

**EQUIPMENT LEASE/PURCHASE AGREEMENT  
(ACQUISITION FUND – ARIZONA)**

This Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (as further hereinafter defined, this “*Agreement*”) dated as of May \_\_, 2013, and entered into between Banc of America Public Capital Corp, a Kansas corporation (as further hereinafter defined, the “*Lessor*”), and the City of Flagstaff, a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona (“*Lessee*”).

**WITNESSETH:**

WHEREAS, Lessee desires to lease and acquire from Lessor certain Renewable Energy Equipment (as such term is defined herein), subject to the terms and conditions hereof;

WHEREAS, Lessee is authorized under the constitution and laws of the State of Arizona to enter into this Agreement for the purposes set forth herein;

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:

“*Acquisition Amount*” means \$ \_\_\_\_\_. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose, to acquire and install the Renewable Energy Equipment and to pay a portion of the Delivery Costs.

“*Acquisition Fund*” means the fund established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement.

“*Acquisition Fund Agreement*” means the Acquisition Fund and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Acquisition Fund Custodian, pursuant to which the Acquisition Fund is established and administered.

“*Acquisition Fund Custodian*” means the Acquisition Fund Custodian identified in the Acquisition Fund Agreement, and its successors and assigns.

“*Acquisition Period*” means the period ending five (5) business days prior to \_\_\_\_\_.

“*Agreement*” means this Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04 hereof.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

“*Commencement Date*” means the date when Lessee’s obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian.

“*Contract Rate*” means the rate identified as such in the Payment Schedule.

“*Delivery Costs*” means the costs incurred in connection with the execution and delivery of the Agreement, including counsel fees, fees and expenses of the Acquisition Fund Custodian and similar costs, fees and expenses.

“*Determination of Taxability*” means and shall be deemed to have occurred on the first to occur of the following: (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 which legally holds that the interest component of any Rental Payment is includable in the gross income of the holder thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment is includable in the gross income of the holder thereof; or (c) receipt by Lessor or Lessee of a written opinion of Bond Counsel that the interest component of any Rental Payment has become includable in the gross income of the holder thereof for federal income tax purposes.

“*Equipment Acceptance*” means, with respect to each portion of the Renewable Energy Equipment that may operate for its intended purpose as a separate and independent functional unit, that the Renewable Energy 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.

“*Equipment Costs*” means the total cost of the Renewable Energy Equipment, including related costs such as freight, installation and taxes and capitalizable costs incurred in connection with the acquisition, installation and/or financing of the Renewable Energy Equipment.

“*Equipment Schedule*” means the equipment schedule attached hereto as Exhibit A and made a part hereof.

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

“*Event of Taxability*” means the circumstance of the interest component of any Rental Payment paid or payable pursuant to this Agreement becoming includable for federal income tax

purposes in a holder's gross income as a consequence of any act, omission or event whatsoever, as determined by a Determination of Taxability.

*"Lease Term"* means the Original Term and all Renewal Terms, with a final Renewal Term ending on October \_\_, 2028.

*"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 this Agreement, including the right, title and interest of Lessor in and to the Renewable Energy Equipment, the Rental Payments and other amounts due hereunder, pursuant to Section 11.01 hereof, or the Acquisition Fund, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

*"Material Adverse Change"* means any change in Lessee's creditworthiness that could 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.

*"Original Term"* means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at such Commencement Date.

*"Payment Schedule"* means the payment schedule attached hereto as Exhibit B and made a part hereof.

*"Rebates"* means, collectively, all incentives, rebates or credits available with respect to the Renewable Energy Equipment, and any additional incentives, rebates or credits that Lessee or Vendor may be entitled to as a result of the Renewable Energy Equipment.

*"Renewable Energy Equipment"* means the property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V hereof. Whenever reference is made in this Agreement to Renewable Energy Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Renewable Energy Equipment.

*"Renewal Terms"* means the renewal terms of this Agreement, each having a duration of one year and a term coextensive with Lessee's fiscal year.

*"Rental Payments"* means the basic rental payments payable by Lessee hereunder pursuant to Section 4.01 hereof, consisting of a principal component and an interest component.

*"State"* means the State of Arizona.

*"Taxable Date"* means the date on which the interest component of any Rental Payment is first includable in gross income of any holder thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“*Taxable Rate*” means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“*Termination Value*” means the amount provided in the Payment Schedule.

