CITY OF PARKER
AGENDA ITEM SUMMARY

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1. *DEPARTMENT MAKING REQUEST/NAME OF PRESENTER:*	2. *MEETING DATE:*
Council and Public Works	June 6, 2023

Resolution 2023-392

4. *IS THIS ITEM BUDGETED (IF APPLICABLE)*

YES ☐ **NO** ☐ **N/A X**

A RESOLUTION OF THE CITY OF PARKER, FLORIDA, FINDING IT NECESSARY TO ACQUIRE EQUIPMENT FOR GOVERNMENTAL OR PROPRIETARY PURPOSES, IT WOULD BE IN THE PUBLIC INTEREST TO ACQUIRE SUCH EQUIPMENT UNDER THE TERMS OF A LEASE PURCHASE AGREEMENT WITH TRUSTMARK NATIONAL BANK; AUTHORIZING AND DIRECTING THE AUTHORIZED OFFICERS OF THE CITY TO EXECUTE A LEASE-PURCHASE AGREEMENT AND SUPPORTING SCHEDULES AND ATTACHMENTS; AND PROVIDING FOR A REPEALER CLAUSE, SEVERABILITY AND FOR AN EFFECTIVE DATE.

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AGENDA ITEM # 2

RESOLUTION NO. 2023-392

A RESOLUTION OF THE CITY OF PARKER, FLORIDA, FINDING IT NECESSARY TO ACQUIRE EQUIPMENT FOR GOVERNMENTAL OR PROPRIETARY PURPOSES, IT WOULD BE IN THE PUBLIC INTEREST TO ACQUIRE SUCH EQUIPMENT UNDER THE TERMS OF A LEASE PURCHASE AGREEMENT WITH TRUSTMARK NATIONAL BANK; AUTHORIZING AND DIRECTING THE AUTHORIZED OFFICERS OF THE CITY TO EXECUTE A LEASE-PURCHASE AGREEMENT AND SUPPORTING SCHEDULES AND ATTACHMENTS; AND PROVIDING FOR A REPEALER CLAUSE, SEVERABILITY AND FOR AN EFFECTIVE DATE.

WHEREAS, the City of Parker, Florida ("City") is a validly existing political subdivision of the State of Florida ("State"), existing as such under and by virtue of the constitution, statutes and laws of the State;

WHEREAS, the Council of the City ("City Council") has the power under the laws of the State, including but not limited to the provisions of Chapter 166, Part II, of the Florida Statutes to lease or purchase personal property for use by the City; and the City Council has determined, and hereby determines, that it is in the best interests of the City to enter into a Lease-Purchase Agreement ("Agreement") with Trustmark National Bank ("Lessor"), in substantially the form attached hereto with such changes as may be agreed upon by the signatories to the documents, for the purpose of financing the acquisition of the equipment described in Exhibit "A" to the Agreement ("Equipment"), and that the use of such Equipment is essential to the City's proper, efficient and economic operation;

WHEREAS, the City has obtained various financing proposals and Trustmark National Bank has offered the lowest and best terms and is hereby judged and determined to be the best by the City;

WHEREAS, the City Council has taken the necessary and appropriate steps under applicable law, including, without limitation, any requirements to arrange for the acquisition of the Equipment under the Agreement;

WHEREAS, the Agreement may be terminated, and the City's obligations thereunder are extinguished, if the City Council fails to appropriate money for the ensuing fiscal year for the payment of the amounts due in such fiscal year;

WHEREAS, there has been presented to the City Council the form of the Agreement, which the City proposes to approve, enter into and deliver; and it appears that the Agreement is in appropriate form and is an appropriate instrument for the purposes intended.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF PARKER:

SECTION 1. That all actions of the City in effectuating the Agreement are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Agreement.

SECTION 2. The City Council hereby approves the acquisition/lease by the City of the Equipment, such acquisition to be financed by or leased through Lessor pursuant to and in accordance with the terms of the Agreement, which will be a valid, legal and binding obligation of the City enforceable in accordance with its terms. The form and content of the Agreement are in all respects authorized, approved and confirmed with such changes as may be approved by the respective signatories. The Mayor or the Mayor Pro-Tem (in the case of the unavailability of the Mayor) and the City Clerk (collectively "Authorized Officers") are authorized, empowered and directed to execute and deliver the Agreement for and on behalf of the City in substantially the form attached hereto, but with such changes, modifications, additions or deletions therein as shall be deemed necessary, desirable or appropriate with such consent being evidenced by their signatures, and to execute and deliver any other documents necessary to consummate or evidence the transaction which is the subject of this Resolution. Upon delivery and acceptance by the Lessee of the Equipment, the Authorized Officers are authorized and directed to execute a Certificate of Acceptance of such Equipment.

SECTION 3. The Agreement contemplates 4 annual payments in arrears over a period of time not to exceed 49 months at an annual rate of interest of 4.61%.

SECTION 4. Pursuant to Section 265(b)(3)(B)(i) of the Internal Revenue Code of 1986 ("Code"), as amended or modified, the City hereby specifically designates the Agreement as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code, and the City represents it will not designate more than Ten Million and No/100 Dollars ($10,000,000.00) of obligations issued by the City in the calendar year in which the Agreement is executed and delivered as such a "qualified tax-exempt obligation."

SECTION 5. The City agrees to provide property damage and liability insurance on the Equipment during the term of the Agreement and to designate Trustmark National Bank as a loss payee and additional insured as its interest may appear in accordance with the terms of the Agreement.

