

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT
(ESCROW ACCOUNT) (CALIFORNIA ABATEMENT)

This Master Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of _____, 2014, is entered into by and between Banc of America Public Capital Corp, a Kansas corporation (“*Lessor*”), and the City of San José, a charter city and municipal corporation existing under the Constitution and laws of the State of California (“*Lessee*”).

WITNESSETH:

WHEREAS, Lessee desires to lease, purchase and acquire from Lessor certain equipment described in each Schedule (as such term is defined herein), subject to the terms and conditions of and for the purposes set forth in the related Lease; and

WHEREAS, the relationship between the parties shall be a continuing one and items of equipment and other personal property may be financed pursuant to one or more Leases entered into from time to time in accordance with this Agreement by execution and delivery of additional Schedules by the parties hereto, subject to the terms and conditions provided herein; and

WHEREAS, Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and each Schedule for the purposes set forth herein and therein;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“*Acceptance Date*” means, with respect to the items of Equipment identified in a Disbursement Request, the date that Lessee identifies to Lessor and the Escrow Agent and certifies as the date on which Equipment Acceptance with respect to such items of Equipment has occurred and for which disbursement from the Escrow Account is then requested in accordance with such Disbursement Request pursuant to the Escrow Agreement; *provided, however,* that if there is no Escrow Agreement in place, the Acceptance Date means the date as of which Equipment Acceptance has occurred as identified in an Acceptance Certificate in the form attached hereto as Exhibit D.

“*Acquisition Amount*” means, with respect to each Lease, the amount specified in the related Schedule and represented by Lessee to be sufficient, together with other funds of Lessee

3550877.01.13.doc
2216778

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

(if any) that are legally available for the purpose, to acquire and install the Equipment listed in such Lease.

“Acquisition Period” means, with respect to each Lease for which an Escrow Account is established, that period identified in the related Schedule during which the Lease Proceeds attributable to such Lease may be expended on Equipment Costs pursuant to the related Escrow Agreement.

“Agreement” means this Master Equipment Lease/Purchase Agreement, including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04.

“Code” means the Internal Revenue Code of 1986 as in effect on the date of delivery of this Agreement or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of delivery of this Agreement, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Contract Rate” means, with respect to each Lease, the rate identified as such in the applicable Payment Schedule.

“Disbursement Request” means, with respect to the items of Equipment therein identified, a Disbursement Request substantially in the form attached as Schedule 1 to the Escrow Agreement.

“Equipment” means, with respect to each Lease, the property listed in the related Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V. Whenever reference is made in this Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“Equipment Acceptance” means, with respect to any portion of the Equipment that may operate for its intended purpose as a separate and independent functional unit, that the Equipment constituting such portion has been acquired and installed by the Vendor, is operating in a manner consistent with the manufacturer’s intended use and has been inspected and finally accepted by Lessee for all purposes of this Agreement or any Lease.

“Equipment Costs” means, with respect to each Lease, the total cost of the Equipment listed in the related Schedule, including related costs such as freight, installation and taxes, capitalizable costs and costs of issuance incurred in connection with the acquisition, installation and/or financing of the Equipment.

“Equipment Schedule” means, with respect to each Lease, the Equipment Schedule attached to and made part of the related Schedule and substantially in the form of Exhibit A to this Agreement.

“Escrow Account” means, with respect to any Lease, the account established and held by the Escrow Agent pursuant to the related Escrow Agreement, if any.

“Escrow Agent” means, with respect to each Lease for which an Escrow Account is established, the Escrow Agent identified in the related Escrow Agreement, and its successors and assigns.

“Escrow Agreement” means, with respect to each Lease for which an Escrow Account is established, an Escrow and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which an Escrow Account is established and administered.

“Event of Default” means an Event of Default described in Section 12.01.

“Extended Lease Term” means, with respect to each Lease, a period (and any successive period) during which the original Lease Term for such Lease is extended pursuant to Section 3.03 and is equal in duration to any period during which Lessee does not pay Rental Payments (in whole or in part) when scheduled as a result of the occurrence of an event that results in abatement of Lessee’s obligation to make Rental Payments in accordance with the Payment Schedule.

“Fair Market Value” with respect to non-real estate investments, means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term *“Fair Market Value”* means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment. To the extent required by the applicable regulations under the Code, the term *“investment”* will include a hedge.

“*Funding Date*” means, with respect to each Lease, the date on which the Acquisition Amount is advanced by Lessor in accordance with Section 3.04(c).

“*Lease*” means a Schedule and the terms and provisions of this Agreement that are incorporated by reference into such Schedule.

“*Lease Proceeds*” means, with respect to each Lease for which an Escrow Account is established, the total amount of money to be paid by Lessor to the Escrow Agent for deposit and application in accordance with such Lease and the related Escrow Agreement.

“*Lease Term*” means, with respect to each Lease, the lease term provided in the related Schedule and, with respect to this Agreement, the period from the date hereof until this Agreement is terminated in accordance with Section 13.08.

“*Lessee*” means the entity referred to as Lessee in the first paragraph of this Agreement.

“*Lessor*” means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to the Equipment under a Lease or any Lease (including the Rental Payments and other amounts due thereunder) and any related Escrow Account pursuant to Section 11.01, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform under a Lease.

“*Material Adverse Change*” means any change in Lessee’s financial condition that is reasonably likely to have a material adverse effect on (a) the financial condition or operations of Lessee or (b) Lessee’s ability to perform its obligations under this Agreement or any Lease.

“*Payment Schedule*” means, with respect to each Lease, the Payment Schedule attached to and made part of the related Schedule and substantially in the form of Exhibit B attached to this Agreement.

“*Prepayment Price*” means, with respect to each Lease, the amount that Lessee shall pay to Lessor to prepay its obligations under such Lease as provided in the related Payment Schedule.

“*Rental Payment Commencement Date*” means, with respect to each Lease, the date identified as the Rental Payment Commencement Date under the related Schedule, which is the date Lessee becomes obligated to commence payment of Rental Payments in accordance with the Payment Schedule pursuant to Section 4.01(a).

“*Rental Payment Date*” means, with respect to each Lease, _____ and _____ of each year during the applicable Lease Term, unless otherwise provided in the Payment Schedule related to a particular Lease.

“Rental Payments” means, with respect to each Lease, the basic rental payments payable by Lessee on the Rental Payment Dates and in the amounts as specified in the related Payment Schedule, consisting of a principal component and an interest component, and in all cases sufficient to repay the principal component under such Lease and interest thereon at the applicable Contract Rate (or Taxable Rate if then in effect).

“Schedule” means each separately numbered Equipment Schedule and riders, if any, attached to such Equipment Schedule, together with each related Payment Schedule.

“Special Tax Counsel” means Jones Hall, A Professional Law Corporation, or any other nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions whose opinions are generally accepted by purchasers of tax-exempt obligations and who is selected by Lessee and reasonably acceptable to Lessor.

“State” means the State of California.

“Tax Certificate” means, collectively, the Certificate as to Arbitrage and the Certificate Regarding Use of Proceeds relating to a Tax-Exempt Lease, both dated as of the date of such Tax-Exempt Lease and executed by the Lessee.

“Tax-Exempt Lease” means a Lease where the interest component of Rental Payments under such Lease is excluded from gross income of the owner thereof for federal income tax purposes.

“Taxable Rate” means, with respect to each Lease, the rate identified as such in the applicable Payment Schedule.

“Vendor” means the manufacturer, installer or supplier of the Equipment listed in a Schedule or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessor arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Equipment pursuant to the applicable Lease.

“Vendor Agreement” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment pursuant to the applicable Lease.

“Vendor Payment Date” means the date on which a Vendor or Lessee (in the case of reimbursement) receives payment (whether from an Escrow Account or directly from Lessor) from amounts advanced under a Lease in connection with acquisition of the Equipment by Lessee.

Article II

Section 2.01. Representations and Covenants of Lessee. Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(a) Lessee is a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State, with full power and authority to enter into this Agreement, each Lease, each Escrow Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and under each Lease and each Escrow Agreement.

(b) Lessee has duly authorized the execution and delivery of this Agreement and each Lease and related Escrow Agreement by proper action of the City Council of the City of San José at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred pursuant to the Charter of the City of San José and all other applicable laws as conditions precedent for the City's execution and delivery of this Agreement and each Lease and related Escrow Agreement.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a charter city.

(e) Lessee has complied or will comply with such public bidding requirements as may be applicable to this Agreement and each Lease and the acquisition and installation by Lessee of the Equipment.

(f) Lessee has kept, and throughout the Lease Term of each Lease shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) the complete Comprehensive Annual Financial Report of the Lessee (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 270 days after its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or for the following fiscal year within 20 days of proposal or adoption (as the case may be). The financial statements described in subsection (f)(i) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(g) Lessee has a need for the Equipment listed on each Schedule and expects to make use of the Equipment upon its installation. Lessee's need for the Equipment is not temporary and

Lessee does not expect the need for any item of the Equipment to diminish during the related Lease Term.

(h) Except as disclosed in writing to the Lessor prior to the effective date of this Agreement or any Lease, there is no pending litigation, tax claim, proceeding with service of process having been accomplished against the Lessee, or to the knowledge of the Director of Finance, threatened in writing against the Lessee, for which there is a reasonable possibility that an adverse decision could materially adversely affect Lessee's financial condition or could materially impair its ability to perform its obligations under this Agreement, any Lease or any Escrow Agreement. Lessee will, at its expense, maintain its legal existence and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Equipment and the Escrow Account relating to any Lease and Lessor's rights and benefits under this Agreement, each Lease and related Escrow Agreement.

(i) To the knowledge of the Director of Finance, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. As of the date hereof, no event of default has occurred and is continuing under any agreement for borrowing money, lease financing of property or otherwise receiving credit secured by, or payable from, the general fund of the Lessee, consisting of (x) the failure to pay any indebtedness when due or (y) the failure to perform any other obligation thereunder and giving the holder of the indebtedness the right to accelerate the indebtedness.

Section 2.02. Representations and Covenants of Lessor. Lessor represents, covenants and warrants for the benefit of Lessee on the date hereof as follows:

(a) The Lessor is a corporation duly organized and existing under the laws of the State of Kansas, with full power and authority to enter into this Agreement, each Lease, each Escrow Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and under each Lease and each Escrow Agreement.

(b) The representatives of the Lessor executing this Agreement, each Lease and each Escrow Agreement are fully authorized to execute the same.

(c) This Agreement, each Lease and each Escrow Agreement have been duly authorized, executed and delivered by the Lessor and constitute the legal, valid and binding agreements of the Lessor, enforceable against the Lessor in accordance with their respective terms.

ARTICLE III

Section 3.01. Lease of Equipment. Subject to the terms of this Agreement, Lessor agrees to provide the funds specified in each Lease for Lessee to acquire and install the Equipment

described in the related Schedule. Upon the execution and delivery of each Lease, Lessor demises, leases, transfers and lets to Lessee, and Lessee acquires, rents and leases from Lessor, the Equipment as set forth in such Lease and in accordance with the terms thereof.

Section 3.02. Continuation of Lease Term. Lessee intends, subject to Section 3.03, to continue the Lease Term of each Lease and to pay the Rental Payments thereunder. Lessee affirms that sufficient funds are legally available for its current fiscal year to pay any Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term of each Lease can be obtained from legally available funds of Lessee.

Section 3.03. Abatement. (a) During any period in which, by reason of material damage or destruction or taking under the power of eminent domain (or sale to any entity threatening the use of such power) or material title defect with respect to any Equipment, there is substantial interference with the beneficial use and enjoyment by Lessee of such Equipment, the Rental Payments due under the applicable Lease shall be abated in the same proportion (including in whole) that the portion of such Equipment that is unavailable for Lessee's beneficial use and enjoyment bears to all of the Equipment. Lessee shall immediately notify Lessor upon the occurrence of any event causing substantial interference with Lessee's beneficial use and enjoyment of any Equipment, the portion of the Equipment that is unavailable and the identity of the affected Lease. Such notice shall be provided prior to the abatement of any Rental Payments under the applicable Lease in the manner set forth in Section 3.03(b) below, but shall not be a precondition to the Lessee's right to abatement pursuant to State law.

(b) The amount of Rental Payments abated under the applicable Lease shall be such that the remaining Rental Payment obligation for each rental period represents fair consideration for the beneficial use and enjoyment of the portions of the Equipment that are not affected by such interference. Such abatement shall commence on the date that Lessee's beneficial use and enjoyment of the affected Equipment is restricted because of such interference and end on the earlier of (i) the date on which the beneficial use and enjoyment thereof are restored to Lessee, or (ii) the date on which Lessee either (x) replaces the affected Equipment, (y) uses the proceeds of insurance or condemnation award to pay the applicable Prepayment Price therefor or (z) elects to pay the applicable Prepayment Price for the affected Equipment pursuant to Section 10.01(b) if no insurance proceeds or condemnation award are available for purposes of the foregoing clause (y); *provided, however,* that the term of the applicable Lease shall automatically be extended for an Extended Lease Term and further extended successively for any additional Extended Lease Term as a result of the occurrence of any subsequent similar event; and *provided further, however,* that in no event shall any such extension result in the Lease Term extending past the date specified in the definition of "*Lease Term*" under the applicable Lease. The date on which abatement ends with respect to the applicable Lease as determined pursuant to the next preceding sentence is referred to in this Section 3.03 as an "*Abatement End Date.*"

(c) The terms and conditions during any Extended Lease Term with respect to a Lease shall be the same as the terms and conditions during the original Lease Term for such Lease,

except that, for all Leases, (i) the then unpaid aggregate principal component under the applicable Lease shall be amortized at the applicable Contract Rate on a level debt service basis over a period equal to the duration of the then remainder of such original Lease Term and such Extended Lease Term and with Rental Payments payable on each Rental Payment Date provided in the applicable Lease; (ii) Lessor shall prepare, and Lessor and Lessee shall execute and deliver, a revised Payment Schedule with respect to such Lease based on the factors described in the preceding clause (i); and (iii) if the Extended Lease Term under the applicable Lease does not end on an applicable Rental Payment Date, the final date for payment of Rental Payments under such Lease shall be the last business day of the Extended Lease Term under the applicable Lease.; and except that, for Tax-Exempt Leases, (i) Lessee shall take such actions as may be reasonably necessary to maintain federal tax-exemption of the interest component of Rental Payments under any applicable Tax-Exempt Lease, including preparing, executing and filing an information reporting return in compliance with the Code in the event that the revised Payment Schedule with respect to the applicable Tax-Exempt Lease may result in treatment of such revised Payment Schedule as a reissuance of the applicable Tax-Exempt Lease for federal income tax purposes, and (ii) the Extended Lease Term under the applicable Tax-Exempt Lease shall not exceed the earlier of the date specified for such purpose in the definition of “*Lease Term*” under the applicable Tax-Exempt Lease or the latest date that would not adversely affect federal tax-exemption of the interest component of Rental Payments under such Tax-Exempt Lease based upon the relationship of the reasonably expected average useful life of the Equipment thereunder and the weighted average maturity of the aggregate principal component under the revised Payment Schedule for the applicable Tax-Exempt Lease. In connection with the execution and delivery of a revised Payment Schedule for a Tax-Exempt Lease as herein provided, Lessee shall deliver to Lessor, at Lessee’s expense, a written opinion of Special Tax Counsel (selected by Lessee and reasonably acceptable to Lessor) with respect to the federal tax matters described in this subsection (c). Lessee shall direct the Special Tax Counsel to cooperate with Lessor in connection with federal tax matters that relate to the calculations that Lessor is required to make as provided in the first sentence of this subsection (c). Lessor shall establish the Extended Lease Term for the applicable Lease, calculate the increased interest component and revised amortization of the then unpaid aggregate principal component under the applicable Lease and prepare the revised Payment Schedule for such Lease, all as provided in the first sentence of this subsection (c), within thirty days after an Abatement End Date (as described in subsection (b) above). Once Lessor has prepared such revised Payment Schedule, Lessor shall promptly deliver such revised Payment Schedule to Lessee for execution and delivery by Lessee and return to Lessor; *provided* that the revised Payment Schedule for the applicable Lease prepared in accordance with this subsection (c) shall become immediately effective for the period from and after such Abatement End Date.

(d) Notwithstanding any such interference with Lessee’s beneficial use and enjoyment of a portion of the Equipment, the applicable Lease shall continue in full force and effect with respect to any remaining Equipment thereunder. Lessee hereby waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate any Lease by virtue of any interference with the use and possession of the Equipment thereunder.

Section 3.04. Conditions to Lessor's Performance. (a) As a prerequisite to the performance by Lessor of any of its obligations under any Lease, Lessee shall deliver to Lessor, in form and substance satisfactory to Lessor, the following:

- (i) A fully completed Schedule, executed by Lessee;
- (ii) If an Escrow Account is to be established with respect to such Lease, an Escrow Agreement substantially in the form set forth in Exhibit G hereto, executed by Lessee and the Escrow Agent;
- (iii) A certified copy of a resolution, ordinance or other official action of the City Council of the City of San José, substantially in the form attached hereto as Exhibit C-1, authorizing the execution and delivery of this Agreement and each Lease and related Escrow Agreement entered into pursuant hereto and performance by Lessee of its obligations under this Agreement, each Lease and related Escrow Agreement entered into pursuant hereto;
- (iv) An incumbency and authorization certificate executed by the City Clerk or Deputy City Clerk of Lessee, in substantially the form attached hereto as Exhibit C-2;
- (v) An opinion of counsel to Lessee in form and substance acceptable to Lessor, respecting this Agreement and the Lease and Escrow Agreement (if any) then being entered into, and, with respect to a Tax-Exempt Lease, an opinion of Special Tax Counsel to the effect that the interest component of Rental Payments under the Tax-Exempt Lease then being entered into is excludable from gross income of the owners thereof for federal income tax purposes and otherwise in form and content acceptable to Lessor;
- (vi) Evidence of insurance as required by Section 7.02 hereof;
- (vii) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02;
- (viii) A waiver or waivers of interest in the Equipment from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located;
- (ix) With respect to each Tax-Exempt Lease, a Tax Certificate executed by the Lessee and a copy of a fully completed and executed Form 8038-G with respect to the Lease then being entered into;
- (x) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04, or, at Lessor's sole discretion, such Surety Bonds may be provided after the

Funding Date with respect to the Lease then being entered into, *provided however*, that no `Disbursement Request` pursuant to the related Escrow Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 have been delivered to Lessor;

(xi) For a Tax-Exempt Lease, in the event that Lessee is to be reimbursed for expenditures that it has paid more than 60 days prior to the Funding Date for the Lease then being entered into, evidence of the adoption of a reimbursement resolution or other official action covering the reimbursement from tax-exempt proceeds of expenditures incurred not more than 60 days prior to the date of such resolution or other official action;

(xii) Original invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to Equipment has passed to Lessee), to the extent required by Section 5.01(b);

(xiii) Wire instructions for payments to be made to Vendors and Form W-9 from each such Vendor; and

(xiv) Such other items reasonably required and requested in writing by Lessor.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lessor of any of its obligations under this Agreement and any Lease and related Escrow Agreement shall be subject to: (i) no Material Adverse Change having occurred since the date of this Agreement, (ii) no Event of Default having occurred and then be continuing under any Lease then in effect, and (iii) no Lease shall have been terminated as the result of the occurrence of an Event of Default; *provided, however*, that nothing in this subsection (b) shall terminate Lessor's obligation under Section 5.02 prior to the occurrence of an Event of Default.

(c) Subject to satisfaction of the foregoing, (i) Lessor will pay the Acquisition Amount for Equipment described in a Schedule to the Vendor or reimburse Lessee for its prior expenditures with respect to such Equipment (subject to satisfaction of Section 3.04(a)(xi) hereof), upon receipt of the documents described in Sections 5.01(a) and (b); or (ii) if an Escrow Account is being established with respect to the related Lease, Lessor will deposit the Lease Proceeds for Equipment described in the applicable Schedule with the Escrow Agent as provided in the related Escrow Agreement.

(d) This Agreement is not a commitment by Lessor or Lessee to enter into any Lease not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor or Lessee to enter into any proposed Lease, it being understood that whether Lessor or Lessee enters into any proposed Lease shall be a decision solely within their respective discretion.

(e) Lessee will cooperate with Lessor in Lessor's review of any proposed Lease. Without limiting the foregoing, Lessee will provide Lessor with any documentation or information Lessor may reasonably request in connection with Lessor's review of any proposed Lease. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of Lessee and other matters related to Lessee.

(f) In the event of any conflict in terms between a Schedule and this Agreement, the terms of the Schedule shall control in the interpretation of the Lease created thereby.

