

**CHARTER TOWNSHIP OF JAMESTOWN
COUNTY OF OTTAWA, MICHIGAN**

At a regular meeting of the Township Board of the Charter Township of Jamestown, Ottawa County, Michigan, held in the Township Hall, in said Township on the 18th day of September, 2017, at 7:00 p.m.

PRESENT: Members: Bergwerff, DeHaan, Brouwer, Tacoma, Altman, Oskin, Miller

ABSENT: Members: None

The following preamble and resolution was offered by Member Altman and supported by Member DeHaan:

RESOLUTION NO. R17-010

**RESOLUTION TO AUTHORIZE
THE FINANCING OF A NEW TOWNSHIP FIRE HALL
BY INSTALLMENT PURCHASE AGREEMENT**

WHEREAS, the Charter Township of Jamestown (the "Township") is authorized by Act 99 of the Public Acts of Michigan of 1933, as amended ("Act 99"), to purchase real or personal property for public purposes, and to pay for such property in installments over the lesser of a period of fifteen years or the useful life of such property; and

WHEREAS, the Township proposes to purchase a new fire hall, as more particularly described on Exhibit A attached hereto, which constitutes real and personal property within the meaning of Act 99 (the "Property"), from a contractor to be selected by the Township following the receipt of construction bids (the "Vendor") and at a purchase price to be established based upon the receipt of construction bids (the "Purchase Price"), which Purchase Price is estimated to be \$3,500,000 based on pre-construction bid estimates, all as set forth on Exhibit A attached hereto; and

WHEREAS, it is in the best interest of the Township to obtain financing for a portion of the Purchase Price in the not to exceed amount of \$2,500,000 (the "Financed Amount"); and

WHEREAS, the Financed Amount, when added to the currently outstanding balance of all other installment purchases made of real and personal property by the Township pursuant to Act 99, less permitted exceptions, does not exceed \$4,193,286, which is one and one quarter of one percent (1-1/4%) of the 2017 Taxable Value of the real and personal property in the Township.

NOW, THEREFORE, BE IT HEREBY RESOLVED AS FOLLOWS:

1. The Township Board determines that it is necessary and in the best interest of the Township to purchase the Property for an amount not to exceed the Purchase Price and to utilize such Property for public and Township purposes. The difference between the Purchase Price and the Financed Amount shall be paid to the Vendor from Township funds on hand and the payment of said amount is hereby appropriated and/or ratified.
2. The Township Board determines that it is necessary and in the best interests of the Township to finance the purchase of the Property pursuant to Act 99. The Financed Amount shall be financed by an installment purchase agreement as provided in this Resolution.
3. The useful life of such Property is hereby determined to be not less than fifteen (15) years.
4. An Installment Purchase Agreement by and between the Township, a bank to be selected by the Township following the receipt of financial proposals, and the Vendor in the form attached to this Resolution as Exhibit A (the "Installment Purchase Agreement") is hereby approved, with such additions, deletions or modifications as are determined to be in the best interest of the Township following the receipt of financing proposals from local area banks and financial institutions.
5. The Township Treasurer is hereby designated as the Registrar for the Installment Purchase Agreement.

6. The Installment Purchase Agreement is hereby designated as a “qualified tax exempt obligation” for purposes of deduction of interest expense by financial institutions under the provisions of Section 265(b)(3) of the Code, it being reasonably anticipated that the aggregate amount of qualified tax exempt obligations which will be issued by the Township and all subordinate entities to the Township shall not exceed \$10,000,000 during calendar year 2017.

7. The obligation of the Township to pay the principal installments of the Financed Amount and interest thereon shall be a limited tax general obligation of the Township subject to applicable statutory and constitutional limitations.

8. The Township shall at all times have control of the Property and shall maintain the same for public use and public purposes.

9. The Township shall include in its annual general fund budget such sum or sums as may be necessary to pay and satisfy all payments when due under the Installment Purchase Agreement.

10. The Supervisor of the Township, acting with Mika Meyers PLC, Township Attorneys, and Bendzinski & Co. Municipal Advisors, of Detroit, as registered municipal advisor, (the “Registered Municipal Advisor”), is authorized and directed to prepare financing specifications to be sent to local area banks and financial institutions by the Registered Municipal Advisor, on behalf of the Township, and to report the results of such proposals following receipt of the proposals, to the Township Board for award of the financing of the Project. The Township Board hereby ratifies and confirms the selection of Bendzinski & Co Municipal Advisors, as Registered Municipal Advisor for the financing of the Project.