SECTION 6. All resolutions or parts thereof in conflict with this resolution are hereby repealed to the extent of such conflict.

SECTION 7. If any section, paragraph, sentence, or clause hereof or any provision of this Resolution is declared to be invalid or unconstitutional, the remaining provisions of this Resolution shall be unaffected thereby and shall remain in full force and effect.

SECTION 8. This Resolution may not be amended or repealed except with the prior written consent of the Lessor.

SECTION 9. This Resolution shall take effect immediately upon its passage.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Parker, Florida, on this 6th day of June, 2023.

CITY OF PARKER, FLORIDA

By:_____
Andrew Kelly, as Mayor

Attest:

By:_____
Jami Hinrichs, as City Clerk

TIMOTHY J. SLOAN, P.A.
ATTORNEY AND COUNSELOR AT LAW
427 MCKENZIE AVENUE
POST OFFICE Box 2327
PANAMA CITY, FLORIDA 32402-2327

TIMOTHY J. SLOAN
ALSO MEMBER OF
DISTRICT OF COLUMBIA
AND MISSOURI BARS

TELEPHONE (850) 769-2501
FACSIMILE (850) 769-0824

June ____, 2023

Trustmark National Bank
Attn: Tina Rutherford, Vice President
2315 S. Highway 77
Lynn Haven, FL 32444

Re: Lease-Purchase Agreement dated as of June ____, 2023

Dear Ms. Rutherford:

The City of Parker, Florida ("City") has requested that we render a legal opinion with respect to certain areas of a prospective Lease-Purchase Agreement dated as of June_____, 2023 ("Lease") where Trustmark National Bank ("Trustmark") will be the Lessor and the City will be the Lessee.

As used in this opinion letter, the term "Governmental Authority" shall mean and include any federal, state, county, municipal, or other government, domestic or foreign, or any agency, department, commission, bureau, board, court or instrumentality thereof. In connection with and in preparation for the rendering of this opinion, we have examined the following documents:

1. Chapter 166 of the Florida Statutes ("Act");

2. The Charter of the City;

3. Code of Ordinances of the City ("Code");

4. Resolution No. 2023-392 ("Resolution");

5. Certificates and Representations of City officials ("Certificates"); and

6. Lease-Purchase Agreement.

All capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease, unless the context clearly dictates otherwise.

We are members of the Florida Bar only. The opinions expressed herein are limited to the pertinent laws in existence as of the date hereof, and we expressly disclaim any undertaking to advise you of any changes of law or fact that may hereafter come to our attention. We do not express any opinions herein concerning the laws of any jurisdiction other than Florida except for applicable laws, if any, of the United States of America.

In rendering the opinions set forth herein, we have relied, without investigation, on each of the following assumptions: (a) the legal capacity of each natural person to take all actions required of each such person in connection with the Lease; (b) the legal existence of each party to the Lease other than the City; (c) the power of each party to the Lease other than the City to execute, deliver and perform all documents evidencing the Lease executed and delivered by such party and to do each other act done or to be done by such party; (d) the authorization, execution and delivery by each party, other than the City, of each document executed and delivered or to be executed and delivered by such party; (e) the legality, validity, binding effect and enforceability as to each party, other than the City, of each document executed and delivered by such party or to be executed and delivered and of each other act done or to be done by such party; (f) there have been no undisclosed modifications of any provision of any document reviewed by us in connection with the rendering of this opinion letter and no undisclosed prior waiver of any right or remedy that may be contained in the Lease; (g) the genuineness of each signature, the completeness of each document submitted to us, the authenticity of each document reviewed by us as an original, the conformity to the original of each document reviewed by us as a copy and the authenticity of the original of each document received by us as a copy; (h) the truthfulness of each statement as to all factual matters otherwise not known to us to be untruthful contained in any document encompassed within the diligence review undertaken by us; (i) each certificate or other document issued by a Governmental Authority is accurate, complete and authentic as of the date of this opinion, and all official public records (including their proper indexing and filing) are accurate and complete; (j) each recipient of this opinion letter

has acted in good faith, without notice of any defense against enforcement of rights created by, or adverse claim to any property or security interest transferred or created as part of, the Lease, and has complied with all laws applicable to it that affect the Lease; (k) the Lease and the conduct of the parties to the Lease comply with any requirement of good faith, fair dealing and conscionability; (l) routine procedural matters such as service of process or qualification to do business in the relevant jurisdiction(s) will be satisfied by the parties seeking to enforce the Lease; (m) agreements (other than the Lease as to which opinions are being given) and judgments, decrees and orders reviewed in connection with rendering the opinions will be enforced as written; (n) no action, discretionary or otherwise, will be taken by or on behalf of the City in the future that might result in a violation of law or otherwise constitute a breach or default under the Lease (or any other document related thereto) or under any applicable court order; (o) there are no agreements or understandings among the parties, written or oral, and there is no usage of trade or course of prior dealing among the parties that would, in either case, define, supplement, modify or qualify the terms of the Lease or the rights of the parties thereunder; (p) the payment of all required documentary stamp taxes, intangible taxes and other taxes and fees imposed upon the execution, filing or recording of documents, if any; (q) with respect to the Lease, including the inducement of the parties to enter into and perform their respective obligations thereunder, there has been no mutual mistake of fact or undue influence and there exists no fraud or duress; (r) the truth and accuracy as to the factual matters of all statements and certificates made or provided to me and those contained in all documents and other matters furnished to me by the City Council members or the City's employees; (s) that none of the City's Council members and employees has made, and that none of such documents or other matters has contained, an untrue statement of any material fact, or omitted to state a material fact necessary in order to make such statements, in light of the circumstances in which they were made, not misleading; and (t) the City did, according to Florida law and its Code, properly post notice and call a meeting of its City Council, that was held on June 6, 2023.