ARTICLE IV

Section 4.01 Rental Payments. (a) Lessee agrees, subject to Section 3.03, to pay to Lessor beginning on the Rental Payment Commencement Date: (i) Rental Payments representing a principal component payable in the respective installments and on the respective Rental Payment Dates as indicated in the Payment Schedule for each Lease under the column entitled "*Principal Component*" and (ii) Rental Payments representing an interest component in the respective installments and on the respective Rental Payment Dates as indicated in the Payment Schedule under the column entitled "*Interest Component.*"

(b) Subject to Section 3.03, Lessee shall promptly pay Rental Payments from and after the Rental Payment Commencement Date, in lawful money of the United States of America, on the Rental Payment Dates and in such amounts as provided in the Payment Schedule for each Lease, to Lessor by wire transfer in immediately available funds in accordance with wire payment instructions provided by Lessor to Lessee in writing or to such other place or in such other manner as may be designated by Lessor in writing to Lessee.

(c) Interest on the Acquisition Amount advanced under a Lease shall begin to accrue as of the Funding Date with respect to such Lease. Subject to Section 3.03, Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Contract Rate (or the Taxable Rate if then in effect) under the applicable Lease plus 5% per annum (calculated on the basis of a 360-day year of twelve 30-day months) or the maximum amount permitted by law, whichever is less, from such date to the date the Rental Payment is paid.

Section 4.02. Interest and Principal Components. A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal as more fully detailed on the Payment Schedule for each Lease.

Section 4.03. Rental Payments to Constitute a Current Expense of Lessee. The Rental Payment payable on a particular Rental Payment Date under a Lease shall be for the period from the immediately preceding Rental Payment Date (or the respective Acceptance Dates in the case of the first Rental Payment Date) to such particular Rental Payment Date under such Lease. For

each fiscal year or portion thereof during the Lease Term under a Lease, Rental Payments and other amounts payable under such Lease shall constitute the total rentals for such fiscal year or portion thereof and shall be paid by Lessee for and in consideration of the right of use and possession, and the continued quiet use and enjoyment, of the Equipment under such Lease by Lessee for and during such fiscal year or portion thereof. Lessor and Lessee have agreed, and shall determine on the Funding Date for each Lease, that such rentals shall not be in excess of the fair rental value of the Equipment under such Lease then being entered into pursuant to this Agreement. In making such determination, consideration shall be given to the costs of acquiring and installing such Equipment, the uses and purposes served by such Equipment and the benefits therefrom that will accrue to Lessee by reason of the applicable Lease and to the general public by reason of Lessee's use of the Equipment thereunder. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments and other amounts payable under a Lease shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained in this Agreement or any Lease constitute a pledge of the general tax revenues, funds or moneys of Lessee.

Section 4.04. Rental Payments to be Unconditional. Except as provided in Section 3.03, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement and each Lease shall be absolute and unconditional in all events without diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment under a Lease, any defects, malfunctions, breakdowns or infirmities in such Equipment, disputes with the Vendor of any Equipment or Lessor, failure of the Vendor under any Vendor Agreement to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Vendor under any Vendor Agreement, or any accident, condemnation or unforeseen circumstances.

Section 4.05. Tax Covenants. With respect to each Tax-Exempt Lease, the Lessee covenants as follows:

(a) *Private Activity Bond Limitation.* The Lessee will assure that the proceeds of each Lease are not so used as to cause the obligations of the Lessee under that Lease to satisfy the private business tests of Section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

(b) *Federal Guarantee Prohibition.* The Lessee will not take any action or permit or suffer any action to be taken if the result of such action would be to cause any of the obligations of the Lessee under each Lease to be 'federally guaranteed' within the meaning of Section 149(b) of the Code.

(c) *Rebate Requirement.* The Lessee will take any and all actions necessary to assure compliance with Section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Leases, the Escrow Agreements and this Agreement.

(d) *No Arbitrage.* The Lessee will not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of any Lease or any amount deposited under an Escrow Agreement which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of delivery of that Lease would have caused any of the obligations of the Lessee under the Lease to be `arbitrage bonds` within the meaning of Section 148 of the Code.

(e) *Maintenance of Tax-Exemption.* The Lessee will take all actions necessary to assure the exclusion of the interest component of Rental Payments under any Lease from the gross income of the owner thereof to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of delivery of the applicable Lease.

(f) *Record Retention.* The Lessee will retain its records of all accounting and monitoring it carries out with respect to this Agreement and each Lease for at least 3 years after the Lease is paid or prepaid in full (whichever is earlier); *however*, if a Lease is prepaid with proceeds of a refunding obligation, the Lessee will retain its records of accounting and monitoring at least 3 years after the earlier of the maturity or redemption of the obligations that prepaid the Lease.

(g) *Compliance with Tax Certificate.* The Lessee will comply with the provisions of the Tax Certificate with respect to each Lease, which is incorporated herein as if fully set forth herein. The covenants of this Section will survive payment in full or defeasance of each Lease.

(h) *Acquisition, Disposition and Valuation of Investments.*

(i) Except as otherwise provided in subparagraph (ii) below, the Lessee covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Agreement or an Escrow Account under an Escrow Agreement, or otherwise containing gross proceeds (within the meaning of Section 148 of the Code) of a Lease will be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement, the applicable Lease or the Code) at Fair Market Value.

(ii) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code will be valued at their present value (within the meaning of section 148 of the Code).

(i) *Amendments.* The Lessee will work with the Lessor to make such additions, deletions or modifications to this Agreement or to any Lease as may be necessary or desirable to assure exemption from federal income taxation of interest with respect to a Tax-Exempt Lease.

Nothing in this Section 4.05 will be construed to prohibit the parties hereto from executing and delivering a Lease with a tax-advantaged status other than tax-exemption or from including additional or different tax covenants with respect to such tax-advantaged Lease.

(j) *Single Issue for Tax Purposes.* The Lessee has elected to treat each Tax-Exempt Lease that is delivered on a date that is no later than the third anniversary of the date of the delivery of the first Tax-Exempt Lease as a single issue for federal income tax purposes. The Tax-Exempt Leases that are delivered after the third anniversary of the delivery of the first Tax-Exempt Lease will not be considered part of the same issue. Prior to delivering a Tax-Exempt Lease (each, a “*New Tax-Exempt Lease*”) after the third anniversary of the date of the delivery of the first Tax-Exempt Lease, the Lessee will provide the Lessor an opinion of Special Tax Counsel to the effect that the interest component of Rental Payments under such New Tax-Exempt Lease is excludable from gross income of the owners thereof for federal income tax purposes and otherwise in form and content acceptable to Lessor. The maximum principal amount of the Tax-Exempt Leases shall not exceed \$_____.

Section 4.06. Event of Taxability. Upon the occurrence of an Event of Taxability with respect to a Lease, the interest component of Rental Payments under such Lease and any charge on Rental Payments or other amounts payable based on the Contract Rate under such Lease shall have accrued and be payable at the Taxable Rate applicable to such Lease retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate identified in the applicable Lease.

For purposes of this Section, “*Event of Taxability*” means the circumstance of the interest component of any Rental Payment paid or payable pursuant to a Lease becoming includible for federal income tax purposes in an owner’s gross income as a consequence of any act, omission or event whatsoever, including but not limited to the matters described in the immediately succeeding sentence, and regardless of whether the same was within or beyond the control of Lessee. An Event of Taxability shall be presumed to have occurred upon (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence from the Internal Revenue Service which legally holds that the interest component of any Rental Payment under such Lease is includable in the gross income of the owner thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment under such Lease is includable in the gross income of the owner thereof; or (c) receipt by Lessor or Lessee of a written opinion of Special Tax Counsel to the effect that the interest component of any Rental Payment under a Lease has become includable in the gross income of the owner thereof for federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest component of any Rental Payment is deemed includable in the gross income of the owner thereof for federal income tax purposes.

Section 4.07. Mandatory Prepayment. If Lease Proceeds of a Lease are deposited into an Escrow Account, any funds not applied to Equipment Costs and remaining in such Escrow Account on the earlier of (a) the expiration of the Acquisition Period under such Lease and (b) the date on which Lessee delivers to the Escrow Agent the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from such Escrow Account, shall be applied by Lessor on each successive Rental Payment Date thereafter to pay all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing under the related Lease in the reverse chronological order of the Rental Payment Dates for such Lease.

Section 4.08. Covenant to Budget and Appropriate. Lessee hereby covenants to take such action as is necessary under the laws applicable to Lessee to budget for and appropriate and maintain funds sufficient and available to discharge its obligation to meet all Rental Payments under each Lease in each of its fiscal years during the Lease Term for each Lease.

The covenants on the part of Lessee herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of Lessee to take such action and do such things as are required by law in the performance of the official duty of such officials to enable Lessee to carry out and perform the covenants and agreements in this Agreement and each Lease agreed to be carried out and performed by Lessee.

Section 4.09. Substitution of Equipment under Certain Circumstances. In the event of damage to or destruction of all or a portion of the Equipment under any Lease due to earthquake or other uninsured casualty for which the proceeds of rental interruption insurance are not available, promptly after the occurrence of such event, the City Manager will use his/her best efforts to bring forward a recommendation for City Council consideration to substitute and add additional Equipment under the applicable Lease other real or personal property of Lessee that is unimpaired and unencumbered, the fair rental value of which shall be at least equal to the Rental Payments due during each fiscal year for the remainder of the Lease Term of the applicable Lease, provided that any such addition and substitution shall be subject to the approval of the City Council of the Lessee.

ARTICLE V

Section 5.01. Acquisition, Delivery, Installation and Acceptance of Equipment. (a) With respect to each Lease, Lessee shall order the Equipment to be acquired and financed thereunder, cause the Equipment to be delivered and installed at the location or locations specified in such Lease and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. Upon the occurrence of Equipment Acceptance with respect to the Equipment listed in a Lease, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor an Acceptance Certificate in the form attached hereto as Exhibit D; *provided, however,* that if an Escrow Account has been established with

respect to such Lease as provided in Section 3.04 hereof, Lessee shall deliver Disbursement Requests to the Escrow Agent pursuant to the related Escrow Agreement for the purpose of effecting disbursements from the Escrow Account to pay (or reimburse) Equipment Costs for the Equipment acquired and pursuant to such Lease.

(b) Lessee shall deliver to Lessor, or to an Escrow Agent if an Escrow Account has been established with respect to the related Lease, original invoices (and proof of payment of such invoices if Lessee seeks reimbursement for prior expenditures) and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee. With respect to Equipment not purchased through an Escrow Account, Lessor shall, upon receipt of the Acceptance Certificate from Lessee, prepare an Equipment Schedule and Payment Schedule in the forms attached hereto as Exhibits A and B, respectively. Lessee shall execute and deliver to Lessor such Equipment Schedule and Payment Schedule as a Schedule pursuant to Section 3.04(a)(i) within 5 business days of receipt, subject to satisfaction of the conditions set forth in Section 3.04.

Section 5.02. Quiet Enjoyment of Equipment. So long as Lessee is not in default under the related Lease, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term for such Lease.

Section 5.03. Location; Inspection. Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the applicable Lease without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment with reasonable prior notice to the Lessee.

Section 5.04. Use and Maintenance of the Equipment. To the extent funds are legally available, Lessee shall operate, maintain and preserve the Equipment as contemplated by this Agreement and the applicable Lease and shall not abandon the Equipment, except as permitted herein. Lessee shall obtain, or cause to be obtained, all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all material respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under this Agreement and the applicable Lease.

Lessee agrees that it will maintain, preserve and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases during the Lease Term and prior to the return of Equipment to Lessor as provided in this Agreement, Lessee agrees to pay any costs necessary for the manufacturer to re-

certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for herein.

Lessee shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

ARTICLE VI

Section 6.01. Title to the Equipment. Except as otherwise provided in Section 10.01 hereof, title to the Equipment under a Lease shall be deemed to vest in Lessor on the applicable Vendor Payment Date upon payment to Vendor or reimbursement to Lessee pursuant to the Escrow Agreement, if applicable, for such Equipment under such Lease, and immediately and automatically (without any further action by Lessor or Lessee) shall pass from Lessor to Lessee on such Vendor Payment Date in reliance on Lessee's acceptance of Equipment as evidenced by the related Disbursement Request or Schedule, as applicable, with respect to such Lease. Title to the Equipment with value not exceeding the outstanding balance under a Lease will, at Lessor's option, immediately vest in Lessor upon termination of such Lease as the result of the occurrence of an Event of Default thereunder. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment under each Lease from and against all claims, liens and legal processes of its creditors, and keep all Equipment under each Lease free and clear of all such claims, liens and processes. Upon prepayment for the Equipment under a Lease by Lessee pursuant to Section 10.01, Lessor shall release its security interest in and to the Equipment under such Lease, as is and where is, without warranty of any kind other than as to the absence of liens created by or through Lessor, and shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the release of Lessor's security interest in the Equipment subject to such Lease.

Section 6.02. Security Interest. As additional security for the payment and performance of all of Lessee's obligations under each Lease, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Equipment subject to such Lease, (b) moneys and investments held from time to time in the related Escrow Account (if any) and (c) any and all proceeds of any of the foregoing. Upon the execution of each Lease, Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Equipment subject to such Lease, any related Escrow Account and the proceeds thereof, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as Lessee.

Section 6.03. Personal Property, No Encumbrances. Lessee agrees that, as and to the extent permitted by law, the Equipment under each Lease is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever, with the exception of Permitted Encumbrances, on any of the real estate where the Equipment under a Lease is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment under such Lease acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

For purposes of this Section 6.03, “*Permitted Encumbrances*” means (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which Lessee may permit to remain unpaid under Article VII of this Agreement; (b) the security interest granted by this Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; and (d) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which Lessee certifies in writing will not materially impair the use of the Equipment for its intended purposes.

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment under each Lease free of all levies, liens, and encumbrances except those created under such Lease. The parties to this Agreement contemplate that the Equipment under each Lease will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due; *provided* that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term under the applicable Lease. During the Lease Term under each Lease, Lessor will not claim ownership of the Equipment thereunder for the purposes of any tax credits, benefits or deductions with respect to the Equipment.

Section 7.02. Insurance. (a) Lessee shall during the Lease Term under each Lease maintain or cause to be maintained casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Equipment under such Lease against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then

in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Prepayment Price of the Equipment under such Lease or (ii) the replacement cost of the Equipment under such Lease and include coverage for (iii) rental interruption insurance naming Lessor as loss payee, with coverage equal to the maximum total Rental Payments payable by Lessee under such Lease for any consecutive 24-month period and insuring against abatement of Rental Payments payable by Lessee under such Lease resulting from Lessee's loss of beneficial use or enjoyment of the Equipment under such Lease or any substantial portion thereof and caused by any and all perils insured under the casualty insurance described in this subsection (a).

(b) With Lessor's prior consent, Lessee may self-insure against the risks described in subsection (a); *provided, however*, that Lessee may not self-insure for rental interruption. Lessor acknowledges that Lessee self-insures for general liability, automobile liability and for workers' compensation coverage required by the laws of the State.

(c) Lessee shall furnish evidence of such insurance or self-insurance coverage throughout the Lease Term under the applicable Lease. Insurance coverage for risks insured by a third-party insurer that are not self-insured by Lessee shall be provided by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of 'A-' or better. The form of Lessee's evidence of self-insurance coverage will be substantially in the form of the letter attached hereto as Exhibit E. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification.

Section 7.03. Risk of Loss. Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment under any Lease from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment under any Lease shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under any Lease, except as otherwise provided in Section 3.03. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from funds legally available and appropriated for such purpose) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all reasonable expenses incurred in connection therewith (including, without limitation, reasonable counsel fees and expenses) arising out of or as a result of (a) entering into of this Agreement or any Lease or any of the transactions contemplated hereby or thereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment under any Lease, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment under any Lease resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any Lease or any material misrepresentation provided by Lessee under or in connection with this Agreement or any Lease.

The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement and any or all Leases or the termination of the Lease Term under any or all Leases for any reason.

Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties. Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment under any Lease, a payment and performance bond (a “*Surety Bond*”) executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of `A- or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied in accordance with such Surety Bond to the payment and performance of the Vendor’s obligations in accordance with the related Vendor Agreement and, if for whatever reason such proceeds are not so applied, then first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment under any Lease or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment under any Lease, Lessee will promptly proceed to exhaust its remedies against the Vendor in default, to the extent such exhaustion of remedies is financially reasonable, which determination shall be made by the Lessee with the consent of the Lessor, which consent shall not be unreasonably withheld. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee’s obligations under the applicable Lease in the event that Lessee is in arrears in its payment obligations to Lessor.

Section 7.05. Advances. In the event Lessee shall fail to keep the Equipment under any Lease in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the Lease Term under the affected Lease, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate (or the Taxable Rate if then in effect) under the applicable Lease plus 5% per annum or the maximum amount permitted by law, whichever is less; *provided, however*; that any

amount payable by Lessee pursuant to this Section 7.05 shall be payable solely from funds legally available and appropriated for such purpose.

ARTICLE VIII

Section 8.01. Damage, Destruction and Condemnation. If, prior to the termination of the Lease Term under any Lease, (a) the Equipment thereunder or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment thereunder or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment or such portion thereof and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations under the applicable Lease in accordance with Section 10.01(b).

If Lessee elects to replace any item of the Equipment under a Lease (with respect to such Lease, the “*Replaced Equipment*”) pursuant to this Section, the replacement equipment (the “*Replacement Equipment*”) shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment to secure its obligations under the applicable Lease. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor or those created under the applicable Lease, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor’s security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute “*Replacement Equipment*” for purposes of the applicable Lease. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment Date under the applicable Lease after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations under the applicable Lease with respect to the damaged equipment in accordance with Section 10.01(b).

For purposes of this Article, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys’ fees, incurred in the collection thereof.

Section 8.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall to the fullest extent permitted by applicable law, but only from funds legally available and appropriated for such purpose either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds or (b) pay or cause to be paid to Lessor the amount of the then applicable Prepayment Price for the Equipment under the applicable Lease, and, upon such payment, the Lease Term for such Lease shall terminate and Lessor's security interest in the Equipment thereunder shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after paying such Prepayment Price shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

ARTICLE IX

Section 9.01. Disclaimer of Warranties. Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of any of the Equipment or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee's acquisition of the Equipment under each Lease shall be on an "as is" basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, any Lease, any Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement or any Lease.

Section 9.02 Vendor's Agreements; Warranties. Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor, which will not be unreasonably withheld, delayed or conditioned. So long as Lessee shall not be in default under a Lease, Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term under such Lease to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment under such Lease that Lessor may have against an applicable Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendors of the Equipment with respect to the applicable Lease, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to any Lease, including the right to receive full and timely Rental Payments and other payments under each Lease. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Equipment under any Lease.

ARTICLE X

Section 10.01. Prepayment Option. Lessee shall have the option to prepay or satisfy all its obligations under a Lease, at the following times and upon the following terms:

-23-

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

(a) From and after the date specified (if any) in the applicable Payment Schedule (the “*Prepayment Option Commencement Date*”), on the Rental Payment Dates specified in such Payment Schedule, upon not less than 30 days’ prior written notice, and upon payment in full of the Rental Payments then due and all other amounts then owing under the applicable Lease plus the then applicable Prepayment Price, which may include a prepayment premium on the unpaid balance as set forth in such Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment listed in a Lease, on the day specified in Lessee’s notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next applicable Rental Payment Date under such Lease or 60 days after the casualty event) upon payment in full to Lessor of the sum of (i) the Rental Payment then due under such Lease *plus* (ii) the then applicable Prepayment Price under such Lease or if the prepayment date occurs prior to the first Rental Payment Date for which the Prepayment Price is shown, then the sum that is equal to the then aggregate unpaid principal component of Rental Payments (the “*Outstanding Balance*”) on such prepayment date *plus* a prepayment premium in an amount equal to the prepayment premium that would be payable on such first Rental Payment Date *plus* (iii) in the event such prepayment occurs on a date other than a Rental Payment Date, accrued interest to such prepayment date on the Outstanding Balance set forth on the applicable Payment Schedule relating to the Rental Payment immediately prior to the date of such prepayment, *plus* (iv) all other amounts then owing under the applicable Lease; or

(c) Upon payment or prepayment in full of all Rental Payments then due and all other amounts then owing under such Lease to Lessor.

After payment of the applicable Prepayment Price and all other amounts owing under a Lease, Lessor’s security interests in and to the Equipment under such Lease will be terminated and Lessee will own the Equipment free and clear of Lessor’s security interest in such Equipment.