“2009 Capital Projects Financing Agreements” means, collectively, (a) that certain Ground Lease dated as of July 1, 2009, as amended and supplemented, between the City of Flagstaff, Arizona, as lessor, and Wells Fargo Bank, N.A., as trustee, as lessee; (b) that certain Lease-Purchase Agreement dated as of July 1, 2009, as amended and supplemented, between Wells Fargo Bank, N.A., as trustee, as lessor, and the City of Flagstaff, Arizona, as lessee; (c) that certain Trust Agreement dated as of July 1, 2009, as amended and supplemented, between Wells Fargo Bank, N.A., as trustee, and the City of Flagstaff, Arizona and (d) other agreements and documents related to the foregoing, all with respect to the financing of certain Projects (as therein described and defined) on all or a portion of the real estate on which Renewable Energy Equipment is to be located.

“*Vendor*” means the manufacturer, installer or supplier of the Renewable Energy Equipment 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 Renewable Energy Equipment.

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Renewable Energy Equipment.

## 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 municipal corporation duly incorporated and validly existing under the constitution and the laws of the State, with full power and authority to enter into this Agreement and the Acquisition Fund Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement and the Acquisition Fund Agreement by proper action of its governing body 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 in order to ensure the validity and enforceability of this Agreement and the Acquisition Fund 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 municipal corporation.

(e) Lessee has complied materially with such public bidding requirements as may be applicable to this Agreement and the acquisition and installation by Lessee of the Renewable Energy Equipment.

(f) During the Lease Term, the Renewable Energy Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority. Lessee does not intend to sell or otherwise dispose of the Renewable Energy Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor, or provide written notice to Lessor that the same are available at an internal website: (i) annual audited financial statements (including, so long as required by such generally accepted accounting principles and practices (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 210 days of 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 the following fiscal. The financial statements described in subsection (g)(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.

(h) Lessee has an immediate need for the Renewable Energy Equipment and expects to make immediate use of the Renewable Energy Equipment. Lessee's need for the Renewable Energy Equipment is not temporary and Lessee does not expect the need for any item of the Renewable Energy Equipment to diminish during the Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. Lessee shall not permit the Federal government to guarantee any Rental Payments. The Renewable Energy Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Renewable Energy Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may materially adversely affect Lessee's financial condition or impair its ability to perform its obligations under this Agreement or the Acquisition Fund Agreement. Lessee will, at its expense, maintain its legal existence in good standing 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 Renewable Energy Equipment and the Acquisition Fund and Lessor's rights, interests and benefits under this Agreement and the Acquisition Fund Agreement.

(k) Lessee is the fee owner of the real estate where the Renewable Energy Equipment is and will be located and has good and marketable title thereto, and other than to the extent of the rights and interests created under the 2009 Capital Projects Financing Agreements, there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate (other than (i) liens for general ad valorem taxes and assessments, (ii) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law, and (iii) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record, in each case described in (i) through (iii), which will not, in the reasonable opinion of the Lessee, subject such real estate or any part thereof, to loss or forfeiture or materially impair the use of the real estate for its intended purposes).

(l) During the past ten (10) years, 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. No material event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(m) Lessee hereby acknowledges that the Lessor is relying on Lessee's procurement of (i) the energy savings guarantee from Ameresco and (ii) the Rebates as a material inducement for its execution and delivery of this Agreement. Lessee acknowledges that it must acquire and install the Renewable Energy Equipment by certain dates and comply with certain conditions relating to the Rebates in order obtain the Rebates. Lessee hereby agrees to use its best efforts to fulfill all requirements and meet all deadlines in order to obtain all such Rebates.

(n) Lessee hereby covenants and agrees to cooperate in all respects with Lessor in facilitating the prompt and careful removal and return of the Renewable Energy Equipment to Lessor from the real estate where the Renewable Energy Equipment is and will be located if at any time Lessor is entitled to have the Renewable Energy Equipment returned or delivered or it or entitled to repossession of the Renewable Energy Equipment pursuant to Section 3.03 or Section 12.02 hereof.

### ARTICLE III

*Section 3.01. Lease of Renewable Energy Equipment.* Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire and install the Renewable Energy Equipment and pay certain of the Delivery Costs. Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Renewable Energy Equipment. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term as set forth in the Payment Schedule.

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03 hereof, to continue the Lease Term and to pay the Rental Payments under the Lease through the Original Term and all Renewal Terms. Lessee affirms that sufficient funds are 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 can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law, to have such portion of the budget or appropriation request approved and to exhaust all available reviews and appeals in the event such portion of the budget or appropriation request is not approved.

*Section 3.03. Nonappropriation.* Lessee is obligated only to pay such Rental Payments from its general fund and from any other funds legally available for the purpose as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees to cease use of the Renewable Energy Equipment and peaceably remove and deliver at Lessee's expense the Renewable Energy Equipment to Lessor at the location(s) to be specified by Lessor.