11. The Township Supervisor, the Township Clerk and/or the Township Treasurer are hereby authorized to execute and file the Installment Purchase Agreement, and all documents,

EXHIBIT A

<u>Description of Property</u>	<u>Vendor</u>	<u>Purchase Price</u>
Construction of an approximate 13,274 square foot new fire station consisting of three (3) drive-through apparatus bays, an approximate 899 square foot mezzanine, and approximately 7,088 square feet of office, training, living, and support spaces, and related appurtenances, to be designated as "Jamestown Township Fire Station No. 1" and located at 3240 24th Avenue in the Township	To be determined based on receipt of construction bids	To be determined based on receipt of construction bids

EXHIBIT B
INSTALLMENT PURCHASE AGREEMENT

§ _____
INSTALLMENT PURCHASE AGREEMENT

THIS INSTALLMENT PURCHASE AGREEMENT (the "Agreement") is dated as of _____, 2017, by and between the CHARTER TOWNSHIP OF JAMESTOWN, a Michigan charter law township (the "Township"), _____, a _____ (the "Vendor"), and _____ (the "Bank"), as assignee of certain of Vendor's rights in the Agreement as provided herein.

WHEREAS, the Township is the Owner and the Vendor is the _____ pursuant to that certain _____, by and between the Township and the Vendor and dated as of _____, 2017 (the "Contract"), relating to the purchase by construction of _____ (the "Property") to be located on lands owned or controlled by the Township within the Township; and

WHEREAS, the Township proposes to pay for all or a portion of the Property in installments in accordance with Act 99 of the Public Acts of Michigan of 1933, as amended ("Act 99").

NOW, THEREFORE, in consideration of their mutual undertakings and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Acquisition of Property; Payment of Contract Sum.** The Township agrees to purchase the Property, as defined in the Contract, for the maximum price of \$_____ as set forth in the Contract (the "Contract Amount"). The amount of \$_____ (the "Financed Amount") for the Property will be financed through this Agreement and the Financed Amount shall be paid by the Township to the Vendor in the manner provided in this Agreement. The difference between the Contract Amount and the Financed Amount, if any, shall be paid by the Township to the Vendor in accordance with the Contract, from available Township funds on hand.

2. **Payment of Financed Amount in Installment Payments.**

a. The Financed Amount shall be payable by the Township to the Vendor at the times and in the amounts set forth in subparagraph b.

b. The Township shall pay the Financed Amount plus interest on the unpaid outstanding principal balance thereof as follows (the "Installment Payments"):

(1) Principal shall be payable [to be inserted based on financing bids];

(2) Interest shall accrue from the date of this Agreement on the unpaid principal balance as follows: [to be inserted based on financing bids];

(2) Interest shall be computed on the basis of a 360-day year, comprised of twelve 30-day months, for the actual number of days elapsed.

(3) Installment Payments shall be applied first to accrued interest and then to principal.

(4) At the Township's option, the unpaid principal portion of the Installment Payments and the accrued interest thereon may be prepaid in part or in full at any time, in such order of maturity as shall be determined by the Township without premium or penalty. The Township shall provide ten (10) days written notice to the Bank of any prepayment.

3. **Assignment by Vendor to Bank.** The Vendor hereby assigns (the "Assignment") to the Bank the Vendor's right to receive the Installment Payments in accordance with Paragraph 2, in consideration of (a) the payment by the Bank of an amount equal to the Financed Amount to the Township in accordance with Paragraph 4(a); and (b) the obligation of the Township to make payment(s) to the Vendor in accordance with Paragraph 4(b). It is expressly agreed between the

Vendor, the Township and the Bank that as a condition of Vendor's assignment to Bank that the Township shall make all Installment Payments directly to the Bank.

4. **Payment by Bank; Construction Fund; Useful Life.**

a. The Bank, as assignee of the rights of the Vendor to receive the Installment Payments, will pay to the Township, upon execution of this Agreement, an amount equal to the Financed Amount.

b. The Township shall, upon receipt of such payment by the Bank, deposit an amount equal to the Financed Amount, into a segregated depository account (the "Construction Fund") to be held by the Township solely for the purpose of paying the Financed Amount to Vendor in accordance with the Contract. The funds on hand in the Construction Fund may be invested by the Township in investments permitted by the Township investment policy. Any balance remaining in the Construction Fund after payment in full to the Vendor pursuant to the Contract shall be applied towards the next Installment Payment due under Paragraph 2.

c. The Township, in reliance on the certification of _____, certifies to the Bank that the useful life of the Property is equal to or longer than the term of the Installment Payments, e.g., _____ years.

