No amendment, change, modification, alteration or termination of this Agreement shall be made other than pursuant to a written instrument signed by the Authority and the Municipality and consented to in writing by the Trustee in accordance with the Bond Resolution.

For all purposes of this Section, the Trustee shall be entitled to rely upon an opinion of counsel, which counsel shall be satisfactory to the Trustee with respect to the extent, if any, as to which any action adversely affects the interests of any holders of Bonds then outstanding.

**Section 9.5 Amounts Remaining under Bond Resolution.** It is agreed by the parties hereto that any amounts released to the Authority pursuant to Section 1102 of the Bond Resolution or remaining in any fund or account created under the Bond Resolution, upon expiration or sooner termination of the Lease Term, as provided in this Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Bond Resolution) and the fees, charges and expenses of the Trustee and Paying Agents and the Authority in accordance with the Bond Resolution, shall belong to and be paid to the Municipality.

**Section 9.6 Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 9.7 Notices and Demands.** All notices, demands or other communications provided for in this Agreement shall be in writing and shall be delivered personally, or sent by certified or registered mail, to (i) the Municipality at \_\_\_\_\_, \_\_\_\_\_, New Jersey \_\_\_\_\_, Attn: Chief Financial Officer, (ii) the Authority at the Hall of Records, 1 East Main Street, Freehold, New Jersey 07728, Attn: Chairman, (iii) the Trustee at 333 Thornall Street, 4th Floor, Edison, New Jersey 08837, Attn: Corporate Trust Department and (iv) the County at the Hall of Records, 1 East Main Street, Freehold, New Jersey 07728, Attn: Director of Finance, or to such other representatives or addresses as the Authority, the Municipality, the Trustee or the County may from time to time designate by written notice to the parties hereto or beneficiaries hereof.

**Section 9.8 Headings.** The Article and section headings in this Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

**Section 9.9 Non-Waiver.** It is understood and agreed that nothing contained in this Agreement shall be construed as a waiver on the part of the parties, or any of them, of any right not explicitly waived in this Agreement.

**Section 9.10 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

IN WITNESS WHEREOF, the Authority has caused this instrument to be signed by its Chairman as its duly authorized officer and the Municipality has caused this instrument to be executed in its name by its Mayor, all as of the day and year first above written.

THE MONMOUTH COUNTY  
IMPROVEMENT AUTHORITY

\_\_\_\_\_  
William C. Barham  
Chairman

\_\_\_\_\_  
OF \_\_\_\_\_, NEW JERSEY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Mayor

EXHIBIT A  
DESCRIPTION OF EQUIPMENT

**EXHIBIT B**  
**ACCEPTANCE CERTIFICATE**

I, the undersigned [insert title], do hereby certify pursuant to the terms of the Lease and Agreement between The Monmouth County Improvement Authority (the "Authority") and the \_\_\_\_\_ of \_\_\_\_\_ (the "Municipality"), dated as of October 1, 2025 (the "Lease Agreement"), as follows:

(a) The Municipality, on behalf of the Authority, has acquired the Item of Equipment described in Exhibit A to the Lease Agreement, the general description of which is:

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(b) Attached hereto is all necessary legal documentation to evidence ownership [or to evidence a progress payment] of such Item of Equipment.

(c) Such Item of Equipment meets the Municipality's specifications therefor, has been [or will be] delivered [in compliance with] to the Municipality's satisfaction (or is in compliance with manufacturer's contract), and is in good repair and working order. This certificate constitutes the Acceptance Certificate for such Item of Equipment.

(d) The amount of purchase price [progress payment] for the Item of Equipment is \$\_\_\_\_\_. Such amount is authorized by the Lease Agreement to be withdrawn from the Acquisition Fund and such amount is the correct amount as specified in the manufacturer's contract.

(e) The undersigned is an Authorized Municipal Representative.

(f) Terms defined in the Lease Agreement and used in this certificate have the same meanings in this certificate as are ascribed to such terms in the Lease Agreement.