*Section 3.04. Conditions to Lessor's Performance.* (a) As a prerequisite to the performance by Lessor of any of its obligations under this Agreement, Lessee shall deliver to Lessor the following:

(i) An Acquisition Fund Agreement in the form set forth in Exhibit H hereto, satisfactory to Lessor and executed by Lessee and the Acquisition Fund Custodian;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as Exhibit C-1, authorizing the execution and delivery of this Agreement and the Acquisition Fund

Agreement and performance by Lessee of its obligations under this Agreement and the Acquisition Fund Agreement;

(iii) A Certificate executed by the City Clerk or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C-2, completed to the satisfaction of Lessor;

(iv) Opinions of counsel to Lessee, which taken as a whole, are substantially in the form attached hereto as Exhibit D and otherwise satisfactory to Lessor;

(v) Evidence of insurance as required by Section 7.02 hereof;

(vi) 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 hereof;

~~(vii) A waiver or waivers of interest in the Renewable Energy Equipment, satisfactory to Lessor, from any mortgagee or any other party having an interest in the real estate on which the Renewable Energy Equipment will be located and/or landlord of the real estate on which the Renewable Energy Equipment will be located;~~ (viii) A copy of a fully completed and executed Form 8038-G and a fully completed and executed Arbitrage Certificate with respect to the Agreement;

~~(ix)~~ (viii) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04 hereof, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, *provided, however*, that no "Disbursement Request" pursuant to the Acquisition Fund Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 hereof have been delivered to Lessor;

~~(ix)~~ (ix) A copy of each completed and executed application that Lessee is required to file, and has filed, in order to obtain the Rebates with respect to the Renewable Energy Equipment and evidence of such Rebates;

~~(ix)~~ (ix) A copy of the fully executed Master Solar Agreement dated as of \_\_\_\_\_, 2013 between Ameresco Southwest, Inc. f/k/a APS Energy Services Company, Inc. ("*Ameresco*") and the Lessee including an energy savings guarantee from Ameresco with respect to the Renewable Energy Equipment; and

~~(ix)~~ (xi) Such other items reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Acquisition Fund Agreement shall be subject to: (i) no Material Adverse Change in the financial condition of Lessee since the date of this Agreement, and (ii) no Event of Default having occurred and continuing.



(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Acquisition Fund Custodian for deposit into the Acquisition Fund as provided in the Acquisition Fund Agreement.

#### ARTICLE IV

*Section 4.01. Rental Payments.* Subject to Section 3.03 hereof, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the dates and in such amounts as provided in the Payment Schedule. Interest on the Acquisition Amount shall begin to accrue as of the Commencement Date. 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 plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date.

*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.

*Section 4.03. Rental Payments to Constitute a Current Expense of Lessee.* Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments 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 herein 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 hereof, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation by reason of any failure of the Renewable Energy Equipment to perform in the manner or to the extent that the Lessee anticipated from and after its acceptance or any failure to achieve cost or other savings that the Lessee anticipated, any other failure of the Renewable Energy Equipment, any defects, malfunctions, breakdowns or infirmities in the Renewable Energy Equipment, any disputes with the Vendor of any Renewable Energy Equipment or Lessor, any failure or inability (for whatever reason) of Lessee to receive (or delay in receipt of) all or any portion of any Rebate or any payment for guaranteed energy savings by Vendor under the Vendor Agreement, any 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, or failure of any Vendor to deliver any Renewable Energy Equipment or otherwise perform any of its obligations.

*Section 4.05. Tax Covenants.* (a) Lessee will not make or direct the making of any investment or other use of the proceeds of this Agreement which would cause this Agreement to be an “arbitrage bond” as that term is defined in section 148 (or any successor provision thereto) of the Code or a “private activity bond” as that term is defined in section 141 (or any successor

provision thereto) of the Code, and Lessee will comply with the requirements of the Code sections and related Regulations throughout the Lease Term. (Particularly, Lessee shall be the owner of the Equipment for federal income tax purposes. Lessee shall not enter into any management or service contract with any entity other than a governmental entity for the operation of any portion of the Equipment unless the management or service contract complies with the requirements of Revenue Procedure 97-13 or such other authority as may control at the time or any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the Equipment.) Also, the payment of the Rental Payments shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of this Agreement, or amounts treated as proceeds of this Agreement, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds may be so invested for an initial temporary period until needed for the purpose for which this Agreement is being executed and delivered, may be so used in making investments in a *bona fide* debt service fund or may be invested in obligations issued by the United States Treasury.