5. **Consent by Township to Assignment by Vendor to Bank.** The Township hereby consents to the Assignment. The warranties and other obligations of the Vendor set forth in the Contract, and Paragraph 8 of this Agreement shall remain the sole responsibility of the Vendor and shall not be assignable. The Vendor hereby acknowledges that all of said warranties and other obligations shall not be assigned and shall remain the sole responsibility of the Vendor. With respect to the Bank, the Township hereby waives any defenses based upon warranty, failure or inability of the Vendor to perform its non-assignable obligations or the failure of title to the Property. The

Township's obligation to the Bank is absolute and unconditional and shall remain in full force and effect until the amounts owed hereunder shall have been paid by the Township to the Bank, and such obligation shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following:

- a. Any failure of title with respect to the Vendor's interest in the Property or the invalidity, enforceability or termination of this Agreement;
- b. The modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in this Agreement;
- c. The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment or other similar proceedings affecting the Vendor or any of its assets or any allocation or contest of the validity of this Agreement, or the disaffirmance of this Agreement in any such proceedings;
- d. To the extent permitted by law, any event or action which would, in the absence of this clause, result in release or discharge by operation of law of the Vendor from the performance or observation of any obligation, covenant or agreement contained in this Agreement or the Contract;
- e. The default or failure of the Vendor fully to perform any of its obligations set forth in this Agreement, the Contract, or any other agreement; or
- f. Any casualty or destruction of the Property.

6. **Representation and Warranty of Vendor.** The Vendor represents and warrants that the Assignment does not violate any agreement, contract, or loan agreement to which it is a party and

that the Agreement has been duly executed and delivered by the Vendor. After the payment by the Bank of an amount equal to the Financed Amount to the Township in accordance with Paragraph 4(a), the Vendor acknowledges that the Bank shall have no liability for payment of monies to the Vendor or for the performance of any obligations to the Vendor.

7. **Limited Tax General Obligation.** The obligation of the Township to pay the Installment Payments hereunder is a general obligation of the Township secured by its full faith and credit, which shall include the Township's limited tax obligation, within applicable constitutional and statutory limits, and the Township's general funds. The Township shall include in its annual General Fund budget and pay each year, until this Agreement is paid in full, such sum or sums as may be necessary each year to pay the Installment Payments when due.

8. **Delivery Date; Warranties.** The Vendor will deliver the Property and the title thereto in the manner and at the times set forth in the Contract. Warranties, if any, with respect to the Property shall not be assigned by Vendor to Bank but shall remain enforceable by the Township against Vendor in accordance with the Contract.

9. **Tax Covenant.** The Township covenants and agrees that it shall take all actions within its control and that it shall not fail to take any action as may be necessary to maintain the exclusion of the interest portion of the Installment Payments from gross income within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"). In addition, the Township hereby covenants that it will make no use of the proceeds of the Agreement which, if such use had been reasonably expected on the date of the Agreement, would have caused the Agreement to be considered an "arbitrage bond," as defined in Section 148 of the Code. This Agreement has been designated as a "qualified tax-exempt obligation" by the Township, within the meaning of Section 265(b)(3) of the Code, it being reasonably anticipated that the aggregate amount of qualified

tax-exempt obligations which will be issued by or on behalf of the Township and all subordinate entities to the Township, including this Agreement, shall not exceed \$10,000,000 during calendar year 2017.

10. **Compliance with Act 99.** The Township covenants and agrees that the Township shall at all times have control of the Property and shall maintain the same for public use and purposes, and that it shall otherwise take all actions within its control and that it shall not fail to take any action as may be necessary to comply with Act 99.

11. **Conditions for Transfer or Assignment by Bank.**

a. This Agreement may not be transferred or assigned by the Bank, except by appropriate entry in the register maintained by the Township, it being the intention that this Agreement be registered within the meaning of Section 149(a) of the Code.

b. The Agreement has been issued to the Bank as sole purchaser of the Agreement in a principal amount equal to the Financed Amount and may not be subsequently traded, sold, or transferred by the Bank whether by participation interests or otherwise in any principal amount of less than \$100,000 other than through a primary offering under the federal securities laws, including compliance to the extent applicable with SEC Rule 15c 2-12.

12. **Entire Agreement; Conflict.** Except for the Contract, this Agreement constitutes the entire agreement of the parties. All other prior or contemporaneous agreements, understandings, representations and statements, oral or written, are hereby terminated. In the event of a conflict in terms between the Contract, and this Agreement, the specific terms of this Agreement shall govern.

13. **Amendments.** Any attempt to modify the terms of this Agreement or of any supporting document shall be ineffective unless approved in writing by all of the parties hereto. Any

provision of this Agreement not concerning Vendor may be modified by agreement of the Bank and Township only.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first set forth above.

CHARTER TOWNSHIP OF JAMESTOWN

By _____
Ken Bergwerff
Its: Township Supervisor

By _____
Candy DeHaan
Its: Township Clerk

_____, as Vendor

By _____
Its: _____

_____[Bank]_____

By _____
Its: