

BOROUGH OF AVALON
Allegheny County, Pennsylvania
ORDINANCE NO. 1291

AN ORDINANCE INCREASING THE INDEBTEDNESS OF THE OF THE BOROUGH OF AVALON, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA AND AUTHORIZING THE BOROUGH TO ISSUE A GENERAL OBLIGATION NOTE IN THE AMOUNT OF \$75,000.00 TO ENABLE THE BOROUGH TO PURCHASE A STREET SWEEPER; 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; AUTHORIZING THE EXECUTION, SALE AND DELIVERY THEREOF; AND REPEALING ALL INCONSISTENT ORDINANCES AND/OR RESOLUTIONS.

WHEREAS, it is necessary that the indebtedness of the Borough of Avalon, Allegheny County, Pennsylvania be increased for the following purpose: To purchase a street sweeper (hereinafter called "the Project"); and

WHEREAS, the Borough has received preliminary and realistic costs estimates from professional engineers indicating the sum of \$75,000.00 will be needed to purchase the street sweeper; and

WHEREAS, AIM has approved the Borough of Avalon's request for a \$75,000.00 loan for the stated purpose of purchasing a street sweeper; and

WHEREAS, the loan will have a five-year payback schedule at an interest rate of 2.67%; and

WHEREAS, the proposed increase of debt, together with its nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the limitations of the local government unit debt incurring power, pursuant to constitutional and statutory authority to be exceeded.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Avalon, Allegheny County, Pennsylvania, and it is hereby ordained and enacted by the authority of the same as follows:

SECTION 1. That the aggregate principal amount of the Certificate and/or Note of the Borough of Avalon, Allegheny County, Pennsylvania, proposed to be issued is \$75,000.00, with the same to be issued for the foregoing purpose and with the same to be incurred as nonelectoral debt. The cost of the street sweeper is set forth in the "Equipment Loan Agreement," which is attached hereto and incorporated herein by reference as Exhibit "A," is hereby approved and the Borough Secretary is hereby authorized to execute the Certificate of Indebtedness which is attached hereto as Exhibit "B."

SECTION 2. The period of useful life of the street sweeper is in excess of five years and is expected to be ten (10) years.

SECTION 3. The \$75,000.00 indebtedness shall be evidenced by one general obligation Note (known as the AIM Loan Agreement and attached hereto), in proper form, in the sum of \$75,000.00, 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 General Assembly of the Commonwealth of Pennsylvania approved the 28th day of April, 1978, being Act 52 of 1978 Session and known as the Local Government Unit Debt Act, at the rate of interest of 2.67% 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 interest of 8.01% 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:

	PRINCIPAL	INTEREST
Fiscal Year 2006	\$75,000	\$2,002.50
Fiscal Year 2007	\$60,000	\$1,602.00
Fiscal Year 2008	\$45,000	\$1,201.50
Fiscal Year 2009	\$30,000	\$ 801.00
Fiscal Year 2010	\$15,000	\$ 400.50

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 Certificate and/or Note shall be payable at the office of the Sinking Fund Depository selected for the Certificate and/or Note as hereinafter provided.

SECTION 4. This Certificate and/or Note is hereby declared to be a general obligation of the Borough of Avalon, Allegheny County, Pennsylvania. The local government unit hereby covenants that it shall include the amount of debt service on the Certificate and/or 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 thereof at the dates and places and in the manner set forth in the Note according to the true intent and meaning thereof, and such proper budgeting, appropriation, and payment, the full faith, credit and taxing power of the Borough of Avalon 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 8.01% (three times the established rate) are as follows:

<u>YEAR</u>	<u>PRINCIPAL</u>	<u>INTEREST</u>
2006	\$75,000	\$6,007.50
2007	\$60,000	\$4,806.00
2008	\$45,000	\$3,604.50
2009	\$30,000	\$2,409.00
2010	\$15,000	\$1,204.50

SECTION 5. The form of said Note shall be Loan Agreement which is attached hereto as Exhibit "A," 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 Note shall be executed in the name and under the corporate seal of the local government unit by the President and its Vice President and attested to by the Secretary . The Secretary of the Borough of Avalon is authorized and directed to prepare, certify and file the Debt Statement required by Section 410 of the Act of 1978 and to take other necessary action, including, if necessary or desirable, any statement required to qualify any portion of the debt from appropriate debt limit as self-liquidating or subsidized debt.

SECTION 7. National City Bank of Pennsylvania, is hereby designated as the Sinking Fund Depository for the obligation herein authorized, and there is hereby created and established a Sinking Fund, to be known as "Sinking Fund 2005 General Obligation Note," for the payment of the principal and penalty interest thereon which shall be deposited into the Sinking Fund no later than the date upon which the same becomes due and payable. The Treasurer shall 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, as and when said payments are due, without further action by the local government unit, withdraw available monies in the Sinking Fund and apply said monies to payment of principal and penalty interest on the obligation.

SECTION 8. The Borough President and Vice President are hereby authorized to contract with National City Bank of Pennsylvania for its services 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 citizens of the Borough of Avalon. Therefore, the general obligation Note in the amount of \$75,000, 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 Certificate and/or 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 Avalon; 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 this Ordinance as required by law in the Citizen, a newspaper of general circulation, is ratified and confirmed. The advertisement in this newspaper regarding the enactment of this 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, its 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 herewith.