(b)(i) Lessee shall take all necessary and desirable steps, as determined by the Council of Lessee upon the advice of Bond Counsel, to comply with the requirements hereunder in order to ensure that the interest component of Rental Payments is excluded from gross income for federal income tax purposes under the Code; *provided, however*, compliance with any such requirement shall not be required in the event Lessee and Lessor receive an opinion of Bond Counsel signed by an attorney or firm of attorneys of national recognized standing in the field of law relating to municipal bonds selected by Lessee and reasonably acceptable to the Lessor that either (i) compliance with such requirement is not required to maintain the exclusion from gross income of the interest component of Rental Payments, or (ii) compliance with some other requirement will meet the requirements of the Code. In the event Lessee and Lessor receive such opinion, this Agreement shall be amended to conform to the requirements set forth in such opinion. (In consideration of the execution and delivery of this Agreement by Lessor and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, Lessee covenants, and the appropriate officials of Lessee are hereby directed, to take all action required or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion from gross income of the interest component of Rental Payments.)

(ii) In addition to Section 4.06 hereof, if for any reason any requirement hereunder is not complied with, Lessee shall take all necessary and desirable steps, as determined by the Council of Lessee upon the advice of Bond Counsel, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence, and Lessee shall pay any required interest or penalty under Regulations section 1.148-3(h) with respect to the Code.

(c) Lessee shall comply with the procedures and covenants contained in any arbitrage rebate provision or separate agreement executed in connection with the issuance of this Agreement (initially those specified in the Arbitrage Certificate delivered simultaneously herewith) for so long as compliance is necessary in order to maintain the exclusion from gross income for federal income tax purposes of the interest component of Rental Payments. Such experts and consultants shall be employed, as necessary, to make, as necessary, any calculations

in respect of rebates to be made to the United States of America in accordance with Section 148(f) of the Code, particularly those specified in the Arbitrage Certificate delivered simultaneously with the original issuance of this Agreement.

*Section 4.06. Event of Taxability.* Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the Taxable Date, and Lessee will pay such additional amount as will result in the holder thereof receiving the interest component of Rental Payments (from and after the Taxable Date) at the Taxable Rate.

*Section 4.07. Mandatory Prepayment.* Any funds not applied to Equipment Costs and remaining in the Acquisition Fund on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate (in the form attached hereto as Exhibit E), shall be applied by Lessor on any Rental Payment date to 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 hereunder in the inverse order of Rental Payment dates.

## ARTICLE V

*Section 5.01. Delivery, Installation and Acceptance of Renewable Energy Equipment.* (a) Lessee shall order the Renewable Energy Equipment, cause the Renewable Energy Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all Equipment Costs and other costs in connection therewith. When the Renewable Energy Equipment has been delivered and installed, Lessee shall promptly accept such Renewable Energy Equipment and evidence said acceptance by executing and delivering to Lessor an "Acceptance Certificate" in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor original invoices (and proof of payment of such invoices) and bills of sale (if title to such Renewable Energy Equipment has passed to Lessee) relating to each item of Renewable Energy Equipment accepted by Lessee.

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

*Section 5.03. Location; Inspection.* Once installed, no item of the Renewable Energy Equipment will be moved or relocated from the location specified for it in the Equipment Schedule 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 Renewable Energy Equipment is located for the purpose of inspecting the Renewable Energy Equipment.

*Section 5.04. Use and Maintenance of the Renewable Energy Equipment.* Lessee shall not install, use, operate or maintain the Renewable Energy Equipment (or cause the Renewable Energy Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall obtain and provide all permits and licenses, if any, necessary for the installation and operation of the Renewable Energy Equipment. In addition, Lessee agrees to comply in all 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 Renewable Energy Equipment or its interest or rights hereunder.

Lessee agrees that it will maintain, preserve, and keep the Renewable Energy 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 Renewable Energy Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Renewable Energy Equipment as eligible for manufacturer's maintenance upon the return of the Renewable Energy Equipment to Lessor as provided for herein.

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

## ARTICLE VI

*Section 6.01. Title to the Renewable Energy Equipment.* During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Renewable Energy Equipment shall be vested in Lessee immediately upon its acceptance of each item of Renewable Energy Equipment, subject to the terms and conditions hereof. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Renewable Energy Equipment from and against all claims, liens and legal processes of its creditors, and keep all Renewable Energy Equipment free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Renewable Energy Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Renewable Energy Equipment to Lessor in accordance with Section 12.02 hereof. Upon payment of all amounts due and owing under this Agreement in accordance with Section 10.01 hereof (including upon payment of all Rental Payments and other amounts payable under this Agreement), Lessor's security interest or other

interest in the Renewable Energy Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security interest in the Renewable Energy Equipment. During the Lease Term, Lessor will not claim ownership of the Renewable Energy Equipment for the purposes of any tax credits, benefits or deductions with respect to the Renewable Energy Equipment.

