

MICHIGAN TOWNSHIPS ASSOCIATION
56th ANNUAL EDUCATIONAL CONFERENCE
JANUARY 28 – 30, 2009

FINANCING THROUGH
INSTALLMENT AGREEMENTS

By: Robert E. Thall, MTA Legal Counsel
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458 West South Street
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(269) 382-4500
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I. INSTALLMENT PURCHASE AGREEMENT

P.A. 99 of 1933, MCL §123.721 through §123.723.

MCL § 123.721

Purchase of real or personal property; contract or agreement; limitations; exceptions.

Sec. 1. (1) A village, township, city, or school district, after adoption of a resolution by its governing body approving the action, may enter into any contract or agreement for the purchase of real or personal property for public purposes, to be paid for in installments over a period of not to exceed 15 years and not to exceed the useful life of the property acquired as determined by the resolution. For school buses, the determined useful life shall not exceed 6 years. The outstanding balance of all purchases authorized under this act, exclusive of interest, shall not exceed 1-1/4% of the taxable value of the real and personal property in the village, township, city, or school district at the date of the contract or agreement. The limitations do not apply to contracts or leases entered into under 1948 (1st Ex Sess) PA 31, MCL 123.951 to 123.965, or to other contracts or leases between public corporations or municipalities. The contracts or agreements, and the purchase of property under the contracts or agreements are not subject to the provisions of the municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) The governing body of a village, township, city, or school district may include in its budget and pay a sum or sums as may be necessary each year to meet the payments of any installments, and the interest thereon, when and as the installment becomes due, including overdue installments.

(3) The authority granted in this act shall not be construed to authorize the governing body of a city, village, township, or school district to levy taxes in excess of statutory or charter limitations without the approval of its electors.

(4) The limitations imposed by subsection (1) are not applicable to a contract for purchase of lands declared surplus by the United States government or one of its agencies, subject to the prior approval of the contract by the department of treasury.

MCL § 123.722

Use and leasing.

Sec. 2. Such property may be used for any useful public purpose, and by resolution of the legislative body of any village and/or township and/or city, any portion of any real estate or building, may be leased or otherwise let to the local school board for educational purposes, and may also be rented by day to day agreement for educational, charitable or entertainment purposes. The revenue from any such rentals shall be applied in the payment of any installment, and/or the interest thereon, until the purchase price of such property is wholly paid for, or for the maintenance and improvement of the same. Thereafter such revenues shall be covered into the general fund of such village and/or township and/or city.

MCL § 123.723

Village, township, city and school district property; control and maintenance.

Sec. 3. The governing body of a village, township, city, or school district shall at all times have control of property purchased under this act and shall maintain the property for public use and purposes.

II. PLANS/BIDS/BUILDING REQUIREMENTS

- A. Plans - Building Requirements
- B. Bid Requirements
- C. Bidder Requirements, MCL §123.501

MCL § 123.501

Bidders on public works; statement as to qualifications, notice of rejection.

Sec. 1. Any officer, board, commission, committee or department of the state, county, city, village, or township government authorized to receive bids for the construction, maintenance and/or repair of public works, except public buildings, may require that any person proposing to bid on any such work, submit a sworn statement at least 10 days before bids are opened on such standard form and in such detail and at such time as may be deemed necessary by said officer, board, commission, committee or

department, setting forth his qualifications to satisfactorily carry out the work to be performed within the time specified for such performance. Said qualifications may be judged by said officer, board, commission, committee or department upon the basis of the proposed bidder's past performance on work of a similar nature, his financial resources and his construction equipment and facilities which he proposes to use on the work advertised for construction as disclosed by such sworn statement and any other available information and a determination made whether or not the proposed bidder is a suitable person to bid on the work. Any person determined not to be a suitable person to bid on any proposed work shall be notified in writing 5 days before bids are opened of such determination.

III. BONDING REQUIREMENTS

MCL §129.201

Principal contractor furnishing performance and payment bond; irrevocable letter of credit in lieu of bond, common carrier, operator of state subsidized railroad.