As to any factual matters, we have relied upon the Certificates of various officers and employees of the City and the representations therein, and any written forms being signed by any

official, officer or authorized representative of the particular Governmental Authority, corporation, firm or other person or entity concerned. Where any opinion or confirmation is qualified by the phrase "to our knowledge," "known to us" or the like, it means that the undersigned lawyer is without any actual knowledge or conscious awareness that the opinion or confirmation is untrue in any respect material to the opinion or confirmation.

Based solely upon and subject to the contents hereof, we express the following opinions:

1. The City is a municipal corporation duly organized and existing under the Constitution and laws of the State of Florida, and has good right and lawful authority to enact and perform its obligations under the Resolution and the Lease.

2. Based upon the factual information supplied to us in the Certificates, the City has duly enacted the Resolution, and therefore, the execution, delivery and performance by the City under the Lease and the acquisition of the Equipment has been authorized by all necessary action by the City. As such, the Lease constitutes legally binding and valid obligations of the City, enforceable in accordance with its respective terms.

3. To the best of our knowledge, the adoption of the Resolution and the authorization, execution and delivery of the Lease, and compliance with the provisions thereof, will not conflict with or constitute a breach of or default under any law, administrative regulation, court decree, ordinance, resolution or any agreement or other instrument to which the City is subject.

4. The City has designated the Lease as a qualified tax-exempt obligation of Lessee for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

5. To the best of our knowledge, there are no pending or threatened actions or proceedings before any court, administrative agency or other tribunal or body against City which may materially affect City's financial condition or operations; or which could have any effect whatsoever upon the validity, performance or enforceability of the terms of the Lease.

The following Florida and federal laws, rules and regulations

are expressly excluded from the scope of this opinion: (a) securities laws, rules and regulations; (b) Federal Reserve Board margin regulations; (c) laws, rules and regulations regulating banks and other financial institutions, insurance companies and investment companies; (d) pension and employee benefit laws, rules and regulations, such as the Employee Retirement Income Security Act (ERISA); (e) labor laws, rules and regulations, including laws on occupational safety and health (OSHA); (f) antitrust and unfair competition laws, rules and regulations; (g) laws, rules and regulations concerning compliance with fiduciary requirements; (h) laws, rules and regulations concerning the creation, attachment, perfection and priority of any lien or security interest, except to the extent expressly covered in this opinion letter; (i) laws, rules and regulations relating to taxation; (j) bankruptcy, fraudulent conveyance, fraudulent transfer and other insolvency laws; (k) environmental laws, rules and regulations; (l) laws, rules and regulations relating to patents, copyrights, trademarks, trade secrets and other intellectual property; (m) local laws, statutes, administrative decisions, ordinances, rules or regulations, including any zoning, planning, building, occupancy or other similar approval or permit or any other ordinance or regulation of any county, municipality, township or other political subdivision of the State of Florida; (n) criminal and state forfeiture laws and any racketeering laws, rules and regulations; (o) other statutes of general application to the extent that they provide for criminal prosecution; (p) laws relating to terrorism or money laundering; (q) laws, regulations and policies concerning national and local emergency and possible judicial deference to acts of sovereign states; (r) filing or consent requirements under any of the foregoing excluded laws; and (s) judicial and administrative decisions to the extent they deal with any of the foregoing excluded laws.

Our opinions herein with respect to the enforceability of the obligations and the availability of benefits are subject to the following limitations: (1) bankruptcy, insolvency, reorganization, moratorium, conservatorship, or other similar laws of general application relating to or affecting creditors' rights; (2) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law; (3) the exercise of judicial discretion; and (4) qualifications contained in this opinion letter. Further, no opinion is given with respect to the applicability of approvals, consents or orders as may be required under the Blue Sky

or securities laws or legal investment laws of any state in connection with the registration of any bonds or other documents under the Federal securities laws.

This opinion is limited to Florida law in effect as of the date hereof. The opinions in this letter are made solely for the benefit of Trustmark in connection with the Lease. Any other reliance upon any opinion or representation included herein is unauthorized and any liability arising in any way from such unauthorized use or reliance is specifically disclaimed. In the event the Lease is not consummated between the City and Trustmark, the opinions and representations included herein shall be null and void.

Very truly yours,

TIMOTHY J. SLOAN, P.A.

Timothy J. Sloan

TJS/mf
cc: City of Parker

CERTIFICATE OF ACCEPTANCE

I, the undersigned, hereby certify that I am the duly qualified and acting Mayor of the City of Parker, Florida, a public body of the State of Florida ("Lessee"); and, with respect to the Lease-Purchase Agreement dated June _____, 2023 (the "Lease"), by and between Lessee and Trustmark National Bank ("Lessor"), that:

1. The Equipment described in the Lease has been delivered and installed in accordance with Lessee's Specifications and has been accepted by Lessee.

2. The Required Payments provided for in Exhibit "B" to the Lease shall commence and be due and payable on the dates set forth and in the amounts shown on Exhibit "B" to the Lease.