*Section 6.02. Security Interest.* As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Renewable Energy Equipment, (b) moneys and investments held from time to time in the Acquisition Fund and (c) any and all proceeds of any of the foregoing. 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 Renewable Energy Equipment, the Acquisition Fund and the proceeds thereof, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the Uniform Commercial Code of the State and treating Chapter 9, Title 47 of the Arizona Revised Statutes as applicable to Lessee notwithstanding the express provisions of Section 47.9109.D.14 thereof, and any attempts to realize on the security interests granted by Lessee will be conducted in accordance with the Arizona law.

*Section 6.03. Personal Property, No Encumbrances.* Lessee agrees that the Renewable Energy Equipment 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 Renewable Energy 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 on any of the real estate where the Renewable Energy Equipment 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 Renewable Energy Equipment 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.

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* Lessee shall keep the Renewable Energy Equipment free of all levies, liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Renewable Energy Equipment will be used for a governmental or proprietary purpose of Lessee and that the Renewable Energy Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Renewable Energy 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 Renewable Energy Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Renewable Energy

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.

*Section 7.02. Insurance.* Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Renewable Energy Equipment 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 Termination Value of the Renewable Energy Equipment or (ii) the replacement cost of the Renewable Energy Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount satisfactory to Lessor; and (c) worker's compensation coverage as required by the laws of the State; *provided* that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as Exhibit F. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. 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 Renewable Energy Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Renewable Energy Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. 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 legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Renewable Energy Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Renewable Energy Equipment 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 material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term 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 Renewable Energy Equipment, a payment and performance bond (“*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 Renewable Energy 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 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, installation, construction, maintenance and/or servicing of the Renewable Energy Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Renewable Energy Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. 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 hereunder.

*Section 7.05. Advances.* In the event Lessee shall fail to keep the Renewable Energy Equipment 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 Renewable Energy 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 then current Original Term or Renewal Term 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 plus 5% per annum or the maximum amount permitted by law, whichever is less.

## **ARTICLE VIII**

*Section 8.01. Damage, Destruction and Condemnation.* If, prior to the termination of the Lease Term, (a) the Renewable Energy Equipment 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 Renewable Energy Equipment 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 Renewable Energy Equipment or such part 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 hereunder in accordance with Section 10.01(b) hereof.

If Lessee elects to replace any item of the Renewable Energy Equipment (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. 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, 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 “Renewable Energy Equipment” for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to equipment in accordance with Section 10.01(b) hereof.

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 hereof, Lessee shall 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 Termination Value for the Renewable Energy Equipment, and, upon such payment, the Lease Term shall terminate and Lessor’s security interest in the Renewable Energy Equipment 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 the applicable Termination Value for such Renewable Energy Equipment 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 the Renewable Energy Equipment, or any other warranty



or representation, express or implied, with respect thereto and, as to Lessor, Lessee's acquisition of the Renewable Energy Equipment 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, the Renewable Energy Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

*Section 9.02. Indemnification.* To the fullest extent permitted by applicable law, the Lessee hereby agrees to indemnify and hold harmless Lessor, its directors, officers, shareholders, employees, agents and successors from and against any loss, claim, damage, expense, and liability resulting from or attributable to the acquisition, installation, construction, or use of the Equipment. Notwithstanding the foregoing, Lessor shall not be indemnified for any liability solely and directly resulting from the gross negligence or willful misconduct of Lessor.

*Section 9.03. 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. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Renewable Energy Equipment that Lessor may have against Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendors of the Renewable Energy Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments. 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 Renewable Energy Equipment.

## ARTICLE X

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

(a) From and after the date specified (if any) in the Payment Schedule (the "*Prepayment Option Commencement Date*"), on the Rental Payment dates specified in the Payment Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the sum of all Rental Payments then due *plus* all other amounts then owing hereunder *plus* the then applicable Termination Value, which may include a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Renewable Energy Equipment, 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 Rental Payment date or 60 days after the casualty event) upon payment in full to Lessor of the sum of (i) all Rental Payments then due *plus* (ii) the then applicable Termination Value (or, in the event such prepayment occurs on a date other than a Rental Payment date, the sum of (x) the Termination Value relating to the Rental Payment immediately prior to the date of such prepayment plus (y) accrued interest on the

aggregate unpaid principal portion of Rental Payments immediately prior to the date of such prepayment) *plus* (iii) all other amounts then owing hereunder; or

(c) Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder to Lessor.

After payment of the applicable Termination Value and all other amounts owing hereunder, Lessor's security interests in and to such Renewable Energy Equipment will be terminated and Lessee will own the Renewable Energy Equipment free and clear of Lessor's security interest in the Renewable Energy Equipment.