ARTICLE XI

Section 11.01. Assignment by Lessor. (a) Lessor’s right, title and interest in and to this Agreement, any and all of the Leases, the Rental Payments and any other amounts payable by Lessee under any and all of the Leases, the Escrow Agreement relating to any applicable Lease, its security interest in the Equipment subject to the applicable Lease and in any related Escrow Account, and all proceeds therefrom may be assigned and reassigned by Lessor at any time, in whole or in part, to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom is a “*qualified institutional buyer*” as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an “*accredited investor*” as defined in Section 501(a)(1), (2) or (3) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing a Lease (or any interest

therein) for its own account with no present intention to resell or distribute such Lease (or interest therein), subject to each investor's right at any time to dispose of the related Lease or any interest therein as it determines to be in its best interests, (ii) shall not result in more than 35 owners of Lessor's rights and interests under a Lease and (iii) shall not require Lessee to make Rental Payments, send notices or otherwise deal with respect to matters arising under a Lease with or to more than one Lease Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in a Lease are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "Lease Servicer") to act on their behalf with respect to the rights and interests of Lessor under the related Lease and Escrow Agreement, including with respect to the exercise of rights and remedies of Lessor on behalf of such owners upon the occurrence of an Event of Default under the related Lease. Unless assignment, transfer or conveyance is made to an affiliate of the Lessor, the assignee or assignees shall deliver to the Lessee an investor letter in substantially the form delivered by Lessor on the date of this Agreement with appropriate modifications to reflect such assignment, transfer or conveyance. Lessor and Lessee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 11.01 shall apply to the first and subsequent assignees and sub-assignees of any of Lessor's right, title and interest in, to and under a Lease (or any interest therein).

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective as against Lessee until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Rental Payments payable under a Lease, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank, trust company or other entity that acts as the Lease Servicer for such Lease. Notices of assignment provided pursuant to this Section 11.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 11.01(a) hereof. Lessee hereby appoints the Lease Servicer as its agent for purposes of maintaining a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Lease Servicer last designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or a Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Equipment listed in a particular Lease and all rights in, to and under the Lease related to such Equipment, and all of Lessor's security interest in and to the applicable Escrow Account, or all rights in, to and under the applicable Escrow Agreement.

(c) If Lessor notifies Lessee of its intent to assign a Lease, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment with respect to

such Lease substantially in the form of Exhibit F attached to this Agreement within five (5) business days after its receipt of such request.

Section 11.02. Assignment and Subleasing by Lessee. None of Lessee's right, title, and interest in, to and under (a) this Agreement, (b) any Lease or any portion of the Equipment under such Lease or (c) the applicable Escrow Agreement (if any) or the Escrow Account thereunder may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.

ARTICLE XII

Section 12.01. Events of Default Defined. Any of the following events shall constitute an "Event of Default" under a Lease:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under such Lease within 10 days after the date when due as specified therein or (ii) maintain insurance as required under such Lease (including Section 7.02 of this Agreement as incorporated in such Lease);

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement or such Lease on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided that*, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or any Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor (including, without limitation, the occurrence of any event of default under any other Lease), the obligations of which are payable from Lessee's General Fund, or (ii) arises under any obligation payable from Lessee's General Fund under which there is outstanding, owing or committed an aggregate amount in excess of \$1,000,000.00;

(e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be

unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors or (iv) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, moratorium or insolvency proceeding; or

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for the Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

Section 12.02. Remedies on Default. Whenever any Event of Default exists under a Lease, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may without terminating such Lease take whatever action at law or in equity may appear necessary or desirable to collect each Rental Payment payable by Lessee under such Lease and other amounts payable by Lessee thereunder as they become due and payable;

(b) With or without terminating the Lease Term under such Lease, Lessor may enter the premises where the Equipment listed in such Lease is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee pursuant to such Lease and other amounts related to such Lease or the Equipment listed therein that are payable by Lessee to the end of the then current Lease Term, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under such Lease, including, without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03; provided, that in no event shall Lessee be liable in any fiscal year for any amount in excess of the Rental Payments shown for such year in the Payment Schedule for such Lease. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder, any other Lease or with respect to the Equipment listed therein;

(c) Lessor may terminate the Escrow Agreement relating to such Lease and apply any proceeds in the Escrow Account thereunder to the Rental Payments due under such Lease;

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement, such Lease or the Escrow Agreement relating thereto or as a secured party in any or all of the Equipment subject to such Lease or with respect to the related Escrow Account; and

(e) By action pursuant to the California Code of Civil Procedure, or as otherwise provided by law, obtain the issuance of a writ of mandamus enforcing, for each fiscal year *seriatim* during the entire balance of the remaining Lease Term under such Lease, subject to Section 3.03, the duty of Lessee to appropriate and take all other administrative steps necessary for the payment of Rental Payments and other amounts due under such Lease.

Section 12.03. No Remedy Exclusive; No Acceleration. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under any Lease now or hereafter existing at law or in equity; *provided* that Lessor shall have no right to accelerate any Rental Payment or otherwise declare any Rental Payment or other amount payable not then in default to be immediately due and payable. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice other than such notice as may be required in this Article.

Section 12.04. Application of Moneys. Any net proceeds from the exercise of any remedy under any Lease, including the application specified in Section 12.02(b)(ii) (after deducting all expenses of Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing Equipment and all brokerage, auctioneer's or attorney's fees), shall be applied as follows:

(a) If such remedy is exercised solely with respect to a single Lease, Equipment listed in such Lease or rights thereunder, then to amounts due pursuant to such Lease and other amounts related to such Lease or such Equipment.

(b) If such remedy is exercised with respect to more than one Lease, Equipment listed in more than one Lease or rights under more than one Lease, then to amounts due pursuant to such Leases pro rata.

ARTICLE XIII

Section 13.01. Notices. All notices, certificates or other communications under this Agreement or any Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by

facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

Section 13.02. Binding Effect. This Agreement and each Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. Severability. In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or thereof.

Section 13.04. Amendments, Changes and Modifications. This Agreement and each Lease may only be amended by Lessor and Lessee in writing.

Section 13.05. Execution in Counterparts. This Agreement and each Lease 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, provided that only Counterpart No. 1 of each Lease (including the terms and provisions of this Agreement incorporated therein by reference) shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

Section 13.06. Applicable Law. This Agreement and each Lease shall be governed by and construed in accordance with the laws of the State.

Section 13.07. Captions. The captions or headings in this Agreement and in each Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement or any Lease.

Section 13.08. Termination of Agreement. No additional Leases or Schedules shall be executed and delivered subsequent to the July 1 that immediately precedes the fifth anniversary of the dated date of this Agreement (the "*Final Delivery Date*"), and this Agreement shall terminate upon the termination of all Leases in effect on the Final Delivery Date.

Section 13.09. Waiver of Personal Liability. No officer, agent or employee of Lessee shall be individually or personally liable for the payment of any Rental Payment or for anything else contained in this Agreement or in any Lease; but nothing herein contained shall relieve any such, officer, agent or employee from the performance of any official duty provided by law.

[Remainder of Page Intentionally Left Blank]

[Signature Page Follows]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Master Equipment Lease/Purchase Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:

BANC OF AMERICA PUBLIC CAPITAL CORP
11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration
Fax No.: (443) 556-6977

LESSEE:

CITY OF SAN JOSE, CALIFORNIA
200 E. Santa Clara Street
13th Floor
San José, CA 95113-1905
Attention: Finance ' Debt Management
Fax No.: (408) 292-6482

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Seal)

Attest:

By: _____
Name: _____
Title: _____

Signature Page to Master Equipment Lease/Purchase Agreement

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

LIST OF EXHIBITS

Exhibit A	'	Form of Equipment Schedule
Exhibit B	'	Form of Payment Schedule
Exhibit C-1	'	Form of Authorizing Resolution
Exhibit C-2	'	Form of Incumbency and Authorization Certificate
Exhibit D	'	Form of Acceptance Certificate
Exhibit E	'	Form of Self-Insurance Certificate
Exhibit F	'	Form of Notice and Acknowledgement of Assignment
Exhibit G	'	Form of Escrow and Account Control Agreement

EXHIBIT A

FORM OF EQUIPMENT SCHEDULE NO. ____

RE: Master Equipment Lease/Purchase Agreement, dated as of _____, 2014, between Banc of America Public Capital Corp, as Lessor, and the City of San José, California, as Lessee

1. *Defined Terms.* All terms used herein have the meanings ascribed to them in the above-referenced Master Equipment Lease/Purchase Agreement (the “*Agreement*”).

2. *Equipment.* For purposes of the Lease created hereby, the following items of Equipment are hereby included under this Schedule together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto as provided in the Agreement.

Quantity	Description	Serial No.	Model No.	Location

3. *Payment Schedule.*

(a) *Rental Payments; Rental Payment Commencement Date.* The Rental Payments shall be in such amounts and payable on such Rental Payment Dates as set forth in the Payment Schedule attached to this Schedule and incorporated herein by this reference, subject to adjustment upon the occurrence of an Event of Taxability as provided in Section 4.06 of the Agreement, if applicable. Lessee’s obligation to pay Rental Payments under the Lease created hereby shall commence on the date on which all of the Equipment is substantially available for Lessee’s beneficial use and enjoyment or _____, 20____, whichever is later (the later of such two dates being herein referred to as the “*Rental Payment Commencement Date*”). For purposes

of Section 4.03 of the Agreement, Lessor and Lessee have agreed and hereby determine that such Rental Payments are not to be in excess of the fair rental value of the Equipment under the Lease created hereby based on the considerations set forth in Section 4.03.

(b) *Prepayment Price Schedule.* The Prepayment Price on each Rental Payment Date to which prepayment is applicable shall be the amount set forth for such Rental Payment Date in the `Prepayment Price_ column of the Payment Schedule attached to this Schedule. The Prepayment Price is in addition to all Rental Payments then due under this Schedule (including the Rental Payment shown on the same line in the Payment Schedule).

4. *Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement (particularly Section 2.01 thereof) are true and correct as though made on the Funding Date. Lessee further represents and warrants that (a) no Material Adverse Change has occurred since the dated date of the Agreement; (b) no Event of Default has occurred and is continuing under any Lease currently in effect; (c) no Lease has been terminated as the result of the occurrence of an Event of Default; (d) the City Council of the City of San José has authorized the execution and delivery of the Agreement and the Leases pursuant to Resolution No. _____, approved on _____, 2014; (e) the Equipment listed in this Schedule is essential to the functions of Lessee or to the services Lessee provides its citizens; (f) Lessee has a need for, and expects to make use of, substantially all such Equipment, which will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of its authority; (g) Lessee expects and anticipates adequate funds to be available for all future payments or rent due after the current budgetary period; and (h) Lessee is the fee owner of the real estate where the Equipment is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate.

5. *The Lease.* The terms and provisions of the Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

[Option: If Escrow Agreement Is Used:

6. *Lease Proceeds.* The Lease Proceeds that Lessor shall pay to the Escrow Agent in connection with this Schedule is \$ _____, which \$ _____ is for deposit into the Escrow Account. It is expected that by [six (6)] [twelve (12)] [eighteen (18)] months from the date of this Schedule No. _____, Lessee will have taken possession of all items of Equipment shown above and that the Lessee's final Disbursement Request pursuant to the Escrow Agreement will be signed by Lessee, approved by Lessor and delivered to the Escrow Agent on or before [six (6)] [twelve (12)] [eighteen (18)] months from the date of this Schedule.

OR IF VENDOR PAID DIRECTLY USE:

6. *Acquisition Amount; Sales Tax.* The Acquisition Amount for the Equipment listed in this Schedule to be paid to the Vendor (or reimbursed to Lessee) is \$_____.

[OPTION: IF ESCROW AGREEMENT IS USED:

7. *Acquisition Period.* The Acquisition Period applicable to this Schedule shall end at the conclusion of the ____ month following the date hereof.]

[7][8]. *Lease Term.* The Lease Term shall begin on the Funding Date and end on the first business day after the last scheduled Rental Payment Date, subject to earlier termination pursuant to the Agreement and extension as provided in Section 3.03 of the Agreement, including for any Extended Lease Term; *provided* that in no event shall any such extension result in the Lease Term extending past _____, 20__.

Dated: _____

LESSOR:

BANC OF AMERICA PUBLIC CAPITAL CORP
11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration
Fax No.: (443) 556-6977

LESSEE:

CITY OF SAN JOSE, CALIFORNIA
200 E. Santa Clara Street
13th Floor
San José, CA 95113-1905
Attention: Finance ' Debt Management
Fax No.: (408) 292-6482

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Counterpart No. _____ of _____ manually executed and serially numbered counterparts. To the extent that the Lease created hereby constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

EXHIBIT B □ □

FORM OF PAYMENT SCHEDULE

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST COMPONENT	PRINCIPAL COMPONENT	OUTSTANDING BALANCE	PREPAYMENT PRICE (including prepayment premium, if applicable)

Contract Rate. The Contract Rate is _____% per annum.

Taxable Rate. The Taxable Rate is _____% per annum.

Prepayment Option Commencement Date. For purposes of Section 10.01 of the Agreement, the Prepayment Option Commencement Date with respect to the Lease created by the Schedule to which this Payment Schedule is attached is _____, 20__.

LESSOR:
BANC OF AMERICA PUBLIC CAPITAL CORP

LESSEE:
CITY OF SAN JOSE, CALIFORNIA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT C-1

FORM OF AUTHORIZING RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT WITH BANC OF AMERICA PUBLIC CAPITAL CORP, AS LESSOR, AND SEPARATE SCHEDULES THERETO FOR THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT THAT CONSTITUTES AN ENERGY CONSERVATION FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of San José (the `City_`), a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, is authorized by the laws of the State of California to purchase, acquire and lease equipment that constitutes an energy conservation facility and to enter into contracts with respect thereto; and

WHEREAS, the City Council of the City of San José (the `City Council_`) has determined that a need exists for the acquisition, purchase and financing of certain property consisting of an energy conservation facility (collectively, the `Equipment_`) on the terms herein provided; and

WHEREAS, in order to acquire such equipment, the City proposes to enter into that certain Master Equipment Lease/Purchase Agreement (the `Agreement_`) with Banc of America Public Capital Corp (or one of its affiliates) (the `Lessor_`), the form of which has been posted on the agenda webpage for this meeting of the City Council, , and separate Schedules thereto substantially in the form attached to the Agreement; and

WHEREAS, the City Council deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement and separate Schedules relating thereto from time to time as provided in the Agreement and the other documentation related thereto for the purchase, acquisition, financing and leasing of the Equipment to be therein described on the terms and conditions therein and herein provided;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

Section 1. Findings and Determinations. It is hereby found and determined that the terms of the Agreement (including the form of Equipment Schedule and the form of Payment Schedule, both attached thereto), in the form posted on the agenda webpage for this meeting of

the City Council, are in the best interests of the City for the acquisition, purchase, financing and leasing of the Equipment.

Section 2. Approval of Documents. The form, terms and provisions of the Agreement (including the form of Equipment Schedule and the form of Payment Schedule, both attached thereto) are hereby approved in substantially the forms posted on the agenda webpage for this meeting of the City Council, together with such additions thereto and changes therein as the City Manager of the City (the `City Manager`), the Director of Finance of the City (the `Director of Finance`) or the authorized designees of either the City Manager or the Director of Finance (each, a `Designated Officer`), each acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney, the execution of which by the City shall be conclusive evidence of the approval of any such additions and changes,; *provided, however,* that, without further authorization from the City Council, (a) the aggregate principal component of Rental Payments under all Leases entered into pursuant to the Agreement shall not exceed \$_____ ; (b) the maximum term under any Lease entered into pursuant to the Agreement shall not exceed _____ years; and (c) the maximum interest rate used to determine the interest component of Rental Payments under each Lease shall not exceed the lesser of the maximum rate permitted by law or [ten percent (10%)] per annum. The Designated Officers of the City , each acting alone, may sign and deliver Leases to the Lessor on behalf of the pursuant to the Agreement on such terms and conditions as they shall determine are in the best interests of the Lessee up to the maximum aggregate principal component, maximum term and maximum interest rate provided above. The foregoing authorization shall remain in effect for a period of [two] years from the date hereof during which the _____ or the _____ of Lessee are authorized to sign and deliver Leases pursuant to the Agreement on the terms and conditions herein provided and to be provided in each such Lease.

Section 3. Other Actions Authorized. The officers and employees of the City shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates, Escrow Agreements and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and each Lease.

Section 4. No General Liability. Nothing contained in this Resolution, the Agreement, any Lease, any Escrow Agreement nor any other instrument shall be construed with respect to the City as incurring a pecuniary liability or charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, any Lease, any Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under each Lease are special limited obligations of the City as provided in the Agreement.

Section 5. Appointment of Authorized City Representatives. The _____ and _____ of the City are each hereby designated to act as authorized representatives of the City for purposes of the Agreement, each Lease and the related Escrow Agreement until such time as the City Council shall designate any other or different authorized representative for purposes of the Agreement and any Lease or Escrow Agreement.

Section 6. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED this __ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC,
City Clerk

EXHIBIT C-2 □ □

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, the duly elected or appointed and acting City Clerk or duly appointed Deputy Clerk of the City of San José, California (the “City”) certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of the City (the “Officials”) in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof; and

B. The Officials are duly authorized, on behalf of the City, to negotiate, execute and deliver the Master Equipment Lease/Purchase Agreement dated as of _____, 2014 (the “Agreement”) and separate Schedules relating thereto from time to time as provided in the Agreement (collectively, the “Schedules”), each by and between the City and Banc of America Public Capital Corp (‘Lessor’), the Escrow and Account Control Agreement dated as of _____, 2014 among Lessor, the City and Bank of America, National Association, as Escrow Agent, and all documents related thereto and delivered in connection therewith (collectively, the “Operative Agreements”), and the Operative Agreements are each the binding and authorized agreements of the City, enforceable in all respects in accordance with their respective terms.

NAME OF OFFICIAL	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. The undersigned, the duly elected or appointed and acting City Clerk of the Lessee identified in the above Resolution No. ____ (the “Resolution”) attached hereto as Exhibit A, hereby certifies that the Resolution is a full, true and correct copy of such Resolution as adopted by the City Council on _____, 2014. The Resolution is in full force and effect on the date hereof and has not been amended, modified or otherwise changed by the City Council since the date of adoption of the Resolution.

Dated: _____

By: _____

Name: _____

City Clerk

(The signer of this Certificate cannot be listed above as authorized to execute the Operative Agreements.)

C-2-2

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT A

RESOLUTION NO. _____

C-2-3

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT D □ □

FORM OF ACCEPTANCE CERTIFICATE

Banc of America Public Capital Corp
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

RE: Equipment Schedule No. _____ dated _____, 20__ to
Master Equipment Lease/Purchase Agreement, dated as of
_____, 2014, between Banc of America Public Capital
Corp, as Lessor, and the City of San José, California, as Lessee

Ladies and Gentlemen:

In accordance with the Master Equipment Lease/Purchase Agreement described above (the “*Agreement*”), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. Equipment Acceptance for all of the Equipment listed in the above-referenced Equipment Schedule (the “*Schedule*”) has occurred as of the date hereof.
2. Lessee has conducted such inspection and/or testing of the Equipment listed in the Schedule as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.
4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement and incorporated into the Schedule by reference are true and correct as of the date hereof.
5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof under any Lease currently in effect and no Lease under the Agreement has been terminated as the result of the occurrence of an Event of Default.

D-1

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

6. No Material Adverse Change has occurred since the date of the execution and delivery of the Agreement or the Schedule.

Capitalized terms used, but not defined, in this Acceptance Certificate shall have the same meanings as when such terms are used in the Agreement.

Date: _____

LESSEE:

CITY OF SAN JOSE, CALIFORNIA

By: _____

Name: _____

Title: _____

EXHIBIT E

FORM OF SELF INSURANCE CERTIFICATE

Banc of America Public Capital Corp
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

RE: Equipment Schedule No. _____ dated _____, 20__ to
Master Equipment Lease/Purchase Agreement, dated as of
_____, 2014, between Banc of America Public Capital
Corp, as Lessor, and the City of San José, California, as Lessee

In connection with the above-referenced Equipment Schedule (the "*Schedule*"), the City of San José, California (the "*City*"), the Lessee warrants and represents to Banc of America Public Capital Corp the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement incorporated in the Schedule by reference.

1. The City is self-insured covering third party claims arising out of its general operations (by way of example, commercial general liability, professional liability or automobile liability insurance). Further, the City is also self-insured covering workers' compensation claims. The City also received the necessary consent of the State Department of Industrial Relations to do so.

2. Each fiscal year, as part of its budgetary process, the City appropriates funds specifically for the purposes of satisfying valid third party claims and workers' compensation claims, which may potentially be brought against the City. Information concerning these appropriations is a matter of public record and can be obtained from visiting the following website <http://sanjoseca.gov/budget/>.

LESSEE:
CITY OF SAN JOSE, CALIFORNIA

By: _____

Name: _____

Title: _____

EXHIBIT F

FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

DATED _____

Banc of America Public Capital Corp (“*Assignor*”) hereby gives notice that, as of _____, 20__ it has assigned and sold to _____ (“*Assignee*”) all of Assignor’s right, title and interest in, to and under Equipment Schedule No. _____, dated _____, 20__ (including the Payment Schedule attached thereto, the “*Schedule*”), which incorporates by reference the terms and provisions of that certain Master Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of _____, 2014, each between Assignor and the City of San José, California (“*Lessee*”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Lease (as such term is hereinafter defined), all of Assignor’s right, title and interest in the Equipment listed in the Schedule and all of Assignor’s right, title and interest in, to and under the Escrow and Account Control Agreement dated as of _____, 20__ (the “*Escrow Agreement*”) by and among Lessee, Assignor and Bank of America, National Association, as Escrow Agent, together with the Escrow Account related thereto (collectively, the “*Assigned Property*”).

For purposes of this Notice and Acknowledgment of Assignment (the “*Acknowledgment*”), “*Lease*” means collectively the Schedule and the terms and provisions of the Agreement incorporated therein by reference, together with all exhibits, schedules, riders, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith. The term “*Lease*” specifically excludes all other Equipment Schedules entered into under the Agreement and rental payments other than with respect to the Schedule. Each capitalized term used but not defined herein has the meaning set forth in the Agreement.

1. Lessee hereby acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Lease in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Equipment in accordance with the terms of the Lease, to declare a default and to exercise all remedies thereunder; and (ii) except as provided in Section 3.03 of the Agreement or as required by State law, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Lease shall be absolute and unconditional in all events without diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Acknowledgment, the following information about the Lease is true, accurate and complete:

Number of Rental Payments Remaining	-	_____
Amount of Each Rental Payment	-	\$ _____
Total Amount of Rents Remaining	-	\$ _____
Frequency of Rental Payments	-	_____
Next Rental Payment Due	-	_____
Funds Remaining in Escrow Account	-	\$ _____

4. The Lease remains in full force and effect, has not been amended and no Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

5. Any inquiries of Lessee related to the Lease and any requests for disbursements from the Escrow Account, if applicable, and all Rental Payments and other amounts coming due pursuant to the Lease on and after the date of this Acknowledgment should be remitted to [Assignee] [Lease Servicer] at the following address (or such other address as provided to Lessee in writing from time to time by Assignee [or Lease Servicer]):

Acknowledged and Agreed:

LESSEE:
CITY OF SAN JOSE, CALIFORNIA ☐

By: _____
Name: _____
Title: _____

ASSIGNOR:
BANC OF AMERICA PUBLIC CAPITAL CORP ☐

By: _____
Name: _____
Title: _____

EXHIBIT G

FORM OF ESCROW AND ACCOUNT CONTROL AGREEMENT

THIS ESCROW AND ACCOUNT CONTROL AGREEMENT (this "*Agreement*"), dated as of _____, 2014, by and among Banc of America Public Capital Corp, a Kansas corporation (together with its successors and assigns, hereinafter referred to as "*Lessor*"), City of San José, a charter city and municipal corporation existing under the Constitution and laws of the State of California (hereinafter referred to as "*Lessee*") and Bank of America, National Association, a national banking association organized under the laws of the United States of America (hereinafter referred to as "*Escrow Agent*").

Reference is made to Schedule No. ___ dated _____, 2014 (the "*Schedule*") incorporating the terms of that certain Master Equipment Lease/Purchase Agreement dated as of _____, 2014 (the "*Master Agreement*") between Lessor and Lessee (the Schedule and the Master Agreement are hereinafter referred to as the "*Lease*"), covering the acquisition and lease of certain Equipment described therein (the "*Equipment*"). It is a requirement of the Lease that the Acquisition Amount (\$ _____) be deposited into a segregated escrow account under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Creation of Escrow Account.

(a) There is hereby created an escrow fund to be known as the _____ Escrow Account_ (the "*Escrow Account*") to be held by the Escrow Agent for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) In addition to the instructions provided in the Agreement, Lessee may, from time to time, provide written instructions for Escrow Agent to use any available cash in the Escrow Account to purchase any money market fund or liquid deposit investment vehicle that Escrow Agent from time to time makes available to the parties hereto. Such written instructions shall be provided via delivery to Escrow Agent of a signed and completed Escrow Account Investment Selection Form (such form available from Escrow Agent upon request). All funds invested by Escrow Agent at the direction of Lessee in such short-term investments shall be deemed to be part of the Escrow Account and subject to all the terms and conditions of this Agreement. If any cash is received for the Escrow Account after the cut-off time for the designated short-term investment vehicle, the Escrow Agent shall hold such cash uninvested until the next Business

Day. In the absence of written instructions designating a short-term investment for cash, cash in the Escrow Account shall remain uninvested. Escrow Agent shall have no obligation to pay interest on cash in respect of any period during which it remains uninvested. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Escrow Agent for the reinvestment of any maturing investment. Accordingly, neither the Escrow Agent nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Escrow Account, and Lessee agrees to and does hereby release the Escrow Agent and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Escrow Account shall become part of the Escrow Account, and gains and losses on the investment of the moneys on deposit in the Escrow Account shall be borne by the Escrow Account. The Escrow Agent shall have no discretion whatsoever with respect to the management, disposition or investment of the Escrow Account and is not a trustee or a fiduciary to Lessee. The Escrow Agent shall not be responsible for any market decline in the value of the Escrow Account and has no obligation to notify Lessor and Lessee of any such decline or take any action with respect to the Escrow Account, except upon specific written instructions stated herein. For purposes of this Agreement, 'Qualified Investments' means any investments which meet the requirements of Sections 53600 *et seq.* of the California Government Code.

(c) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent in payment of amounts described in Section 2 hereof upon receipt of written instruction(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Escrow Account are insufficient to pay such amounts, Lessee shall deposit into the Escrow Account any funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Escrow Account on or after the earlier of (i) the expiration of the Acquisition Period and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof.

(d) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account or (ii) written notice given by Lessor of the occurrence of an Event of Default under the Lease.

(e) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. Notwithstanding and without limiting the generality of the foregoing, concurrent with the execution of this Agreement, Lessee and Lessor, respectively, shall deliver to the Escrow Agent an authorized signers form in the form of Exhibit A-1 (Lessee) and Exhibit A-2 (Lessor) attached hereto. Notwithstanding the foregoing sentence, the Escrow Agent is

authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the parties or by a person or persons authorized by the parties. The Escrow Agent specifically allows for receiving direction by written or electronic transmission from an authorized representative with the following caveat, Lessee and Lessor agree to indemnify and hold harmless the Escrow Agent against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees) (collectively, "*Losses*") incurred or sustained by the Escrow Agent as a result of or in connection with the Escrow Agent's reliance upon and compliance with instructions or directions given by written or electronic transmission given by each, respectively, provided, however, that such Losses have not arisen from the gross negligence or willful misconduct of the Escrow Agent, it being understood that forbearance on the part of the Escrow Agent to verify or confirm that the person giving the instructions or directions, is, in fact, an authorized person shall not be deemed to constitute gross negligence or willful misconduct.

In the event conflicting instructions as to the disposition of all or any portion of the Escrow Account are at any time given by Lessor and Lessee, the Escrow Agent shall abide by the instructions or entitlement orders given by Lessor without consent of the Lessee.

(f) Unless the Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this agreement; and in connection therewith, does to the extent permitted by law indemnify the Escrow Agent against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action including an interpleader action to resolve the disagreement. The Escrow Agent shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(h) The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence.

(i) Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for non-routine administration of the Escrow Account and the performance of the Escrow Agent's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Escrow Account.

(j) The Escrow Agent or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation (the `Effective Date_), which shall be a date not less than 60 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the Lessee and Lessor. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Escrow Account.

(k) The Escrow Agent shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no fiduciary or implied duties responsibilities or obligations shall be read into this Agreement.

2. Acquisition of Property.

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Escrow Account. Lessee represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain or cause to be obtained all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof. Escrow Agent shall have no duty to monitor or enforce Lessee's compliance with the foregoing covenant.

(b) Authorized Escrow Account Disbursements. It is agreed as between Lessee and Lessor that disbursements from the Escrow Account shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Requisition Procedure. No disbursement from the Escrow Account shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Escrow Account there shall be filed with the Escrow Agent a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due and the manner of disbursement (check or wire) and certifying the Acceptance Date for the portion of Equipment for which disbursement is requested. The Escrow Agent is authorized to obtain and rely on confirmation of such Disbursement Request and payment instructions by telephone call-back to the person or persons designated for verifying such requests on Exhibit A-2 (such person verifying the request shall be different than the person initiating the request). The Lessor and Lessee hereby confirm that any call-back performed by Escrow Agent to verify a disbursement instruction before release, shall be made to Lessor only and Escrow Agent shall have no obligation to call-back Lessee.

Each such requisition shall be signed by an authorized representative of Lessee (an “*Authorized Representative*”) and by Lessor, and shall be subject to the following conditions, which Escrow Agent shall conclusively presume have been satisfied at such time as a requisition executed by Lessee and Lessor is delivered to it:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:

(i) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Escrow Account for costs relating to the Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof); (ii) the Authorized Representative has no notice of any vendor’s, mechanic’s or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (iv) the Equipment is insured in accordance with the Lease; (v) no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default) has occurred and is continuing; (vi) such disbursement shall occur during the Acquisition Period; (vii) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof; (viii) no Material Adverse Change has occurred since the date of the execution and delivery of the Lease; and (ix) Equipment Acceptance with respect to the portion of Equipment for which disbursement is requested has occurred as of the Acceptance Date identified thereon.

2. Delivery to Lessor invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Equipment has passed to Lessee) therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and

3. The disbursement shall occur during the Acquisition Period.

Notwithstanding anything in this Agreement to the contrary, an amount may not be disbursed from the Escrow Account to pay Equipment Costs relating to a portion of the Equipment prior to the date on which Lessee has certified to the Escrow Agent in the related disbursement request that Equipment Acceptance has occurred with respect to such portion of Equipment for which funds are requested for disbursement from the Escrow Account.

3. Deposit to Escrow Account. Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited in the Escrow Account. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Escrow Account.

4. Excessive Escrow Account. Upon receipt of written instructions from Lessor including a representation that one of the following conditions has been satisfied (upon which representation Escrow Agent shall conclusively rely, any funds remaining in the Escrow Account on or after the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate, or upon a termination of the Escrow Account as otherwise provided herein, shall be distributed by the Escrow Agent to the Lessor in order for the Lessor to apply such funds to amounts owed by Lessee under the Lease in accordance with Section 4.07 of the Lease.

