

BOROUGH OF BALDWIN  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE INCREASING THE INDEBTEDNESS OF THE BOROUGH OF BALDWIN, COUNTY OF ALLEGHENY, PENNSYLVANIA, THE ISSUE OF A GENERAL OBLIGATION NOTE IN THE AMOUNT OF \$152,634.80 FOR THE PURCHASE OF ONE 10 TON INTERNATIONAL TRUCK; FIXING THE FORM, NUMBER, DATE, INTEREST AND MATURITY THEREOF; MAKING A COVENANT FOR THE PAYMENT OF THE DEBT SERVICE OF THE NOTE; PROVIDING FOR THE FILING OF THE REQUIRED DOCUMENTS; PROVIDING FOR THE APPOINTMENT OF A SINKING FUND DEPOSITORY FOR THE NOTE; AND AUTHORIZING THE EXECUTION, SALE AND DELIVERY THEREOF.

WHEREAS, it is necessary that the indebtedness of the Borough of Baldwin, Allegheny County, Pennsylvania be increased for the following purpose: the project consisting of the purchase of a 10 Ton International Truck (hereinafter called the "project"); and

WHEREAS, the Municipality has received preliminary and realistic cost estimates from reputable vendors indicating the sum of \$152,634.80 will be needed to complete the project; and

WHEREAS, the proposed increase of debt, together with a non-electoral indebtedness and any lease rental indebtedness presently outstanding, will not cause the limitation of the Municipality's debt incurring power, pursuant to constitutional and statutory authority, to be exceeded.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough of Baldwin, and it is hereby ordained and enacted by the authority of same in lawful session assembled, a full quorum being present and acting throughout, as follows:

SECTION 1. That the aggregate principal amount of the note of the Municipality is

\$152,634.80, the same to be issued for the foregoing purpose and the same to be incurred as nonelectoral debt.

SECTION 2. The period of useful life of the improvements for which this obligation is to be issued is estimated to be in excess of five years.

SECTION 3. Said indebtedness shall be evidenced by one general obligation Note (known as the AIM Loan Agreement and attached hereto), in proper form, in the principal sum of \$152,634.80, dated and bearing interest from the earliest date of possible issue of said Note, under the statutory time requirements as set forth in the Act of the General Assembly of the Commonwealth of Pennsylvania approved the 28th day of April, 1978; being Act 52 of 1978 Session, at the rate of interest of 1.34% per annum, payable annually on the unpaid balance of said Note on the anniversary date of said Note during the term of said Note, together with interest on overdue principal, and to the extent permitted by law, on overdue penalty interest, at the rate of 4.02% per annum (computed on the basis of 365 days to the year) until paid, which Note shall mature in installments on the annual anniversary date of said note as follows:

<u>YEAR</u>	<u>PRINCIPAL</u>	<u>INTEREST</u>
Fiscal Year 2018	\$30,526.96	\$2,045.31
Fiscal Year 2019	\$30,526.96	\$1,636.25
Fiscal Year 2020	\$30,526.96	\$1,227.18
Fiscal Year 2021	\$30,526.96	\$818.12
Fiscal Year 2022	\$30,526.96	\$536.00

It is further acknowledged that the Loan Agreement has a litigation clause which the Municipality acknowledged and which clause calls for payment by the Municipality of the AIM Solicitor in the event of any litigation caused by the borrower's delinquencies.

The Municipality reserves the right to anticipate any or all installments of

principal or any payment of interest at any time prior to the respective payment dates thereof, without notice or penalty.

The principal and interest of said Note shall be payable at the office of the Sinking Fund Depository selected for the Note as hereinafter provided.

SECTION 4. The said Note is hereby declared to be a general obligation of the Municipality. The Municipality hereby covenants that it shall include the amount of the debt service on the Note for each fiscal year in which such sums are payable in its budget for that year; shall appropriate such amounts to the payment of such debt service; and shall duly and punctually pay or cause to be paid the principal of the Note and the interest thereon at the dates and places and in the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation and payment, the full faith, credit and taxing power of the Municipality is hereby irrevocably pledged.