## ARTICLE XI

*Section 11.01. Assignment by Lessor.* (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Acquisition Fund Agreement, its security interest in the Renewable Energy Equipment and Acquisition Fund, and all proceeds therefrom may be assigned and reassigned 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 to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 11.01 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust; *provided* such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933; *provided further*, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity.

(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 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, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, 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 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 the Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Renewable Energy Equipment and all rights in, to and under this Agreement related to such Renewable Energy Equipment, and all of Lessor's security interest in and to the Acquisition Fund, or all rights in, to and under the Acquisition Fund Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of Exhibit G attached hereto 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 this Agreement or any portion of the Renewable Energy Equipment or the Acquisition Fund Agreement or the Acquisition Fund 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 this Agreement:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within 10 days after the date when due as specified herein or (ii) maintain insurance as required herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement 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 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 (i) that is provided by Lessor or any affiliate of Lessor or (ii) under which there is outstanding, owing or committed an

aggregate amount in excess of \$1,000,000.00, in each case under which Lessee is an obligor, ~~if and~~ such default remains uncured following the applicable cure period, if any, and either (i) arises ~~under any other~~ from a failure to pay any amounts due with respect to such agreement for borrowing money, lease financing of property or provision of credit ~~provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregate amount in excess of \$1,000,000.00;~~ and/or (3) causes or permits amounts to become immediately due and payable in full as a result of such default;

(e) A moratorium, debt restructuring (other than a refinancing or refunding), debt adjustment (other than a refinancing or refunding) or comparable restriction is imposed on or declared with respect to any obligations of the Lessee or 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, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) 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; ~~or~~

(g) Any default occurs under any of the 2009 Capital Projects Financing Agreements and remains uncured following any applicable cure period, if any.

*Section 12.02. Remedies on Default.* Whenever any Event of Default exists, 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 declare all Rental Payments payable by Lessee and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Renewable Energy Equipment is located and retake possession of such Renewable Energy Equipment or require Lessee at Lessee's expense to promptly return any or all of such Renewable Energy Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Renewable Energy Equipment or, for the account of Lessee, sublease such Renewable Energy Equipment, continuing to hold Lessee liable, but solely from legally available

funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder or the Renewable Energy Equipment that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder , including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Renewable Energy Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03 hereof. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or the Renewable Energy Equipment;

(c) Lessor may terminate the Acquisition Fund Agreement and apply any proceeds in the Acquisition Fund to the Rental Payments due hereunder; and

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or the Acquisition Fund Agreement or as a secured party in any or all of the Renewable Energy Equipment or the Acquisition Fund.

*Section 12.03. No Remedy Exclusive.* 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 now or hereafter existing at law or in equity. 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.

### ARTICLE XIII

*Section 13.01. Notices.* All notices, certificates or other communications under this Agreement 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 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 shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

*Section 13.05. Execution in Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 13.06. Applicable Law.* This Agreement 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 are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

*Section 13.08. Business with Iran and Sudan.* Pursuant to Arizona Revised Statutes Sections 35-391.06 and 35-393.06, Lessor certifies that it does not have scrutinized business operations in either Iran or the Sudan.

*Section 13.09. Transactional Conflicts of Interest.* As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that Lessee may, within three (3) years of the execution hereof, cancel this Agreement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Agreement on behalf of Lessee is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of Lessor or a consultant to Lessor with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice from Lessee is received by Lessor unless the notice specifies a later time.

*Section 13.10. Immigration Laws and Regulations.* As required by the provisions of Arizona Revised Statutes Section 41-4401, Lessor warrants Lessor's compliance with all Federal and State immigration laws and regulations that relate to Lessor's employees, as well as subcontractors of Lessor of any tier relating to this Agreement, and their compliance with Arizona Revised Statutes Section 23-214(A); and acknowledges that a breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to including termination of this Agreement. Lessee retains the legal right to inspect the records of Lessor and any contractor's or subcontractor's employee of any tier who performed work pursuant to this Agreement, to ensure compliance with the warranty set forth herein.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, Lessor and Lessee have caused this 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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE:  
City of Flagstaff, Arizona  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Seal)

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Counterpart No. \_\_\_\_\_ of **3** manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

## LIST OF EXHIBITS

Exhibit A	—	Equipment Schedule
Exhibit B	—	Payment Schedule
Exhibit C-1	—	Form of Authorizing Ordinance
Exhibit C-2	—	Form of Incumbency and Authorization Certificate
Exhibit D	—	Form of Opinion of Counsel Form
Exhibit E	—	Form of Acceptance Certificate
Exhibit F	—	Form of Self-Insurance Certificate
Exhibit G	—	Form of Notice and Acknowledgement of Assignment
Exhibit H	—	Form of Acquisition Fund and Account Control Agreement



**EXHIBIT A**

**EQUIPMENT SCHEDULE**

Location of Equipment: [To be provided by Lessee]

Equipment Description (Scope of Work): [To be provided Lessee]

**EXHIBIT B**

**PAYMENT SCHEDULE**

Rental Payment Date	Rental Payment Amount	Interest Portion	Principal Portion	Outstanding Balance	Termination Value (including prepayment premium, if applicable)

*Contract Rate.* The Contract Rate is \_\_\_\_% per annum.