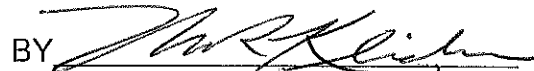
ORDAINED AND ENACTED THIS 15 day of March,

2005.

ATTEST:

BOROUGH OF AVALON


Harry W. Dilmore
Secretary

BY 
Edward Klicker
President

SEAL

Examined and approved by me this 15th day of
March, 2005.


Daniel K. Bricmont, Esq., Mayor

EQUIPMENT LOAN AGREEMENT
(2004-10)

THIS LOAN AGREEMENT, made this 21st day of December 2004, 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 Avalon**, 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 17th 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 \$75,000.00, subject to the conditions expressed herein; and



WHEREAS, the municipality is in the process of advertising for bids for the purchase of a **Street Sweeper**.

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 **\$75,000.00** with interest at **2.67%** 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 **\$75,000.00** 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 April 1, 2005 as the date of purchase of the aforesaid equipment, namely: **Street Sweeper.**
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 **December 21, 2004** , and the last of which 180 days is calculated to be **June 21, 2005**, 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 of

Pennsylvania. The municipality also agrees to furnish a Note or Certificate of Indebtedness in compliance with applicable laws.

7. The municipality agrees that the Resolution and Certificate of Indebtedness shall provide that the Loan is repayable within 5 years with interest at **2.67%** as follows:

- (a) First installment of **\$15,000.00** plus interest of **\$2,002.50** due on or before **June 2006**.
- (b) Second installment of **\$15,000.00** plus interest of **\$1,602.00** due on or before **June 2007**.
- (c) Third installment of **\$15,000.00** plus interest of **\$1,201.50** due on or before **June 2008**.
- (d) Fourth installment of **\$15,000.00** plus interest of **\$801.00** due on or before **June 2009**.
- (e) Fifth installment of **\$15,000.00** plus interest of **\$400.50** due on or before **June 2010**.

In the event the payment is not made on or before the due date, interest will be due and payable upon said obligation at **8.01% DELINQUENT INTEREST** until paid in full.

8. The municipality, in consideration of the low interest Loan, specifically agrees to the following items identified as (a), (b), (c), and (d) of this litigation clause, including but not limited to payment of the AIM litigation solicitor by the borrower for the litigation caused by the borrower's delinquencies:

- (a) In the event there is a violation of the Loan Agreement, the AIM Board and the 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 \$75,000.00 to the municipality;
- (b) The said payment of \$75,000.00 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 **\$75,000.00** 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 \$75,000.00 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 **21st of December 2004**, and therefore the project starting date shall not exceed the **21st of June 2005**.

(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

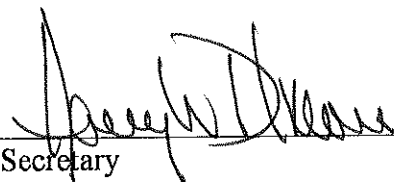
By: _____
Chairman

APPROVED AS TO FORM:

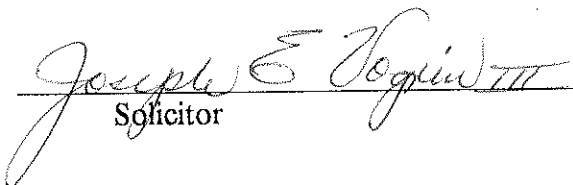
Solicitor

ATTEST:

BOROUGH OF AVALON
Municipality

By: 
Secretary

By: 
President of Council


Solicitor

Agreement between the Authority for Improvements in Municipalities of Allegheny County and the Borough of Avalon, approved by the AIM Board of Directors on December 21, 2004.

Cost: \$75,000.00 Term: 5 years at 2.67% interest.

CERTIFICATE OF INDEBTEDNESS
OF
ALLEGHENY COUNTY, PENNSYLVANIA

\$75,000.00

(DATE SIGNED)

, 20

The Borough of Avalon (hereinafter called the "Municipality"), a political subdivision of the Commonwealth of Pennsylvania with situs within the County of Allegheny, promises to pay to the Order of the AUTHORITY FOR IMPROVEMENTS IN MUNICIPALITIES (hereinafter called "AIM"), at Pittsburgh, Pennsylvania, the sum of Dollars (\$75,000.00), repayable over Five (5) years, with interest at 2.67% as follows:

First installment of \$15,000.00 plus interest of \$2,002.50 will be due on or before one year after receipt of the funds, and a like and equal amount with applicable interest each year thereafter.

In the event payment is not made on or before the due date, interest will be due and payable monthly upon said delinquent obligation at 8.01% penalty interest until paid in full.

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



Payment of the indebtedness herein evidenced may be anticipated in whole or in part at any time and from time to time without penalty.

This Certificate evidences a Loan for the purpose of Purchasing a Street Sweeper in said Municipality, and is to be repaid from the general obligation fund of the Municipality.

This Certificate is executed and delivered in accordance with the provisions of the PA. BOROUGH Code, and further in accordance with Resolution duly adopted thereunder at the meeting of the Municipality held on the 15th day of MARCH 2005, a quorum being present, which Resolution is still in effect.

ATTEST: BOROUGH OF AVALON

BY Ethel M. Hawie

BY Harry W. Dilmore
Harry W. Dilmore, Borough Manager and
Secretary for the Borough of Avalon