3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Required Payments required to be paid under the Lease during the current fiscal year of Lessee, and such moneys will be applied in payment of all Required Payments due and payable during such current fiscal year.

4. Lessee has obtained from a reputable insurance company or self funded group qualified to do business in the State insurance with respect to all risks required to be covered thereby pursuant the Lease.

5. Lessee is exempt from all personal property taxes and is exempt from sales and/or use taxes with respect to the Equipment and the Required Payments.

6. During the Term, the Equipment will be used by Lessee to perform essential governmental functions. Such functions are the collection, transport and delivery to a disposal site of trash and garbage.

7. To the best of Lessee's knowledge, there is no litigation, action, suit or proceeding pending or threatened before any court, administrative agency, arbitrator or governmental body that challenges (a) the authority of Lessee or its officers or employees to enter into the Lease, (b) the proper authorization, approval and execution of the Lease and other documents contemplated thereby, (c) the appropriation of moneys sufficient to make Required Payments coming due under the Lease in Lessee's current fiscal year, or (d) the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.

All capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Lease.

Dated: _____, 2023.

CITY OF PARKER, FLORIDA

By: _____
Print: _____
Its: _____

Date of Lease: _____, 2023
COUNTY OF BAY
STATE OF FLORIDA

Lease No.
Loan No.

LEASE- PURCHASE AGREEMENT

THIS LEASE-PURCHASE AGREEMENT (this "Agreement") is dated _____, 2023, and is between the **CITY OF PARKER, FLORIDA**, a public body of the State of Florida **(the "City" or "Lessee")** and **TRUSTMARK NATIONAL BANK**, a banking institution **("Trustmark" or "Lessor").**

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.

The City has determined that it is necessary for it to acquire the hereafter described Equipment.

This Agreement provides for Trustmark to make available to the City the sum of **$198,214.84** to enable the City to purchase the Equipment (as defined below) by lease, and provides for securing the City's obligations under this Agreement in favor of Trustmark National Bank

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 Trustmark's reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of Trustmark'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 Trustmark 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 Trustmark on the City's behalf) due and owing 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 Trustmark), of an attorney or firm of attorneys acceptable to Trustmark.

"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 the City of Parker, Florida.

"City Representative" means the City's Clerk or such other person or persons at the time designated, by a written certificate furnished to Trustmark 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, ruling 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" is as set forth in Exhibit "A" of this Agreement.

"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 October 1, or such other fiscal year as the City may later lawfully establish.

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

"Interest Component" means the portion of any Required Payment designed as interest as shown on Exhibit "B".

"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 Trustmark for amounts previously expended to remedy the event giving rise to such payment or proceeds.

"Obligations" means the obligations of the City under this Agreement.

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

"Project Costs" means all costs of the design, planning, acquiring and installing the Equipment as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Base Payments payable by the City under this Agreement, including (a) sums required to reimburse the City or its agents for advances for any such costs, (b) interest during the period of the acquisition and installation of the Equipment 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.

"Required Payments" means Base Payments and Additional Payments.

"State" means the State of Florida.

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

2.01. Lease. Trustmark hereby leases to the City, and City hereby leases from Trustmark, 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. Trustmark advanced $198,214.84 (the "Amount Advanced") to the City on the Closing Date, and the City hereby accepts the Amount Advanced from Trustmark. All amounts on deposit with the City shall be used only to acquire the hereinafter described Equipment.

Notwithstanding anything herein to the contrary, no funds will be advanced to City hereunder until Trustmark receives from City the vehicle identification number(s) (VIN) and/or serial number(s) associated with the Equipment.

2.03. [Reserved].

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 full 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, nor shall any provision of this Agreement restrict the future issuance of any of the City's bonds or obligations payable form any class or source of the City's moneys (except to the extent this Agreement restricts the incurrence of additional obligations secured by the Equipment).

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

(c) City shall pay the Required Payments exclusively from current and other legally available funds in consideration of City's use of the Equipment during the Lease term.

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) Trustmark's wavier 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 Equipment or the release of any party who assumes all or any part of such performance;

(d) Any act or omission by Trustmark (but this section provision does not relieve Trustmark of any of its obligations under this Agreement);

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

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

ARTICLE III

LESSEE'S PAYMENT OBLIGATION AND RELATED MATTERS

3.01. Rental; Purchase Option.

(a) As rental for the Equipment, the City shall make Base Payments to Trustmark 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 Trustmark's interest in the Equipment, on an as-is, where-is basis, upon notice and payment to Trustmark 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 Trustmark's 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 interest rate equal to the lesser of (i) 12 percent or (ii) the maximum rate allowed by law. Lessor and Lessee agree that any charges or fees resulting from a late payment is considered an administrative fee and is not a penalty.

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.

(b) The Budget Officer shall deliver to Trustmark 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 in this section required of the City' Budget Officer shall be deemed to be and shall be construed to be in fulfillment of ministerial duties.

(d) The City intends each Fiscal Year, subject to there being current or legally available funds sufficient to repay the Required Payments, to pay the Required Payments hereunder. The City reasonably believes that current or other legally available funds in an amount sufficient to make all Required Payments during the Lease term will be available and appropriated for the purpose of making Required Payments hereunder. The City reasonably believes that moneys in an amount sufficient to make all such Required Payments during the Lease term can and will be lawfully be appropriated by the governing body of the Lessee and made available for this purpose. Notwithstanding the foregoing, this Agreement does not require the City to make the Required Payments other than from moneys lawfully appropriated therefore. In the event that sufficient funds will not available to be appropriated for the Required Payments in the next occurring Fiscal Year, then the City may terminate this Agreement, in whole and not in part, upon 30 days' notice to Lessor and thereafter the City shall not be obligated to make any remaining Required Payment provided for in this Agreement beyond the Required Payment due in the then current Fiscal Year. If this Agreement is so terminated, the City agrees peacefully to deliver the Equipment to Lessor at the location specified by Lessor.