Authorized Municipal Representative

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Name:  
Title:

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

EXHIBIT C  
ACQUISITION FUND CERTIFICATE

I, the undersigned [insert title], do hereby certify pursuant to the terms of the Lease and Agreement between The Monmouth County Improvement Authority (the "Authority") and the \_\_\_\_\_ (the "Municipality"), dated as of October 1, 2025 (the "Lease Agreement"), as follows:

Equipment Presently Available

a. The Municipality, on behalf of the Authority, has submitted a purchase order for an Item of Equipment described in Exhibit A to the Lease Agreement, the general description of which is: \_\_\_\_\_. If the submission is for passenger vehicles (including police cars), a separate Acquisition Fund Certificate needs to be submitted for the Item of Equipment and the following box checked  .

b. Attached hereto is a copy of the purchase order relating to such Item of Equipment.

c. The amount of the purchase price for the Item of Equipment is \$\_\_\_\_\_, of which amount \$\_\_\_\_\_ is payable upon delivery and acceptance of such Item of Equipment, as evidenced by the attached purchase order.

d. Such Item of Equipment is anticipated to be delivered on or about \_\_\_\_\_, 20\_\_\_.

e. The undersigned is an Authorized Municipal Representative.

f. Terms defined in the Lease Agreement and used in this certificate have the same meanings in this certificate as are ascribed to such terms in the Lease Agreement.

or

Equipment Available in the Next Twelve Months

a. The Municipality, on behalf of the Authority, anticipates submitting a purchase order for an Item of Equipment described in Exhibit A to the Lease Agreement.

b. The amount of the purchase price for the Item of Equipment will be payable upon delivery and acceptance of such Item of Equipment.

c. Such Item of Equipment is anticipated to be delivered on or before \_\_\_\_\_, 20\_\_\_.

d. The undersigned is an Authorized Municipal Representative.

e. Terms defined in the Lease Agreement and used in this certificate have the same meanings in this certificate as are ascribed to such terms in the Lease Agreement.

Authorized Municipal Representative

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

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

**EXHIBIT D**  
**COMPLETION CERTIFICATE OF AUTHORITY**

I, the undersigned [insert title], do hereby certify pursuant to the terms of the Lease and Agreement between The Monmouth County Improvement Authority (the "Authority") and the \_\_\_\_\_ of \_\_\_\_\_ (the "Municipality"), dated as of October 1, 2025 (the "Lease Agreement"), as follows:

(g) The Municipality filed the attached Completion Certificate pursuant to Section 2.5 of the Lease Agreement and Section 403(4) of the Bond Resolution.

(h) In accordance with Section 403(4) of the Bond Resolution, the Authority hereby directs the Trustee to transfer to the Operating Fund from the Acquisition Fund, money in an amount equal to \$0 to fund Authority Administrative Expenses, such amounts to be applied to the purposes of such Fund. The balance in the Acquisition Fund in excess of the amount, if any, stated to be transferred to the Operating Fund as set forth in the immediately preceding sentence, shall be paid over or transferred for deposit in the Debt Service Fund for payment of debt service on the Bonds.

(i) The undersigned is an Authorized Authority Representative; and

(j) Terms defined in the Lease Agreement and used in this certificate have the same meanings in this certificate as are ascribed to such terms in the Lease Agreement.

Authorized Authority Representative

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Name:

Title:

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

**EXHIBIT D**  
**COMPLETION CERTIFICATE OF MUNICIPALITY**

I, the undersigned [insert title], do hereby certify pursuant to the terms of the Lease and Agreement between The Monmouth County Improvement Authority (the "Authority") and the \_\_\_\_\_ of \_\_\_\_\_ (the "Municipality"), dated as of October 1, 2025 (the "Lease Agreement"), as follows:

(k) The Municipality is filing this certificate pursuant to Section 2.5 of the Lease Agreement and Section 403(4) of the Bond Resolution.

(l) The acquisition and installation of all Items of Equipment has been completed substantially in accordance with the specifications applicable thereto and that such Equipment is ready for use;

(m) The date of completion was \_\_\_\_\_;

(n) The amount for the payment of any remaining part of the Cost thereof is \$ \_\_\_\_\_;

(o) The Certificate is given without prejudice to any rights against third parties which exist as of the date of this certificate or which may subsequently come into being;

(p) The undersigned is an Authorized Municipal Representative

(q) Terms defined in the Lease Agreement and used in this certificate have the same meanings in this certificate as are ascribed to such terms in the Lease Agreement.

Authorized Municipal Representative

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Name:

Title:

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