The amounts which the Municipality hereby covenants to pay in each of the following fiscal years on the basis of a penalty interest rate of 4.02% (three times the established rate) are as follows:

<u>YEAR</u>	<u>PRINCIPAL</u>	<u>INTEREST</u>
Fiscal Year 2018	\$30,526.96	\$6,135.92
Fiscal Year 2019	\$30,526.96	\$4,008.74
Fiscal Year 2020	\$30,526.96	\$3,681.55
Fiscal Year 2021	\$30,526.96	\$2,454.37
Fiscal Year 2022	\$30,526.96	\$1,227.18

SECTION 5. The form of said Note shall be the Loan Agreement, which is attached hereto and incorporated in this Ordinance as part and parcel thereof, showing the obligation arising out of the Loan Agreement to the Municipality.

SECTION 6. The said Note shall be executed and guaranteed in the name and under the corporate seal of the Municipality by its President of Council and its Vice President of Council and attested to by the Borough Manager. The aforementioned officers and Borough Manager of the Municipality are authorized and directed to prepare, certify and file the Debt Statement required by Section 410 of Act 52 of 1978, and to take other necessary action, including, if necessary or desirable, any statement required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt.

SECTION 7. Huntington Bank is hereby designated as the Sinking Fund Depository for the obligation herein authorized, and a Sinking Fund will be created and known as "Sinking Fund 2017 General Obligation Note," for the payment of principal and penalty interest there-on which shall be deposited into the Sinking Funds no later than the date upon which the same becomes due and payable. The Treasurer will then deposit into the Sinking Fund, which shall be maintained until such obligation is paid in full, sufficient amounts for payment of principal and interest on the obligation no later than the date upon which such payments shall become due. The Sinking Fund Depository shall then, as and when said payments are due, without further action by the Municipality, withdraw available monies in the Sinking Fund and apply said monies to payment of the principal and penalty interest on the obligation.

SECTION 8. The President of Council and Borough Manager of the Municipality are hereby authorized to contract with Huntington Bank for its service as Sinking Fund Depository for the Note and paying agent for the same.

SECTION 9. In compliance with Section 701 of Act 52 of 1978, the members of the governing body have agreed that a private sale by negotiation rather than public sale is in the best interest of the Borough of Baldwin. Therefore, the general obligation Note in the amount of \$152,634.80, herein authorized to be issued and sold, is hereby awarded and sold to the Authority for Improvements in Municipalities (AIM) in accordance with AIM's proposal to purchase the Note at Par; provided the said Note is dated the date of

delivery thereof to AIM and is in the form set forth in the attached Loan Agreement between AIM and the Borough of Baldwin; and further provided that the proceedings have been approved by the Department of Community and Economic Development if such approval is required under the provisions of the Act.

SECTION 10. The action of the proper officers and the advertising of a summary of the Ordinance as required by law in a newspaper of general circulation is ratified and confirmed. The advertisement in said paper of the enactment of the Ordinance is hereby directed within fifteen (15) days following the day of final enactment.

It is further acknowledged that for the consideration given by AIM, the Loan Agreement contains an indemnification clause for AIM, it's officers, directors, administrators, employees and their successors and assigns.

SECTION 11. All Ordinances or parts of Ordinances not in accord with this Ordinance are hereby repealed insofar as they conflict with this Ordinance.

ORDAINED AND ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:

BOROUGH OF BALDWIN

\_\_\_\_\_  
Borough Manager

By: \_\_\_\_\_  
Michael Stelmasczyk, President of Council

APPROVED AS TO FORM:

Examined and approved this \_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Borough Solicitor

\_\_\_\_\_  
David Depretis, Mayor

**EQUIPMENT LOAN AGREEMENT**  
**(2017-03)**

THIS LOAN AGREEMENT, made this 25<sup>th</sup> day of April 2017, by and between THE AUTHORITY FOR IMPROVEMENTS IN MUNICIPALITIES, a municipal authority formed under the Municipal Authorities Act of 1945 (act of May 2, 1945, PL.L. 382), (hereinafter called "AIM"),

A

N

D

The **Borough of Baldwin**, a political subdivision of the Commonwealth of Pennsylvania, hereinafter called "the municipality",

W I T N E S S E T H

**THAT, WHEREAS**, AIM was organized by the County pursuant to the Municipality Authorities Act aforesaid, for the purpose of rendering help to the municipalities and authorities of Allegheny County; and

**WHEREAS**, AIM has been incorporated as a General Authority, its Articles of Incorporation having been filed and approved in the Department of State of the Commonwealth of Pennsylvania on the 17<sup>th</sup> of June 1968; and

**WHEREAS**, the municipality has made application to AIM for a Loan to enable it to undertake a capital equipment purchase project.

**WHEREAS**, the Board of Directors of AIM has reviewed the project and is of the opinion that the Loan should be given for the reason that the said municipality has been unable to secure satisfactory financing for the project; and therefore the Board has authorized a loan to the municipality in an amount not to exceed **\$152,634.80**, subject to the conditions expressed herein; and

**WHEREAS**, the municipality has advertised for bids for the purchase of **one 10-Ton International Truck**.

**NOW, THEREFORE**, the parties hereto, in consideration of the mutual covenants herein contained, agree as follows:

1. AIM agrees to make a Loan to the municipality and does hereby appropriate a sum not to exceed **\$152,634.80** with interest at **1.34%** in aid of the capital equipment purchase project under the contract above identified.
2. AIM agrees to pay to the municipality a sum not to exceed **\$152,634.80** to assist with the said project subject to the conditions expressed herein. The parties do covenant and agree that, as a condition of eligibility to receive any payment hereunder, the municipality agrees:
  - (a) To apply for approval of this Loan from the Pennsylvania Department of Community and Economic Development in accordance with the Local Government Unit Debt Act (53 P.a.C.S.A. 8001 et seq.), if required, otherwise to supply solicitor's opinion;
  - (b) To file with AIM a copy of the specifications for the project, together with a copy of the contract let for the project to the lowest responsible bidder in accordance with applicable law;
  - (c) That AIM, through its agents, may inspect the equipment;
  - (d) That AIM, through its agents shall have the right to make regular audits of the municipality and engineering records pertaining to this project;
  - (e) To deposit all checks for the said Loan in the municipal treasury and to disburse the funds to the vendor, or those entitled, by proper action of the governing body;
  - (f) Through its governing body to provide each year the Loan is outstanding, in its duly enacted budget, such sum as is sufficient to meet the installment payment, plus

interest due AIM necessary to insure uninterrupted repayment of the Loan as set forth in the repayment schedule in the Loan Note (Agreement);

3. That the municipality has established May 2017 as the date of purchase of the aforesaid equipment, namely: **10-Ton International Truck**.
4. That the municipality will submit to AIM:
  - (a) A detailed list of proposed equipment to be purchased and a copy of the contract let to the lowest responsible bidder in accordance with applicable law.
  - (b) A written statement from a design professional certifying that the project meets AIM's definition of a capital project, i.e., a cost over ten thousand dollars (\$10,000) and a useful life of more than five years.
  - (c) If available, equipment specifications.
5. Should this Equipment fail to be purchased within 180 days of the date of approval by the AIM Board, which date of approval is **April 25, 2017** , and the last of which 180 days is calculated to be **October 25, 2017**, it shall be reviewed by the AIM Board, at which time the AIM Board, in its sole discretion and at its sole option, shall determine whether or not the contract is terminated, then the municipality will immediately refund all monies received from AIM and shall reapply for this project if it is to proceed at a later date.
6. The municipality covenants and agrees to adopt and furnish to AIM a certified copy of the Ordinance and/or Resolution and the legal opinion of its solicitor that the borrowing made hereunder is a valid and subsisting obligation of the municipality, in accordance with the Pennsylvania Local Government Debt Act and other borrowing laws of the Commonwealth



parties hereto agree that AIM reserves the right to commence litigation any time within the statutory period allowed by the laws of the Commonwealth of Pennsylvania under such contracts. In the said event of a violation of the Loan Agreement, the parties hereto agree, that any violation as determined by the AIM Board shall require the payback of the entire Loan no matter what portion of the Loan may have been spent prior to the violation;

- (b) All litigation fees are to be paid by the delinquent Loan recipient;
  - (c) All litigation should be handled by the AIM litigation solicitor;
  - (d) All litigation fees are to be set at the discretion of the AIM Board of Directors.
9. The municipality shall specifically indemnify AIM, its officers, directors, administrators, and their successors and assigns, against any and all actions, claims and demands including any claims for the negligence of AIM, its officers, directors, administrators and their successors and assigns, arising out of:
- (a) The payment of **\$152,634.80** to the municipality;
  - (b) The said payment of **\$152,634.80** by AIM to the municipality is acknowledged to be consideration for indemnification by the borough.
  - (c) It is further averred by AIM and acknowledged by the municipality that the Board Members of AIM, its officers, directors and their successors and assigns are public servants who receive no salary and who serve at the request of the Commissioners of Allegheny County to administer funds and do capital improvements in accordance with the By-Laws and Charter of AIM.
  - (d) The municipality, as a result of the above, hereby agrees to indemnify AIM, its officers, directors, administrators and their successors and assigns, and hold each and

everyone of them harmless from and against any claims for damages, liability including negligence of the AIM officers, directors, administrators and their successors and assigns; torts, loss of efficiency or creation of deficits in AIM funds including attorney's fees and other costs and expenses incident to a claim, suit, action or proceeding, arising out of or resulting from:

- (i) The transfer of **\$152,634.80** from its accounts to the municipality's through the action of AIM, its officers, directors, administrators and their successors and assigns;
- (ii) The use of the said money by the municipality in any endeavors listed in this particular contract;
- (iii) The claims of anyone challenging in any way, in law, equity or otherwise, including individual negligence of the AIM officers, directors, administrators and their successors and assigns, the transfer of any funds of AIM;
- (iv) The claims of any individuals in law, equity or otherwise, claiming directly or indirectly from the Agreement with the municipality or from the agreement with the municipality's contractor, elected officials, appointed officials, volunteers and their successors and assigns, or in any way related to any of them or related to any contract that the municipality has, including any claims whatsoever of any negligence by AIM and specific claims of negligence by AIM, its officers, directors, administrators and their successors and assigns;
- (v) Any lawsuit claiming in law, equity or otherwise, that AIM, its officers, directors, administrators and their successors and assigns, are liable or subsequently found to be liable for any action alleged in any lawsuit

including negligence, no matter what type or what cause;

- (vi) Any action taken by AIM, its officers, directors, administrators and their successors and assigns, wherein a claim is made in law, equity or otherwise, is claiming that a loss has occurred to any municipal entity or any qualified entity to receive grants or loans from AIM as a result of the transfer of **\$152,634.80** to the municipality; or
- (vii) Any claim of any kind being made against AIM, its officers, directors, administrators or their successors and assigns, or any combination of any of the above, including any findings of negligence on the part of AIM, its officers, directors, administrators and their successors and assigns.

10. AIM hereby agrees to notify the municipality immediately upon written or formal oral notice that any claim or demand whatsoever exists or has been asserted or has been threatened which would constitute a claim or demand hereunder to be indemnified by the municipality.
11. AIM further agrees, through its officers, directors, administrators, and their successors and assigns, that it shall promptly notify the municipality of all of the facts within its knowledge with respect to any such claim or demand.
12. Under this indemnification Agreement, the municipality upon receipt of notice of any claim or demand to AIM, its officers, directors, administrators or their successors and assigns, shall accept the said claim and have it defended by the AIM litigation solicitor with concurrence of the AIM Board. All costs and expenses of the defense of such claim, including any claims or findings of negligence on the part of AIM, its officers, directors, administrators and their successors and assigns, and further including the right to appeal to courts with the highest applicable appellate jurisdiction, shall be borne by the municipality.

13. In the event, for any reason arising out of any lawsuit, claim or demand, AIM, its officers, directors, administrators and their successors and assigns, shall have what is deemed to be a legal conflict of interest including a conflict arising out of claims or findings of negligence of AIM, its officers, directors, administrators, employees and their successors and assigns, then and in that event the municipality shall provide a second law firm capable of protecting the AIM officer, director, administrator or their successor and assign with the conflict of interest, and shall pay the costs and expenses of all investigation, litigation and appeals with regard to the individual with the conflict of interest. The second said law firm shall be chosen by the AIM litigation solicitor with the concurrence of the AIM Board of Directors.
14. In any case where a verdict on any item listed above, including findings of negligence against AIM, its officers, directors, administrators and their successors and assigns, or any one of them, the municipality shall make all determinations through the AIM Board and its attorneys as to appeal, payment, compromise and settlement, and shall be responsible for the payment of the verdict, its compromise or settlement, including any costs before or after appeal.
15. It is specifically agreed between the municipality and AIM that the AIM officers, directors, administrators and their successors and assigns shall not be responsible for the payment of any monies whatsoever with regard to any portion of any kind of lawsuit listed herein, including claims or findings of negligence of the AIM officers, directors, administrators or their successors and assigns or the investigation, settlement, verdict, set-off, appeal or retrial of any such lawsuit, and that the municipality shall solely be responsible for the indemnification, defense and cost of the same, to AIM, its officers, directors, administrators and their successors and assigns.

16. It is further agreed that under this indemnification Agreement that it shall continue to protect the executors, administrators or their successors or assigns or heirs of any AIM officer, director, administrator or their successor or assign, including claims of or findings of personal negligence where those individuals shall predecease or become legally incapable for appearance during the inception and subsequent final completion of the said lawsuit.
17. The municipality agrees that the project starting date under this Agreement is a time prior to the passage of 180 days from the date of approval of the AIM Board of Directors. The date of approval of the AIM Board of the project is the **25<sup>th</sup> of April 2017**, and therefore the project starting date shall not exceed the **25<sup>th</sup> of October 2017**.

(SEE PARAGRAPH NO. 5)

18. The municipality agrees that if the project is incapable of meeting its completion date, AIM will immediately be informed so that the AIM may immediately make a "priority appraisal" and inform the Board of Directors of the consequences of such delay and give a reasonable completion date.
19. The undersigned officials of the municipality acknowledge that they do not have at the present time a Grant or Loan from AIM except as follows:

NONE  
**OUTSTANDING AIM LOANS/GRANTS**

20. The purchase or securing of equipment under the appropriate application to AIM shall be understood to preclude any posting of a lien against the said equipment.

Neither shall any application grant the listing of the title of such property for the purpose of establishing collateral or other financial obligations supported by the said equipment.

A lien or title listing against any such equipment may only be granted by a formal decision of the AIM Board after submission of a related application, discussion by staff, and a formal legal opinion to the Board from the AIM Solicitor.

The AIM Board, in its power under the Authorities Act of the Commonwealth of Pennsylvania may grant the right to other parties, entities and municipalities to accept a lien and post title as collateral against said property or title to said property.

**INTENTIONALLY LEFT BLANK**

*IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date aforesaid intending to be legally bound hereby, pursuant to the Ordinance and/or Resolution adopted by the respective governing bodies authorizing the same to be made and done.*

ATTEST:

THE AUTHORITY FOR IMPROVEMENTS  
IN MUNICIPALITIES:

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Solicitor

ATTEST:

BOROUGH OF BALDWIN  
Municipality

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

By: \_\_\_\_\_  
President of Council

\_\_\_\_\_  
Solicitor

Agreement between the Authority for Improvements in Municipalities of Allegheny County and the Borough of Baldwin, approved by the AIM Board of Directors on April 25, 2017.

Cost: \$152,634.80    Term: 5 years at 1.34% interest.

**MICHAEL B. LEDERMAN**

— *Attorney at Law* —

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**SOLICITOR'S OPINION**

BOROUGH OF BALDWIN  
COUNTY OF ALLEGHENY  
PENNSYLVANIA

CERTIFICATE OF INDEBTEDNESS TO  
AUTHORITY FOR IMPROVEMENTS IN  
MUNICIPALITIES (AIM)

JULY 11, 2017  
\$152,634.80

The undersigned, Michael B. Lederman, Solicitor for the Borough of Baldwin, Allegheny County, Pennsylvania, named above, does hereby state that in his opinion the Ordinance and Resolution authorizing the execution and delivery of the above-captioned Certificate of Indebtedness (hereinafter called "Certificate"), have been duly and properly enacted by the Borough in accordance with law; that the proceedings for the authorization and issuance of the Certificate have been duly and properly taken in accordance with law; and the Certificate delivered will be a valid and binding general obligation of the Borough enforceable in accordance with its terms. Under present statutes and regulations, interest on the Certificate is exempt from Federal, Commonwealth of Pennsylvania and local taxation. The undersigned has no knowledge of anything that might impair the validity of the Certificate to be delivered by the Borough in conformity with the said Ordinance.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Michael B. Lederman, Esquire  
Solicitor, Borough of Baldwin