(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.** The interest rate shall be a fixed rate of 4.61% during the term of the lease-purchase agreement. The unpaid principal portion of the amount advanced, plus the fixed interest amount shall continue to be payable on the dates and in the amounts as forth in Exhibit "B".

ARTICLE IV

LESSEE'S COVENANTS, REPRESENTATIONS AND WARRANTIES

4.01. **Indemnification.** To the extent permitted by law, the City shall indemnify, protect and save Trustmark 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 Equipment 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 Payment from being includable in Trustmark'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 Dates, 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 Trustmark 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 Trustmark. 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 laws, 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 Sate, 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 of (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 for by which the City is bound.

4.07. No Litigation. To the best of the City's knowledge after reasonable investigation, 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 threatened with respect to (a) the City's organization, or existence, (b) its authority to execute and delivery 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 of Violation. To the best of the City's knowledge after reasonable investigation, (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 asset 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 Trustmark 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, except those necessary to supply an operating motor vehicle.

(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 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 with regard to Hazardous Materials on, from or affecting the Equipment, the City shall immediately notify Trustmark. 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 Trustmark'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 of 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 eq.), and the regulations adopted and publications promulgated pursuant thereto.

(e) To the extent permitted by law, the City shall indemnify and hold Trustmark

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 Trustmark 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 Trustmark or the City or any transferee or assignee Trustmark 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 under this Agreement.

4.11. Further Instruments. Upon Trustmark's request, the City shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by Trustmark to carry out more effectively the purposes of this Agreement or any other document related to the transactions contemplated by this Agreement, and all or any part of the Equipment 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. Trustmark's Advances for Performance of City's Obligations. If the City fails to perform any of its obligations under this Agreement, Trustmark is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by Trustmark (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Equipment, and any associated legal or other expenses), together with interest thereon at the lesser of 12 percent or the maximum rate allowed by law, shall be included as Additional Payments under this Agreement. The City promises to pay all such amounts to Trustmark 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 Trustmark 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 60 days of the completion of such Fiscal Year.

(b) The City shall furnish Trustmark, at such reasonable times as Trustmark shall request, all other financial information (including, without limitation, the City's annual budget as submitted or approved) as Trustmark may reasonably request. The City shall permit Trustmark or its agents and representatives to inspect the City's books and records and make copies 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 Equipment or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Equipment or any portion thereof which, if not paid, will become a charge on any interest in the Equipment, including Trustmark'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 estimated replacement cost, including installation costs, of the Equipment. Such property damage insurance shall include Trustmark as a loss payee and additional insured. The City shall provide evidence for such coverage to Trustmark 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 liability insurance in an amount not less than $1,000,000 for personal injury or death and $1,000,000 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 Trustmark, provided that in lieu of such policies there may be deposited with Trustmark 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 Trustmark evidence satisfactory to Trustmark 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 Trustmark's prior written consent.

(f) Trustmark 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 Trustmark.

(g) The City shall deliver to Trustmark 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.

4.17. Federal Tax Certificate. Upon the execution of this Agreement, unless waived by Lessor, Lessee will provide to Lessor a Federal Tax Certificate in the form attached hereto as Exhibit "C".

4.18. Attorney Opinion Letter. Upon the execution of this Agreement, Lessee will provide to Lessor an opinion of its legal counsel in the form attached hereto as Exhibit "D".

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. Upon delivery and installation of the Equipment, Lessee will provide Lessor with a completed and executed Certificate of Acceptance in the form attached hereto as Exhibit "E". If Lessee fails to execute and deliver a Certificate of Acceptance within five (5) business days after delivery and installation of the Equipment, Lessee shall be deemed to have done so.

5.02. Changes in Location. The City shall promptly inform Trustmark 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, the Equipment can be acquired and installed for a total price within the total amount of funds to be available pursuant to this Agreement. If the total amount available for such purposes shall be insufficient to pay the entire costs 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 Trustmark has not designed the Equipment, that Trustmark has not supplied any plans or specifications with respect thereto and that Trustmark (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 of implied, that the Equipment or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury to damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the City intends therefore, or (iii) is safe in any manner or respect.

THE EQUIPMENT IS DELIVERED AS IS, AND TRUSTMARK 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 MERCHANT ABILITY 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; 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 Trustmark.

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

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

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

5.06. Compliance with Requirements.

(a) The City shall use its best efforts to cause the Equipment to be used 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 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 for any municipal purpose 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 interests of and all of the Trustmark'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 Trustmark shall have no interest; provided, however, that any such property which becomes permanently affixed to the Equipment shall be subject to Trustmark's interest arising under this Agreement if Trustmark 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. [Reserved].

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

5.12. [Reserved].

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 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 Trustmark for any expense incurred by Trustmark to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, with interest thereon at an interest rate equal to the lesser of 12 percent or the maximum rate allowed by law.