5. Security Interest. The Escrow Agent and Lessee acknowledge and agree that the Escrow Account and all proceeds thereof are being held by Escrow Agent for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Escrow Account, and all proceeds thereof, and all investments made with any amounts in the Escrow Account. If the Escrow Account, or any part thereof, is converted to investments as set forth in this agreement, such investments shall be made in the name of Escrow Agent and the Escrow Agent hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Acquisition Account. In order to perfect Lessor's security interest by means of control in (i) the Escrow Account established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Escrow Account, (iii) all of Lessee's rights in respect of the Escrow Account, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the `Collateral_), Lessor, Lessee and Escrow Agent further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the State of California (the "*Commercial Code*") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Escrow Agent will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) Provided that account investments shall be held in the name of the Escrow Agent, Escrow Agent hereby represents and warrants that (i) the records of Escrow Agent show that Lessee is the sole owner of the Collateral, (ii) Escrow Agent has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (iii) Escrow Agent is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Escrow Agent is obligated to accept from Lessor under this Agreement and entitlement orders that Escrow Agent, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Escrow Agent will not enter into any agreement by which Escrow Agent agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Escrow Agent shall promptly notify Lessor if any person requests Escrow Agent to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, Lessee may affect sales, trades, transfers and exchanges of Collateral within the Escrow Account, but will not, without the prior written consent of Lessor, withdraw any Collateral from the Escrow Account. Escrow Agent acknowledges that Lessor reserves the right, by delivery of written notice to Escrow Agent, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Escrow Account. Further, Escrow Agent hereby agrees to comply with any and all written instructions delivered by Lessor to Escrow Agent (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Escrow Agent to comply with all instructions and entitlement orders delivered by Lessor to Escrow Agent.

(g) Escrow Agent will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Escrow Agent will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Escrow Agent and Lessee hereby agree that any property held in the Escrow Account shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Escrow Agent may be a party.

(i) Escrow Agent is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 8 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Escrow Account statements or reports issued or sent to Lessee with respect to the Escrow Account.

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to Escrow Agent such information as it may request, from time to time, in order for Escrow Agent to satisfy the requirements of the USA

PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This Agreement may not be amended except in writing signed by all parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below.

Notices and other communications hereunder may be delivered or furnished by electronic mail provided that any formal notice be attached to an email message in PDF format and provided further that any notice or other communication sent to an e-mail address shall be deemed received upon and only upon the sender's receipt of affirmative acknowledgement or receipt from the intended recipient. For purposes hereof no acknowledgement of receipt generated on an automated basis shall be deemed sufficient for any purpose hereunder or admissible as evidence of receipt.

If to Lessor: Banc of America Public Capital Corp
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration
Fax: (443) 556-6977

If to Lessee: City of San José
200 E. Santa Clara Street, 13th Floor
San José, California 95113-6482
Attn: Finance & Debt Management
Fax: (408) 292-6482

If to Escrow Agent: Bank of America, National Association
Global Custody and Agency Services
Mail Code: IL4-135-05-07
135 S. LaSalle Street, Suite 511
Chicago, IL 60603
Attention: Alice Wolan
Telephone: (312) 992-9782
Fax: (312) 992-9833
Email: alice.m.wolan@baml.com

9. Lessee and Lessor Tax Certifications. Lessee and Lessor understand and agree that they are required to provide the Escrow Agent with a properly completed and signed Tax Certification (as defined below) and that the Escrow Agent may not perform its duties hereunder without having been provided with such Tax Certification. As used herein "Tax Certification" shall mean an IRS form W-9 or W-8 as applicable. The Escrow Agent will comply with any U.S. tax withholding or backup withholding and reporting requirements that are required by law. With respect to earnings allocable to a United States person, the Escrow Agent will report such income, if required, on IRS Form 1099 or any other form required by law. The IRS Forms 1099 and/or 1042-S shall show the Escrow Agent as payor and Lessee as payee.

The Escrow Agent shall not be responsible for determining or reporting imputed interest, if any.

10. Governing Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the parties hereto consent to jurisdiction in the State of California and venue in any state or Federal court located in the City of San Jose.

11. Successors to Escrow Agent or Lessor. Any bank or corporation into which the Escrow Agent may be merged or with which it may be consolidated, or any bank or corporation to whom the Escrow Agent may transfer a substantial amount of its escrow business, shall be the successor to the Escrow Agent without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding. Any bank or corporation into which the Lessor may be merged or with which it may be consolidated, or any bank or corporation to whom the Lessor may transfer a substantial amount of its business, shall be the successor to the Lessor without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding.

12. Amendments. This Agreement may be amended, modified, and/or supplemented only by an instrument in writing executed by all parties hereto.

13. Assignee Tax Certifications. No party hereto shall assign its rights hereunder until its assignee has submitted to the Escrow Agent (i) Patriot Act disclosure materials and the Escrow Agent has determined that on the basis of such materials it may accept such assignee as a

customer and (ii) assignee has delivered an IRS Form W-8 or W-9, as appropriate, to the Escrow Agent which the Escrow Agent has determined to have been properly signed and completed.

14. Confidentiality. Escrow Agent will treat information related to this Agreement as confidential but, unless prohibited by law, Lessee and Lessor authorize the transfer or disclosure of any information relating to this Agreement to and between the subsidiaries, officers, affiliates and other representatives and advisors of Escrow Agent and third parties selected by any of them, wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Escrow Agent and any such subsidiary, officer, affiliate or third party may transfer or disclose any such information as required by any law, court, regulator or legal process.

Lessor will treat information related to this Agreement as confidential but, unless prohibited by law, Escrow Agent and Lessee authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates, other representatives and advisors of Lessor and debt and equity sources and third parties selected by any of them, and to their prospective assignees wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Lessor and any such subsidiary, officer, affiliate, debt and equity source or third party or prospective assignee may transfer or disclose any such information as required by any law, court, regulator or legal process.

IN WITNESS WHEREOF, the parties have executed this Escrow and Account Control Agreement as of the date first above written.

BANC OF AMERICA PUBLIC CAPITAL CORP,
as Lessor

CITY OF SAN JOSE, CALIFORNIA,
as Lessee

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

BANK OF AMERICA, NATIONAL ASSOCIATION,
as Escrow Agent

By: _____
Name: _____
Title: _____

SCHEDULE I

TO THE ESCROW AND ACCOUNT CONTROL AGREEMENT

FORM OF DISBURSEMENT REQUEST

Re: Equipment Schedule No. ____ dated _____, 2014 to Master Equipment Lease/Purchase Agreement dated as of _____, 2014, each by and between Banc of America Public Capital Corp, as Lessor, and City of San José, California, as Lessee (the “Lease”) (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow and Account Control Agreement, dated as of _____, 2014 (the “Escrow and Account Control Agreement”) by and among Banc of America Public Capital Corp (“Lessor”), City of San José, California (“Lessee”) and Bank of America, National Association (the “Escrow Agent”), the undersigned hereby (a) accepts for the purpose of the Lease the Equipment described below as of the Acceptance Date identified below and (b) requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow and Account Control Agreement for the following purposes:

Disbursement Amounts:

PAYEE'S NAME AND ADDRESS (if disbursement via wire, must include wire transfer instructions)	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE
_____	_____	\$ _____	
_____	_____	\$ _____	
_____	_____	\$ _____	

(i) (a) Each obligation specified in the table herein titled as `Disbursement Amounts_ has been incurred by Lessee in the stated amount, (b) the same is a proper charge against the Escrow Account for costs relating to the Equipment identified in the Lease and (c) has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof).

(ii) Each item of Equipment relating to an obligation specified in the table herein titled as `Disbursement Amounts_ has been delivered, installed and accepted by Lessee. Attached hereto is the original invoice with respect to each such obligation.

(iii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(v) The Equipment is insured in accordance with the Lease.

(vi) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vii) The disbursement shall occur during the Acquisition Period.

(viii) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

(ix) No Material Adverse Change has occurred since the date of the execution and delivery of the Lease.

(x) The Acceptance Date on which Equipment Acceptance has occurred for the Equipment for which disbursement is requested is _____, 20__.

Dated: _____

CITY OF SAN JOSE, CALIFORNIA

By: _____

Name: _____

Title: _____

Disbursement of funds from the Escrow
Account in accordance with the foregoing
Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP,
as Lessor under the Lease

By: _____

Name: _____

Title: _____

Schedule I-2

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT A-1

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, the duly elected or appointed and acting City Clerk of the City of San José, California (“*Lessee*”) certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the “*Officials*”) in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver Equipment Schedule No. ___ dated _____, 2014 incorporating the terms of that certain Master Equipment Lease/Purchase Agreement dated as of _____, 2014 by and between Lessee and Banc of America Public Capital Corp (“*Lessor*”), the Escrow and Account Control Agreement dated as of _____, 2014 among Lessor, Lessee and Bank of America, National Association, as Escrow Agent, and all documents related thereto and delivered in connection therewith (collectively, the “*Agreements*”), and the Agreements each are the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

NAME OF OFFICIAL	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: _____

By: _____

Name: _____

City Clerk

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)

EXHIBIT A-2

**ESCROW AND ACCOUNT CONTROL AGREEMENT DATED AS OF _____, 20__
BY AND AMONG CITY OF SAN JOSE, CALIFORNIA,
BANC OF AMERICA PUBLIC CAPITAL CORP AND
BANK OF AMERICA, NATIONAL ASSOCIATION**

Certificate of Authorized Representatives – Lessor

Name: Terri Preston
Title: Vice President
Phone: 443-556-6936
Facsimile: 443-556-6977
E-mail: Terri.preston@baml.com
Signature: _____

Name: Nancy Nusenko
Title: Senior Operations Consultant
Phone: 443-556-6975
Facsimile: 443-556-6977
E-mail: Nancy.a.nusenko@baml.com
Signature: _____

Fund Transfer / Disbursement Authority Level:
 Initiate
 Verify transactions initiated by others

Fund Transfer / Disbursement Authority Level:
 Initiate
 Verify transactions initiated by others

Name: William Dawkins
Title: Senior Operations Consultant
Phone: 443-556-6968
Facsimile: 443-556-6977
E-mail: William.dawkins@baml.com
Signature: _____

Name: Arlene Sobieck
Title: Senior Operations Consultant
Phone: 443-556-6943
Facsimile: 443-556-6977
E-mail: Arlene.sobieck@baml.com
Signature: _____

Fund Transfer / Disbursement Authority Level:
 Initiate
 Verify transactions initiated by others

Fund Transfer / Disbursement Authority Level:
 Initiate
 Verify transactions initiated by others

The Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the person or persons identified above including without limitation, to initiate and verify funds transfers as indicated.

BANC OF AMERICA PUBLIC CAPITAL CORP

By: _____
Name: _____
Title: _____
Date: _____