*Prepayment Option Commencement Date.* For purposes of Section 10.01(a) of the Agreement, the Prepayment Purchase Option Commencement Date is \_\_\_\_\_.

LESSOR:  
Banc of America Public Capital Corp

LESSEE:  
City of Flagstaff, Arizona

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C-1

### FORM OF AUTHORIZING ORDINANCE

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF FLAGSTAFF, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT (ACQUISITION FUND – ARIZONA) WITH RESPECT TO THE ACQUISITION, INSTALLATION, PURCHASE, FINANCING AND LEASING OF CERTAIN RENEWABLE ENERGY EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF 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 Flagstaff (the “*Lessee*”), a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona, is authorized by the laws of the State of Arizona to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain Renewable Energy Equipment with a cost not to exceed \$ \_\_\_\_\_ constituting personal property necessary for the Lessee to perform essential governmental functions (the “*Renewable Energy Equipment*”); and

WHEREAS, in order to acquire such Renewable Energy Equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the “*Agreement*”) with Banc of America Public Capital Corp (or one of its affiliates) (the “*Lessor*”) and that certain Acquisition Fund and Account Control Agreement (the “*Acquisition Fund Agreement*”) among the Lessee, the Lessor and the Acquisition Fund Custodian therein identified, and the forms of the Agreement and the Acquisition Fund Agreement have been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the Acquisition Fund Agreement (collectively, the “*Financing Agreements*”) and the documentation relate to the financing of the Renewable Energy Equipment for the purchase, acquisition and leasing of the Renewable Energy Equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the governing body of the Lessee as follows:

*Section 1. Approval of Financing Agreements* The form, terms and provisions of the Agreement and the Acquisition Fund Agreement are hereby approved in substantially the forms

presented at this meeting, with such insertions, omissions and changes as shall be approved by the [City Manager] of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the [City Manager] of the Lessee is hereby authorized and directed to execute, and the [City Manager] of the Lessee is hereby authorized and directed to attest and countersign, the Agreement (including any related Exhibits attached thereto) and the Acquisition Fund Agreement and to deliver the Agreement (including such Exhibits) and the Acquisition Fund Agreement to the respective parties thereto, and the [City Manager] of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

*Section 2. Other Actions Authorized.* The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Financing Agreements to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates 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 either of the Financing Agreements.

*Section 3. No General Liability.* Nothing contained in this Ordinance, either Financing Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Ordinance, either Financing Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

*Section 4. Appointment of Authorized Lessee Representatives.* The \_\_\_\_\_ and \_\_\_\_\_ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement and the Acquisition Fund Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement and the Acquisition Fund Agreement.

*Section 5. Severability.* If any section, paragraph, clause or provision of this Ordinance 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 Ordinance.

*Section 6. 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 7. Effective Date.* This Ordinance shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this \_\_\_\_ day of \_\_\_\_\_.

CITY OF FLAGSTAFF, ARIZONA,  
as lessee

[SEAL]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C-2**

**FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE**

The undersigned, a duly elected or appointed and acting City Clerk of the City of Flagstaff, Arizona (“*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 the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 by and between Lessee and Banc of America Public Capital Corp (“*Lessor*”), the Acquisition Fund and Account Control Agreement dated as of May \_\_, 2013 among Lessor, Lessee and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, and all documents related thereto and delivered in connection therewith (collectively, the “*Agreements*”), and the Agreements are each the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

NAME OF OFFICIAL	TITLE	SIGNATURE
Kevin Burke	City Manager	_____
Barbara Goodrich	Management Services Director	_____
Jerry Nabours	Mayor	_____

Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: City Clerk

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

**EXHIBIT D**

**FORM OF OPINION OF COUNSEL TO LESSEE**  
(to be typed on letterhead of counsel)

[Closing Date]

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

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona),  
dated as of May \_\_, 2013 between Banc of America Public Capital Corp,  
as Lessor, and the City of Flagstaff, Arizona, as Lessee

Ladies and Gentlemen:

As legal counsel to the City of Flagstaff, Arizona (“*Lessee*”), I have examined (a) an executed counterpart of a certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), dated as of May \_\_, 2013, and Exhibits thereto by and between Banc of America Public Capital Corp (“*Lessor*”) and Lessee (the “*Agreement*”), which, among other things, provides for the lease of certain property (the “*Renewable Energy Equipment*”) and an executed counterpart of a certain Acquisition Fund and Account Control Agreement among Lessor, Lessee, and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, dated May \_\_, 2013 (the “*Acquisition Fund Agreement*”), (b) an executed counterpart of the ordinances or resolutions of Lessee which with respect to the transaction contemplated by the Agreement, the Acquisition Fund Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Acquisition Fund Agreement and the documents relating thereto are referred to collectively as the “*Transaction Documents*.”