5.14. Damage and Destruction; Use of Net Proceeds.

(a) The City shall promptly notify Trustmark if (i) the Equipment 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 $50,000.00, 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 Trustmark 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 $50,000.00, 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) designated by Trustmark for 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. 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 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 , 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 Trustmark, unless Trustmark 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 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 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.

(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. Trustmark may, without 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) Avail itself of all available remedies under this Agreement, and recovery of attorneys' fees and other expenses.

6.03. Nonsubstitution. If this Agreement is terminated by Lessee in accordance with Section 6.04, Lessee agrees that for a period of one year after termination, to the extent allowed by law, it will not purchase or lease other property or contract with any third party to perform the same functions as, or functions taking the place of, those performed by the Equipment; provided, however, that this restriction shall not be applicable in the event the Equipment previously has been sold by Lessor and the amount received from such sale, less all costs of such sale, is sufficient to pay the Required Payments.

6.04. Consequences of Nonappropriation. Upon an Event of Nonappropriation, the City shall have no further obligation to pay Required Payments beyond the end of the Fiscal Year for which amounts have been appropriated for Required Payments. This Agreement shall terminate on the last day of the Fiscal Year for which amounts have been appropriated for Required Payments without any penalty to the City whatsoever. The City agrees to peaceably surrender possession of the Equipment to Trustmark 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 Trustmark.

In addition, upon the occurrence of any Event of Nonappropriation, Trustmark may, without any further demand or notice, 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 occurring prior to the Event of Nonappropriation, or of liability under those provisions of this Agreement which is 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 the will of Trustmark), and thereupon the City (a) shall pay monthly in advance to Trustmark a fair and reasonable rental value for the use and possession of the Equipment (in an amount Trustmark shall determine in its reasonable judgment), and (b) upon Trustmark's demand, shall deliver possession of the Equipment to Trustmark or, at Trustmark'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, Trustmark, 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 Trustmark shall reasonably deem appropriate. Trustmark 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 Trustmark, 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 Trustmark employs an attorney to assist in enforcement or collection of Required Payments, or if Trustmark 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 attorney's 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 lesser of 12 percent or the maximum rate allowed by law) 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 1001 W. Park St., Panama City, Florida 32404, Attention: Mayor.

(ii) If to Trustmark, to 2315 Highway 77, Lynn Haven, Florida 32444, Attention: Administration/Municipal and Tina Rutherford.

(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 Trustmark. Trustmark may, at any time and from time to time,

assign all or any part of its interest in the Equipment or this Agreement, including, without limitation, Trustmark's rights to receive Required Payments. Any assignment made by Trustmark or any subsequent assignee shall not purport to convey any greater interest or rights than those held by Trustmark pursuant to this Agreement.

The City agrees that this Agreement may become part of a pool of obligations at Trustmark's or assignee's option. Trustmark 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 Trustmark'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 Trustmark'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 payment agent for Trustmark.

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 terms or provision of this Agreement may be amended, modified or waived without the prior written consent of the City and Trustmark.

7.05. Governing Law. The City and Trustmark intend that Florida State law shall govern this Agreement.

7.06. Liability of Officers, Employees 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, employees 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:

By: _____
Jami Hinrichs, City Clerk

CITY OF PARKER, FLORIDA

By: _____
Andrew Kelly, Mayor

TRUSTMARK NATIONAL BANK

Printed Name: _____

Title: _____

By: _____

EXHIBIT "A"

2023 Freightliner Truck with VIN Number 1FVACXFC8RHUW7076

LEASE- PURCHASE AGREEMENT
DATED AS OF _____, 2023
FEDERAL TAX CERTIFICATE

Pursuant to the Code and regulations thereunder, I, the undersigned Mayor of the City of Parker, Florida, a public body of the State of Florida (the "Lessee"), execute and deliver this certificate for the benefit of all persons interested in the exemption from federal income taxation of the interest to be paid on the Lease-Purchase Agreement (the "Lease") for the purchase of the equipment detailed in Exhibit "A", attached hereto, between the Lessee and Trustmark National Bank, as lessor ("Lessor") dated June _____, 2023, and the tax treatment thereof under the Code.

This certificate may be relied upon as the certificate of the Lessee and is executed for the purpose of establishing the facts and reasonable expectations of the Lessee regarding the Lease. It is based upon facts, circumstances, estimates and expectations of the Lessee on the later to occur of the date on which the Certificate of Acceptance was executed and delivered or funds were disbursed by the Lessor in payment for the Equipment described therein (the "Closing Date"), and, to the best of my knowledge and belief, the expectations of the Lessee set forth herein are reasonable. I certify as follows:

1. I am the duly chosen, qualified and acting Mayor or Mayor Pro Temp of the Lessee and as such I am charged with the responsibility for executing the Lease. I am familiar with the facts herein certified, and I am duly authorized to execute and deliver this certificate on behalf of the Lessee.

2. The Lessee has not been notified by the Internal Revenue Service of any listing or proposed listing of its disqualification as an issuer whose certification of its reasonable expectations as to future events on the date of issue of the Lease may not be relied upon by holders of obligations of the Lessee because it made a previous certification which contained a material misrepresentation.

3. The Lease is being issued for the purpose of acquiring the Equipment described in the Lease for use by the Lessee, a governmental use within the meaning of the Code, and is therefore not a private activity bond as such term is defined in the Code. The use of the Equipment by any person other than a governmental unit (including any activity carried on by a person other than a natural person) shall not exceed ten percent (10%) of the total use thereof.