Sec. 1. Before any contract, exceeding \$50,000.00 for the construction, alteration, or repair of any public building or public work or improvement of the state or a county, city, village, township, school district, public educational institution, other political subdivision, public authority, or public agency hereinafter referred to as the "governmental unit", is awarded, the proposed contractor, hereinafter referred to as the "principal contractor", shall furnish at his or her own cost to the governmental unit a performance bond and a payment bond which shall become binding upon the award of the contract to the principal contractor. However, if the principal contractor is a common carrier as defined in section 3 of Act No. 300 of the Public Acts of 1909, as amended, being section 462.3 of the Michigan Compiled Laws, or the designated operator of a state subsidized railroad, the principal contractor may provide an irrevocable letter of credit from a state or national bank or a state or federally chartered savings and loan association instead of the bonds. Neither the invitation for bids, nor any person acting, or purporting to act, on behalf of the governmental unit shall require that the bonds be furnished by a particular bank or surety company, or through a particular agent or broker, or through a bank, company, agent, or broker in any particular locality.

IV. THE INSTALLMENT PURCHASE AGREEMENT PROCESS

Attachments:

- A. Letter of explanation
- B. Letter re: completion
- C. Resolution approving installment purchase agreement
- D. Act 99 installment purchase agreement
- E. Assignment
- F. Act 99 certificate
- G. Non-arbitrage certificate
- H. Legal opinion

January 29, 2009

Mr. _____
Senior Vice President
_____ Bank and Trust Company
220 S. Main Street
_____, MI _____

Re: Installment Purchase Agreement

Dear Mr. _____:

I am writing on behalf of _____ Township located near _____, Michigan. They asked that I provide you with the background information regarding installment purchase agreements under Michigan law.

As we discussed on the phone, as an alternative to bonding or the issuance of tax anticipation notes, there is another financing mechanism known as installment purchase agreements under Act 99 of 1933. These contracts have been used for a long period of time by municipalities to purchase fire trucks and police vehicles. However in the late 1980's several banks and several attorneys around the state sought and received approval from the Michigan Finance Commission to use these agreements to purchase any type of improvement, whether it be real or personal.

As I indicated when we spoke, I wanted to provide you with an outline of how the standard installment purchase agreement proposed by _____ Township for a township hall might be handled.

Under P.A. 99 of 1933, the Township may purchase, pursuant to an installment purchase agreement, any real or personal property that it is otherwise authorized for Township purposes. The installment purchase agreements are subject to certain restrictions which are as follows:

1. Installments cannot exceed 15 years;
2. The installment period cannot exceed the useful life of the property acquired;
3. The balance of all purchases authorized under Act 99 cannot exceed 1.25% of the taxable value of the real and personal property within the Township;

4. The purchase must be authorized by resolution of the Township Board.

Often a contractor cannot afford to finance the improvement, in this case, the construction of a township hall. Therefore, a bank often enters the picture, and through a series of transactions, arranges for the financing. Since the Township cannot directly "borrow" from a bank, the format for an installment purchase agreement is generally as follows:

- a. The Township Board authorizes an installment purchase agreement for the construction of the township hall with contractor X.
- b. The Township and contractor X enter into an installment purchase agreement for construction of the township hall.
- c. The agreement is coordinated with a local bank to arrange interest charges and terms of payment.
- d. Contractor X assigns his interest in the payments to the bank.
- e. The installment purchase financing agreement is contingent upon the Township providing the following where required by the bank:
 - i. The Township issues a general nonarbitrage certificate, i.e., guarantee that the monies are not being reinvested elsewhere in violation of federal tax law.
 - ii. Township completes Form 8038-G and a letter to the Internal Revenue Service, (i.e., reports issue to I.R.S.).
 - iii. Township counsel provides an opinion of the tax exempt status of the transaction.
- f. The bank pays the funds to the contractor as the building is constructed and as required by the installment contract.
- g. Construction is completed, and the Township commences repayment on the installment purchase, pursuant to the assignment, to the bank.

I have enclosed a set of sample documents that I believe would fulfill the requirements to comply with Act 99 as follows:

- A. Resolution Approving Installment Purchase Agreement;

Mr. _____
January 29, 2009
Page 3

- B. Act 99 Certificate;
- C. Act 99 Installment Purchase Agreement;
- D. Assignment Agreement of Obligation of Township;
- E. Non-Arbitrage and Tax Compliance Certificate;
- F. IRS Form 8038-G;
- G. Legal Opinion.

If you or anyone with _____ Bank have any questions about the proposed procedure, please do not hesitate to contact me. I look forward to hearing from your municipal loan officer very soon.

Very truly yours,

BAUCKHAM, SPARKS, LOHRSTORFER,
THALL & SEEGER, P.C.

Robert E. Thall

RET/ser
Enclosures

cc: _____, Township Supervisor
_____, Township Clerk

January 29, 2009

FAXED

Ms. _____
_____ Street
P. O. Box _____
_____, MI _____

Re: _____ - Act 99 Installment Purchase Agreement - New Library

Dear Ms. _____:

I have enclosed a draft of the documents that will need to be completed in order to arrange for the installment purchase financing for _____ Township's new library building. You will see from the information that is missing in the documents that we need to have the name and address of the contractor and the name of the party signing on behalf of the contractor. We also need to have confirmation as to the purchase amount, the amount to be financed and the annualized payments. We also need the name of the contact person at the _____ Bank in _____, complete address, phone number and fax number. I would like to fax the documents to the Bank at the same time that I am faxing you a final drafts. Also for the documents we usually reference the engineer who prepared and sealed the building plans. Therefore, we need the name and address of the engineer.

Again, I am trying to move this matter ahead, given the timing and the fact the contractor wants to be paid. If you want our assistance in actualizing the amount of the payments, please let me know. Please note that we will finalize the documents and forward three sets of originals as soon as the information requested is received.

Once we have the documents in final form, I recommend that you have the Township take the following steps:

1. Convene a special meeting.
2. Enact the Resolution Approving Installment Purchase Agreement with the construction company.
3. Execute the Act 99 Installment Purchase Agreement.

Letter to Ms. _____

January 29, 2009

Page 2

4. Execute the Assignment Agreement of the Township of _____ to the construction company, with the appropriate dollar amounts and interest rates for the Agreement with _____ Bank.
5. Execute the Non-Arbitrage and Tax Compliance Certificate.
6. Have the Clerk complete the Act 99 Certificate.

Once the above final documents have been signed by the Township and contractor, please fax a copy of the same to me. I will forward the Legal Opinion regarding the authority of _____ Township to execute the Act 99 Installment Purchase Agreement to the Township and _____ Bank.

Once the Township has met and authorized the Resolution and executed the documents, you should have the construction company sign the same and forward a copy of all the documents to _____ Bank for completion of the Township's financing.

Very truly yours,

BAUCKHAM, SPARKS, LOHRSTORFER,
THALL & SEEBER, P.C.

Robert E. Thall

RET/ser

Attachments

c: Township Supervisor and Clerk, (faxed w/attachments)

TOWNSHIP OF _____
_____ COUNTY, MICHIGAN

RESOLUTION APPROVING INSTALLMENT PURCHASE AGREEMENT
WITH _____ CONSTRUCTION & SUPPLY CO.

_____, 2009

At a regular (special) meeting of the Township Board of _____, held on _____, 2009, at the Township Hall, which meeting was held in accordance with the Open Meetings Act of the State of Michigan, the following preamble and resolution were offered by Board Member _____, and supported by Board Member _____:

WHEREAS, the Township of _____ determines it to be necessary for the public health, safety and welfare of the Township and its residents and property owners to construct a Library Building to house the _____ Community Branch of the _____ County District Library to serve residents of the Township; and,

WHEREAS, under the provisions of Act 99 of the Public Acts of Michigan of 1933, as amended, the Township Board is authorized to enter into any contract or agreement for the purchase of property for public purposes to be paid for in installments over a period of not to exceed the useful life of the property but no more than 15 years as determined by resolution of the Township Board; and,

WHEREAS, the outstanding balance of all such purchases by the Township under said Act 99, exclusive of interest, shall not exceed one and one-quarter percent (1-1/4 %) of the taxable value of the real and personal property of the Township at the date of such contract or agreement of purchase; and,

WHEREAS, the purchase of the aforesaid Library Building, pursuant to an Installment Purchase Agreement, will not result in the outstanding balance of all such purposes to be in excess of the limitations contained within said Act 99 as above set forth; and,

WHEREAS, the Township Board has entered into negotiations with _____ Construction & Supply Co. for the construction of a new Library Building for a purchase price of \$656,130.00, of which \$413,000.00 will be paid through an Installment Purchase Agreement, subject to any change orders approved by the Township; and,

WHEREAS, the Township Board has determined that such acquisition and purchase price is reasonable and in the best interest of the Township and its residents and property owners; and.

WHEREAS, funds have been pledged by the Township for such acquisition except for the sum of \$413,000.00 of such purchase price which is proposed to be paid by the Township to _____ Construction & Supply Co. in installment payments over a four-year period, together with interest at 3.5% per annum on the unpaid balance; and,

WHEREAS, the Township Board has reviewed a proposed Installment Purchase Agreement with _____ Construction & Supply Co. for the acquisition of said Library Building to be constructed in accordance with plans and specifications prepared by _____ Architectural Inc. which appears reasonable and proper to accomplish such installment purchase;

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. The Act 99 Installment Purchase Agreement attached hereto with _____ Construction & Supply Co. is hereby approved and the Township Supervisor and Clerk are hereby authorized and directed to execute the same on behalf of the Township.
2. The useful life of the Library Building is hereby determined to be at least 30 years.
3. The Supervisor and Clerk are further hereby authorized and directed to execute any additional documents as shall be necessary to effectuate the closing of the Installment Purchase Agreement.
4. The Township hereby agrees to include in its budget for each year during the period of the within Installment Purchase Agreement a sum sufficient to pay the principal and interest coming due under said Installment Purchase Agreement before the beginning of each fiscal year pertinent to such installment payments. In addition, the Township Board hereby pledges its limited full faith and credit for the payment of the installments due under such Installment Purchase Agreement.
5. The Township hereby designates its obligations under the Agreement as 'qualified tax exempt obligations' for purposes of the deduction of interest due under said Installment Purchase Agreement from income tax liability pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.
6. The Township Board covenants that to the extent permitted by law, it shall take all actions within its control necessary to maintain the exclusion of the interest component of the payments due under the aforesaid Installment Purchase Agreement from adjusted gross income for general federal income tax purposes under the aforesaid Internal Revenue Code including, but not limited to, actions relating to the rebate of arbitrage earnings, if applicable,

and the expenditure and investment of proceeds of the Agreement, and to prevent such proceeds from being or becoming "private activity bonds" as the term is used in Section 141 of said Internal Revenue Code.

7. The acquisition of the aforesaid Library Building and the approval of the Installment Purchase Agreement therefore are hereby found and declared to be for a valid public purpose and in the best interest of the health and welfare of the residents and property owners of the Township of _____.
8. All resolutions or parts of resolutions insofar as they conflict with the provisions of the within Resolution are hereby rescinded to the extent of any such conflict.

Upon roll call vote the following voted "aye:"

The following voted "nay:"

The Supervisor declared the Resolution duly adopted.

_____ TOWNSHIP

_____, Clerk

CERTIFICATION

The undersigned certifies that the foregoing Resolution is a true and complete copy of a Resolution adopted by the Township Board of the Township of _____, at a regular/special meeting of said Board held on _____, 2009; that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act of Michigan; that a quorum of the Township Board members was present; and that the foregoing Resolution is a part of the official minutes of the meeting held on said date.

_____, Clerk

Attest:

_____, Supervisor

_____ TOWNSHIP
_____ COUNTY, MICHIGAN

ACT 99 INSTALLMENT PURCHASE AGREEMENT

THIS INSTALLMENT PURCHASE AGREEMENT made and executed on this _____ day of _____, 2009 (hereinafter Agreement), by and between the **Township of _____**, _____ County, Michigan, organized and existing under the Constitution and laws of the State of Michigan (hereinafter Township), and _____ **Construction & Supply Co.**, a Michigan corporation, of _____, Michigan (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the Township desires to acquire through construction a new Library Building through a purchase agreement with Contractor; and,

WHEREAS, the Township desires to pay for such acquisition substantially through an Installment Purchase Agreement as authorized by Act 99 of the Public Acts of Michigan of 1933, as amended; and

WHEREAS, Contractor is willing to provide the required funding for such construction through an Installment Purchase Agreement for the balance of the costs of the project;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE COVENANTS AND CONDITIONS HEREINAFTER CONTAINED, it is hereby agreed between the parties hereto as follows:

Section 1. Definitions. The following terms wherever used in this Agreement shall have the following meanings, unless the context shall indicate another or different meaning:

Act 99 means Act 99 of the Public Acts of Michigan of 1933, as amended.

Agreement means this Installment Purchase Agreement, by and between the Township and the Contractor.

Code means the Internal Revenue Code of 1986, as amended. Reference to the Code shall also include applicable regulations and proposed regulations thereunder and any successor provisions thereof.

Section 2. Agreement Documents. The agreement documents pertinent to the within agreement consists of the written agreement, drawings, specifications, and plans prepared by _____ Architectural Inc. (hereinafter "_____"), and such other

maps and documents pertinent to the within proposed construction. All of the foregoing written documents and maps represent together with the within Installment Purchase Agreement, the entire agreement between the parties and supercede any prior negotiations, representations, or oral agreements between the parties.

Section 3. Description of Project. The Contractor agrees to construct the Library Building and have it ready for operation, on or before _____, 200__, in a good and workmanlike manner pursuant to the drawings, specifications, and documents prepared by _____ Architectural Inc., subject to inspections and certified approvals.

Section 4. Contractor's Bonds. Pursuant to MCL 129.201, Contractor shall furnish to the Township at Contractor's costs, a performance bond and payment bond of not less than 25% of the agreement sum on or before the commencement of construction.

Section 5. Purchase Price and Method of Payment. The Township shall pay the Contractor for its performance of the within Agreement, the sum of \$413,000.00, of which \$413,000.00 will be paid through this Installment Purchase Agreement, subject to any change orders in the project approved by the Township.

On the date construction commences, the Township shall pay to Contractor such amount of said purchase price as equates to the amount of the project not to be financed under this Agreement. The balance of the purchase price shall be paid to the Contractor at such time as the project is fully completed to the satisfaction of the County Building Inspector in accordance with plans and specifications, which shall be paid in installments together with interest at the rate of 3.5% per annum on the unpaid balance, in annual installments with the first installment of \$112,500.00 including principal plus interest. The same annual payments shall be made each year thereafter until the full sum of \$413,000.00 has been paid, together with accrued interest, for a total of \$450,000.00.

The first annual payment shall be due and payable on _____, 2009, and the second on the same date of each and every year thereafter until the full amount of \$413,000.00, together with the interest, has been paid. The Township shall have the right to make extra payments on its obligation to Contractor or to Contractor's assignee and to pay the same in full prior to maturity and without penalty. The Township pledges its limited full faith and credit as security for the payment of the foregoing Agreement obligation.

Section 6. Conditions of Any Contractor's Assignment. In the event Contractor assigns the Township's obligation under the within Agreement to a third party, such as but not limited to _____ Bank, the Township upon notification of such assignment shall make all payments directly to such third party at such place as said third party may from time to time designate. The Contractor shall not be an agent of the third party for any purpose and shall not have the authority to change or modify the within Agreement or any related document or instrument in any way which would affect such payment obligation without the approval of both the Township and any third party assignee. The Township's payment obligation to such third party assignee under this Agreement shall not be subject

to any claim, defense, setoff, or counter-claim that the Township may now or hereafter have against the Contractor whether related or unrelated to the proposed project. The Contractor, however, shall remain subject to any of such Township claims or defenses which shall not be eliminated or decreased by the aforesaid Contractor's assignment. Any third party assignee shall have no responsibility or liability for the work or obligations under the within Agreement.

The Township represents to Contractor and to any third party assignee of Contractor that the interest due under the within Agreement is tax exempt within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986. If for any reason such interest is held not be tax exempt causing the Contractor or its third party assignee to pay income taxes upon such interest, interest due under such Installment Purchase Agreement shall be recomputed from the date interest payments accrue under said Agreement and shall be converted to tax equivalent rate of ___%.

If there is a change in the Code or regulations, or in the interpretation thereof by any court, administrative authority, or other governmental authority, (other than an event of taxability as described above) which takes effect after the date of this letter and which changes the effective yield on the Agreement to Contractor or its assignee including but not limited to changes in federal income tax rates, the interest rate on the Agreement shall change accordingly to compensate for such change in effective yield on the Agreement.

Section 7. Township Warranties. This Contract constitutes the valid and binding obligation of the Township, enforceable in accordance with its terms. The Township further warrants and represents that the Township is a municipal corporation duly organized and validly existing and in good standing under MCL §41.2, as amended, and that the Township has full power and authority to enter into and perform its obligations under this Contract; that the execution, delivery and performance thereof by the Township have been duly authorized by appropriate action of the Township Board and will not violate any provision of the Township Act or other law or any law, rule, order, judgment, contract or agreement that is binding upon the Township; that the Township has designated, by an appropriate resolution, in accordance with Section 265(b)(3)(B) of the Internal Revenue Code of 1986, the obligation of the Township evidenced by this Contract is a "qualified tax-exempt obligation"; that the Township has not designated or issued and does not reasonably expect during the current calendar year to designate or issue more than \$10,000,000.00 of its obligations as "qualified tax-exempt obligations"; and that this Contract does not constitute a "private activity bond" within the meaning of the Internal Revenue Code of 1986.

Section 8. Late Payments. Any payments due and unpaid under this Agreement shall bear additional interest from the date payment is due to the date payment is made at the rate of one percent per month or fraction thereof.

Section 9. Useful Life of Project. The Township represents and warrants that the useful life of the project substantially exceeds the period of the financial obligation of the Township to Contractor.

Section 10. Representations of Contractor. The Contractor represents and warrants that it has legal capacity to execute this Agreement and to carry out its obligations and undertakings hereunder, and that the person executing this Agreement does so on behalf of the Company and with its full authority; that it understands the terms of the within Agreement, and that it is binding upon and fully enforceable against said Contractor.

Section 11. Indemnification by Contractor. Contractor agrees to defend, indemnify and save harmless the Township, its officials, employees, departments, and agents from all liability, claims, demands, judgments, and expenses to persons or property occasioned wholly, or in part, by acts or omissions of Contractor, its agents, employees, or subcontractors pursuant to this Agreement.

Section 12. Indemnification by Township. To the extent permitted by the laws and the constitution of the State of Michigan, the Township shall protect, hold harmless, and indemnify the Contractor from and against any and all liability obligations, losses, claims, and damages whatsoever, and expenses and fees in connection therewith arising out of the financing due Contractor under this Agreement.

Section 13. Transfer of Ownership. Upon completion of the project in accordance with the specifications as certified by Contractor and the County Building Inspector, the project shall be transferred to the ownership and jurisdiction of the Township by Bill of Sale, free and clear of all liens and encumbrances other than the Township's indebtedness to the Contractor or its assignee under the within Agreement.

Section 14. Notices. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when dispatched by registered or certified mail, return receipt requested, postage prepaid, or by hand delivery, or by telegram and confirmed the same day by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

Township of _____
P. O. Box ____
_____, MI _____

_____ Construction & Supply Co.

P. O. Box ____
_____, MI _____

The parties hereto may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates, or other communications may be sent.

Section 15. Governing Law. This Agreement shall be construed in all respects in accordance with the laws of the State of Michigan.

Section 16. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 17. Binding Effect. The covenants herein contained shall bind, and the benefits and advantages inure to, the respective successors and assigns of the parties hereto.

Section 18. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 19. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

Section 20. Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no representations, warranties, promises, guarantees, or agreements, oral or written, express or implied, between the parties hereto with respect to this Agreement.

Section 21. Time and Amendments. Time is deemed to be of the essence of this Agreement. This Agreement may not be effectively amended, changed, modified, altered, or terminated without the prior written consent of both the Township and the Contractor, and Contractor's third party assignee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authority of its Board of Trustees and Board of Directors respectively on the day and date first above written.

Signed in the presence of:

TOWNSHIP OF _____

_____, Supervisor

_____, Clerk

_____ **CONSTRUCTION &
SUPPLY CO.**

**ASSIGNMENT AGREEMENT OF OBLIGATION OF
TOWNSHIP OF _____ TO _____ BANK**

ASSIGNMENT AGREEMENT made this ____ day of _____, 2009, by and between _____ **Construction & Supply Co.** (hereinafter Contractor); _____ Bank (hereinafter Bank); and the **Township of _____**, a municipal corporation, (hereinafter Township);

WITNESSETH:

WHEREAS, Contractor has entered into a Contract with the Township dated _____, 2009, for the construction of a new Library Building by the Contractor for the Township which is attached hereto and hereby made a part hereof; and,

WHEREAS, Contractor wishes to assign the Township's payment obligation under said Contract with Contractor to the Bank in return for the receipt of payments by the Contractor from the Bank; and,

WHEREAS, the Bank is willing to accept the assignment of said Township's contractual obligation to Contractor as security for making payments to Contractor as work is completed upon the Library Building; and,

WHEREAS, the Township's payment obligations to Contractor under said Contract will thereupon be due and payable by the Township to the Bank;

NOW, THEREFORE, in consideration of the premises and the covenants and conditions hereinafter contained, it is hereby agreed by and between the parties as follows:

1. Contractor hereby assigns and transfers all its right, title, and interest in and to payments due from the Township to Contractor for the construction of the Library Building for the Township as set forth in the Contract between Contractor and the Township attached hereto dated _____, 2009.
2. In consideration of said assignment, the Bank hereby covenants and agrees to disburse to Contractor the sum of \$413,000.00 at such time as the Township certifies in writing that the construction of the new Library Building is commencing in accordance with the construction schedule. It is expected that there will be disbursements based upon the draw requests of the Contractor, with the remaining balance to be paid in _____ of 200____, upon completion of the project in accordance with the plans and specifications therefore, and acceptable to such engineer.

3. Upon disbursement of the \$413,000.00 due Contractor under said Contract with the Township, the Township shall thereupon be obligated to pay its contractual indebtedness to Contractor to the Bank as assignee of the Contractor and no further sums shall be due to the Contractor from the Township or the Bank.
4. The Township's payment obligations hereunder to the Bank are and will continue to be free from all defenses, setoffs, claims, or counter-claims against the Bank. The foregoing, however, shall not be construed to waive any that might exist against the Contractor under the construction Contract.

IN WITNESS WHEREOF the parties have executed this Assignment Agreement the day and date first above written by authority of their respective Boards of Directors, and Board of Trustees.

Signed in the presence of:

_____ **CONSTRUCTION &
SUPPLY CO.**

TOWNSHIP OF _____

_____, Supervisor

_____, Clerk

_____ **BANK**

Its: _____

STATE OF MICHIGAN)
)ss
COUNTY OF _____)

On this ____ day of _____, 2009, before me a Notary Public in and for said County, appeared _____, who being first duly sworn, did say that he is the President of the corporation named in this Assignment Agreement and who signed and sealed the Agreement on behalf of said corporation by authority of its Board of Directors; and who acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
County of _____, State of Michigan
Acting in _____ County, Michigan
My commission expires: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2009, before me a Notary Public, appeared _____ and _____, who, being first duly sworn, did say that they are Supervisor and Clerk, respectively, of _____ Township named in said Assignment Agreement; that they signed the same by authority of its Board of Trustees; and acknowledged this instrument to be the free act and deed of said Township.

Notary Public
County of _____, State of Michigan
Acting in _____ County, Michigan
My commission expires: _____

STATE OF MICHIGAN)
)ss
COUNTY OF _____)

On this _____ day of _____, 2009, before me a Notary Public in and for said County, appeared _____, who, being first duly sworn, did say that he is the President of the corporation named in this Assignment Agreement and who signed and sealed the Agreement on behalf of said corporation by authority of its Board of Directors; and who acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
County of _____, State of Michigan
Acting in _____ County, Michigan
My commission expires: _____

ACT 99 CERTIFICATE

The undersigned, the duly authorized and qualified Treasurer of the Township of _____, County of _____, Michigan (hereinafter Township), in connection with the execution by the Township of an Installment Contract for construction of a new Library Building (hereinafter Agreement), dated _____, 2009, between the Township and _____ Construction & Supply Co., hereby certifies as follows:

1. The outstanding balance of all purchases of lands, property or equipment for public purposes, to be paid for in installments, including purchases made pursuant to the Agreement, exclusive of interest, is not more than \$_____.
2. The taxable value of the real and personal property of the Township as of the date of the Agreement is \$_____.
3. The amount set forth in paragraph 1 hereof does not exceed one and one-quarter percent (1¼ %) of the amount set forth in paragraph 2 hereof.

Dated: _____, 2009

TOWNSHIP OF _____

_____, Treasurer

TOWNSHIP OF _____

NON-ARBITRAGE AND TAX COMPLIANCE CERTIFICATE

The undersigned hereby certifies that she is the Township Clerk of the Township of _____, _____ County, Michigan (the Township), and is in general charge of and is the person charged, along with others, with the responsibility for complying with the terms of a certain installment Contract for the construction of a Library Building dated _____, 2009 (the Agreement), that the undersigned has made due inquiry and is fully informed as to the matters set out in this Certificate, and that the following are the reasonable expectations and covenants of the Township with respect to the Agreement as of the date hereof:

1. The Agreement is being entered into for the purpose of financing the purchase of a new Library Building described in the Agreement, for use by the Township (the Property). The Agreement will be used solely to finance the acquisition of the Property and will not be used to acquire any other property or services.
2. The total financed portion of the purchase price of the Property is \$413,000.00. The total is to be financed pursuant to the terms of the Agreement in annual installments of principal and interest each as described in the Agreement.
3. The Agreement has been assigned to cover a period of four years by the Contractor, _____ Construction & Supply Co., to _____ Bank, on the date hereof for payments to the Contractor by said Bank of the payments due under the Agreement.
4. During any time the Township is a party to the Agreement, the Township will not sublease or otherwise allow the use of the Property by any person or other entity other than the Township.
5. As of the date hereof, the Township does not anticipate or expect to sell, assign or otherwise dispose of any or all of the Property to any person or entity during any time prior to the retirement of all obligations under this Agreement.
6. Prior to the retirement of all obligations under the Agreement, the Township will not sell, assign or otherwise dispose of any of the Property to any person or entity.
7. Internal Revenue Service Form 8038-G delivered herewith is true, accurate, and complete.

8. The installments required under the Agreement will be paid as a budget item from specially voted millage and/or the general revenue of the Township. The Township will pay installments required under the Agreement with moneys which have been received by the Township within 12 months prior to such payment.
9. Except as provided in paragraph 8, no security interest or other pledge exists on any fund or other property of the Township for the purpose of securing the Agreement.
10. There are no funds or other monies designated for the purpose of acquiring the Property and the Agreement will not replace any funds or other monies invested at a yield in excess of the yield on the Agreement.
11. The Township has covenanted, to the extent permitted by law, to take all actions necessary to maintain the exclusion of the interest paid under the Agreement from gross income for general federal income tax purposes under the Code.
12. The Township reasonably anticipates that the amount of tax exempt obligations (other than private activity bonds as described in Section 141 of the Internal Revenue Code (the Code)), which will be issued during calendar year 2009 by the Township, any entity which issues obligations on behalf of the Township, and all subordinate entities thereto, will not exceed \$10,000,000.00. The Township has not issued, and it is not anticipated that it will issue tax-exempt obligations on behalf of any other entity in 2009.
13. The Township is a governmental unit with general taxing powers.
14. The Agreement is not part of any "private activity bonds" as defined in Section 141 of the Code.
15. All proceeds of the Agreement will be used for local governmental activities of the Township.
16. The Township has not been disqualified by the Commissioner of the Internal Revenue Service nor has the Township been notified or otherwise become aware that any such disqualifications are currently being considered by the Commissioner.

To the best of my knowledge and belief, there are no other facts, estimates, or circumstances that would change the foregoing, and I hereby certify that the Township's expectations, as set forth herein, are reasonable. It is intended that this Tax Certificate meet the requirements of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as amended, and the terms used herein should be construed consistently with such regulations, and that the covenants and representations herein are also in satisfaction of the requirements of the Code and the regulations propounded thereunder.

Dated: _____, 2009

TOWNSHIP OF _____

_____, Clerk

**LEGAL OPINION ON AUTHORITY OF _____ TOWNSHIP
TO EXECUTE AN ACT 99 INSTALLMENT PURCHASE AGREEMENT**

The undersigned, Robert E. Thall, of the firm of Bauckham, Sparks, Lohrstorfer, Thall & Seeber, P.C., as attorneys for the Township of _____, _____ County, hereby issues the following opinion on the validity of the Act 99 Installment Purchase Agreement between the Township and _____ Construction & Supply Co., a Michigan corporation.

1. The _____ Township Board has authority to enter into the aforesaid Agreement and to perform the Township's obligations thereunder; that said Agreement constitutes a legal, valid, and binding obligation of the Township, enforceable in accordance with its terms for the duration thereof; is not subject to any amendment not acceptable to all parties thereto; and may not be unilaterally rescinded by _____ Township.
2. The _____ Township Board adopted resolutions authorizing the execution of the aforesaid Agreement by the Supervisor and Clerk of the Township on behalf of the Township at meetings called and conducted in accordance with the Michigan Open Meetings Act and by a majority of a quorum present at such meeting.
3. That in the opinion of the undersigned, the interest due upon the unpaid balance of principal under said Agreement is exempt from Federal and State of Michigan income taxes as a municipal obligation for strictly public purposes.
4. The Township Board has designated the obligations of the Township of _____ under its contract with _____ Construction & Supply Co. as "qualified tax exempt obligations" for purposes of the deduction of interest due under said Installment Purchase Agreement from income tax liability pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Dated: _____, 2009

Robert E. Thall
Special Counsel for _____ Township