4. The total cost of the Equipment (including the expenses of issuing the Lease) to be financed pursuant to the Lease is $198,214.84. The balance, if any, of the Equipment costs will be provided by the Lessee from its own funds. The amount which the Lessee expects to receive pursuant to the Lease does not exceed the amount required for the aforementioned purpose.

5. The Lessor will acquire the Equipment from a vendor and will thereupon lease the Equipment to the Lessee pursuant to the Lease. The acquisition of the Equipment will not require any construction.

6. The Lessee reasonably expects that on the Closing Date the funds needed to acquire the Equipment will be disbursed by the Lessor pursuant to the Lease, and the Lease will thereupon constitute the obligation of the Lessee to repay said funds. The total amount of advances by the Lessor shall not exceed $198,214.84.

7. The Lessee does not expect the Equipment to be sold or otherwise disposed of, in whole or in part, or for any transaction or series of transactions to occur prior to the termination of the Lease which would enable the Lessee to allow the Lease to remain in force longer than would otherwise be necessary.

8. The Lessee reasonably expects that there will be no investment of money received by Lessee pursuant to the Lease and consequently no investment or reinvestment income therefrom.

9. The Lessee reasonably expects that no separate fund of the Lessee will be used to pay the principal and interest components of the Required Payments on the Lease.

10. The Lessee is a governmental unit or owned by a government unit with general taxing powers; no obligation of the Lessee pursuant to the Lease (collectively the "Obligations") is a private activity bond (as defined in the Code); and ninety-five percent (95%) or more of the net proceeds of the Obligations are to be used for local governmental activities of the Lessee.

11. (a) The Lessee covenants and certifies to and for the benefit of the owners of the Obligations that it will neither take any action nor omit to take any action nor make any investment or use of the proceeds from the issue and sale of the Obligations, including amounts treated as proceeds, if any, which will cause the Obligations to be classified as arbitrage bonds within the meaning of Section 148 of the Code, as amended, supplemented or superseded, and any regulations as such may be applicable to the Obligations, at the time of such action, investment or use.

(b) (i) The Lessee hereby determines and represents that no rebate relating to the Obligations will be required to be made under the Code. However, in the event it is subsequently determined for any reason that rebates should be made on the Obligations, then the Lessee shall take all actions necessary in order to comply with the requirements of Subsection 148(f) of the Code ("Subsection 148(f)") in order that none of the Obligations shall be treated as an arbitrage bonds pursuant to Subsection 148(f), including payment of all amounts, if any, required to be paid to the United States in accordance with and within the time limits prescribed in the making of any and all calculations, computations and filings required pursuant to, and the maintenance of all such records as may be required pursuant to Subsection 148(f) and the Regulations, thereunder.

(ii) In the event it is determined that a rebate is required to the United States to avoid the Obligations being treated as arbitrage bonds under Subsection 148(f), then, in order to assure that there will be funds available to make any payments required pursuant to Subsection 148(f), the Lessee shall establish a separate and special account of the Lessee (to be designated the Rebate Account) into which the Lessee shall deposit: on or before the 30th day following each bond year (as hereinafter defined), (A) an amount equal to the excess of all earnings on all non-purpose investments (within the meaning of Subsection 148(f) over the amount which would have

been earned if such non-purpose investments had been invested at a rate equal to the yield (computed in accordance with Subsection 148(f) on the Obligations which amounts shall be credited to a fund designated the Excess Income Fund; and (B) all amounts earned on amounts in the Rebate Account, which amounts shall be credited to a fund designated as the Rebate Account Earning Fund. Amounts in the Rebate Account shall be used solely and only to make payments of rebates to the United States as required pursuant to Subsection 148(f), provided that, if at any time the amount in the Rebate Account exceeds the amount which, together with all amounts previously paid to the United States with respect to the Obligations pursuant to Subsection 148(f), will equal the amount which would be required to be rebated to the United States as a result of earnings on non-purpose investments received during the period beginning on the date of delivery of the Obligations and ending on the date of computation, the Lessee may, in its discretion, withdraw such excess from the Rebate Account and apply such monies to the rental payments due under the Lease or, if all payments due on the Obligations shall have been paid in full, and all rebates to the United States payable pursuant to Subsection 148(f) shall have been paid in full, the Lessee may use the amount withdrawn for any purpose permitted under the applicable laws of the State of Florida.

(iii) As used above, the term "Bond Year" shall mean the one-year period beginning on the date of delivery of the Obligations made each succeeding one-year period beginning on the day succeeding the immediately preceding Bond Year, or shall have such other meaning based on facts and circumstances relating to the Obligations as shall be specified in the Subsection 148(f) Regulations.

(c) The Lessee shall not intentionally use any portion of the proceeds (within the meaning of Subsection 148(a) of the Code and any regulations promulgated pursuant thereto) of the Obligations to acquire higher yielding investments (as defined in Subsection 148(a) of the Code and all regulations promulgated pursuant thereto) or to replace funds which were used directly or indirectly to acquire higher yielding investments, except to the extent specifically permitted pursuant to Section 148 of the Code and any regulations promulgated thereunder.

(d) The Lessee shall not purchase or acquire any investment property with proceeds (within the meaning of Section 148 of the Code) of the Obligations in a manner or for a price which would cause any of the obligations to be or become an arbitrage bond, within the meaning of Section 148 of the Code and the regulations promulgated thereunder, including, without limitation, to the extent prescribed by applicable regulations, investments (regardless of yield) which do not comply with the provisions of any regulations intended to assure that obligations are acquired at their "market price."

(e) In connection with the delivery of the Obligations, the Lessee has not and will not engage in any transaction or series of transactions that attempts to circumvent the provisions of section 148 of the Cede and the Treasury Regulations issued thereunder or applicable thereto (a) enabling the Lessee to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (b) increasing the burden on the market for exempt obligations, including, without limitation, the delivery of obligations in the nature of the Obligations that would not otherwise be sold, the incurring of more obligations in the nature of the Obligations than would otherwise be necessary, or the incurring of such obligations sooner, or

allowing them to remain outstanding longer, than would otherwise be necessary.

12. (a) The Obligation(s) are not private activity bonds within the meaning of Section 141 of the Code.

(b) No more than 10% of the proceeds of the Obligation(s) will be used, directly or indirectly, in a trade or business (within the meaning of Section 141 of the Code and including any activity carried on by any person other than a natural person) carried on by any person other than a governmental unit (within the meaning of Section 141 of the Code and specifically excluding the United States of America or any agency or instrumentality thereof).

(c) No more than 10% of any property with respect to which all or any part of the proceeds of the Obligation(s) will be used, directly or indirectly, in a trade or business (within the meaning of Section 141 of the Code and including any activity carried on by any person other than a natural person), other than a governmental unit (within the meaning of Section 141 of the Code and specifically excluding the United States of America or any agency or instrumentality thereof).

(d) None of the proceeds of the Obligation(s) will be used for any private business use (within the meaning of Section 141 of the Code) which is not related to a governmental use (within the meaning of Section 141 of the Code) of such proceeds.

(e) The amount of proceeds of the Obligation(s) used with respect to any private business use which is related to a governmental use of such proceeds will not exceed the amount of proceeds of the Obligation(s) which are to be used for the governmental use to which such private business use relates.

(f) None of the proceeds of the Obligation(s) will be used to make or finance loans for persons other than governmental units.

(g) In no event will the payment of the principal of or the interest on more than 10% of the proceeds of the Obligation(s) be (under the terms of the Lease or any underlying arrangement) directly or indirectly secured (within the meaning of Section 141 of the Code) by any interest in property used or to be used in a private business use or payments in respect to such property or to be derived from payments (whether or not to the Lessee) in respect of property or borrowed money used or to be used for a private business use. No party (other than a governmental unit) which shall use all or any part of the property acquired pursuant to the Lease shall make any payments to the Lessee which are in any way related to any property acquired pursuant to the Lease or in any other way related thereto, if the aggregate of all such payments from all such private parties shall in any year equal or exceed 10% of the principal or interest portion of the Required Payments under the Lease payable during such year, unless the Lessee shall have received an opinion of nationally recognized bond counsel to the effect that receipt of such payments will not adversely affect the exclusion of interest on the Lease from gross income for federal income tax purposes.

13. The Lessee covenants and certifies that there are no other obligations heretofore issued or to be issued by or on behalf of any state, territory or possession of the United States, or political

subdivision of any of the foregoing, or of the District of Columbia, by or for the benefit of the Lessee, which (1) were or are to be sold at substantially the same time as the Obligation(s), (2) was or is to be sold at substantially the same interest rate as the Interest Component of the Required Payments, (3) was or is to be sold pursuant to a common plan of marketing as the marketing plan for the Obligation(s), and (4) is payable directly or indirectly by the Lessee or from the source from which the Obligation(s) is payable. The Lessee covenants and certifies that there are no additional facts or circumstances which may further evidence that the Obligation(s) is part of any other issue of obligations.

14. The Lessee covenants and certifies that no payment of principal of or interest on the Obligation(s) is or will be guaranteed (in whole or in part, directly or indirectly) by the United States, or any agency or instrumentality thereof or any entity with statutory authority to borrow from the United States. The Lessee represents, warrants and covenants that none of the proceeds of the Obligation(s) will be: (a) used to make loans, the payment of principal of or interest on which is or will be guaranteed (in whole or in part, directly or indirectly) by the United States or any agency or instrumentality thereof or any entity with statutory authority to borrow from the United States, or (b) invested (directly or indirectly) in any deposit or account which is insured under federal law by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration or any similar federally chartered corporation, other than: (i) the investment of the proceeds of the Obligations for an initial temporary period (within the meaning of subparagraph 3(B) of Subsection 149(b) of the Code) until such proceeds are needed for the purpose for which the Obligations are being issued; (ii) investments of a bona fide debt service fund (within the meaning of Subparagraph 3(B) of Subsection 149(b) of the Code); (iii) investments of a reserve which meets the requirements of Subsection 148(d) of the Code; (iv) investments in notes issued by the United States Treasury; (v) or other investments permitted under regulations promulgated by the Internal Revenue Service pursuant to Subsection 149(b) of the Code.

15. The Lessee covenants and certifies that, notwithstanding any provision of this Certificate or the rights of the Lessee hereunder, the Lessee will not take or permit to be taken on its behalf any action which would impair the exemption of interest on the Obligation(s) from federal income taxation, and it will take such reasonable action as may be necessary to continue such exemption, including, without limitation, the preparation and filing of any statements required to be filed by it in order to maintain such exemption.

All representations, warranties and covenants contained in the Lease are true and correct as of the date of this Certificate.

Dated as of _____, 2023

CITY OF PARKER, FLORIDA

ATTEST: _____
Jami Hinrichs, City Clerk

By: _____
Andrew Kelly, Mayor