Based on the foregoing, I am of the following opinions:

1. Lessee a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona, and [has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power][is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the “*Code*”) and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code].

2. Lessee has the requisite power and authority to lease and acquire the Renewable Energy Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Renewable Energy Equipment, the Acquisition Fund or other collateral thereunder.

**[6. The portion of rental payments designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor's gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of Arizona personal income taxes; and such interest is not a specific item of tax preference or other collateral for purposes of the federal individual or corporate alternative minimum taxes.]**

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Sincerely,



**EXHIBIT E**

**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 Lease/Purchase Agreement (Acquisition Fund – Arizona),  
dated as of May \_\_, 2013 between Banc of America Public Capital Corp,  
as Lessor, and the City of Flagstaff, Arizona, as Lessee

Ladies and Gentlemen:

In accordance with the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the “*Agreement*”), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Renewable Energy Equipment (as such term is defined in the Agreement) has been delivered, installed and accepted on the date hereof.

2. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Renewable Energy 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 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.

Date: \_\_\_\_\_

LESSEE:  
CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

**EXHIBIT F**

**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 Lease/Purchase Agreement (Acquisition Fund – Arizona), dated as of May \_\_, 2013 (the “*Agreement*”) between Banc of America Public Capital Corp, as Lessor, and the City of Flagstaff, Arizona, as Lessee

In connection with the above-referenced Agreement, the City of Flagstaff, Arizona (the “*Lessee*”), 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.

1. The Lessee is self-insured for damage or destruction to the Renewable Energy Equipment. The dollar amount limit for property damage to the Renewable Energy Equipment under such self-insurance program is \$\_\_\_\_\_. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee’s self-insurance limits for property damage to the Renewable Energy Equipment which policy has a dollar limit for property damage to the Renewable Energy Equipment under such policy of \$\_\_\_\_\_.]

2. The Lessee is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Renewable Energy Equipment. The dollar limit for such liability claims under the Lessee’s self-insurance program is \$\_\_\_\_\_. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee’s self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Renewable Energy Equipment in the amount of \$\_\_\_\_\_.

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund [are/are not] subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee’s self-insurance liabilities is \$\_\_\_\_\_. [Amounts paid from the Lessee’s self-insurance fund are subject to a dollar per claim of \$\_\_\_\_\_.]

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources: \_\_\_\_\_. Amounts payable for claims from the such sources are limited as follows: \_\_\_\_\_.

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

LESSEE:  
CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT G**

**FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT**

**DATED** \_\_\_\_\_

BANC OF AMERICA PUBLIC CAPITAL CORP (“*Assignor*”) hereby gives notice that it has assigned and sold to \_\_\_\_\_ (“*Assignee*”) all of Assignor’s right, title and interest in, to and under the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the “*Agreement*”) dated as of \_\_\_\_\_, between Assignor and the City of Flagstaff, Arizona (“*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 Agreement, all of Assignor’s right, title and interest in the Renewable Energy Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Acquisition Fund and Account Control Agreement dated May \_\_, 2013 (the “*Acquisition Fund Agreement*”) by and among Lessee, Assignor and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, together with the Acquisition Fund related thereto (collectively, the “*Assigned Property*”).

1. Pursuant to the authority of Ordinance \_\_\_\_\_ adopted on \_\_\_\_\_, Lessee hereby [consents to and] 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 Agreement 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 Renewable Energy Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all rights and remedies thereunder; and (ii) except as provided in Section 3.03 of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this “*Acknowledgement*”), the following information about the Agreement 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 Acquisition Fund	–	\$ _____

4. The Agreement remains in full force and effect, has not been amended and no nonappropriation or 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 Agreement and any requests for disbursements from the Acquisition Fund, if applicable, and all Rental Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

LESSEE:  
CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNOR:  
BANC OF AMERICA PUBLIC CAPITAL CORP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT H

### FORM OF ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement (this "*Agreement*"), dated as of May \_\_, 2013, by and among Banc of America Public Capital Corp (hereinafter referred to as "*Lessor*"), the City of Flagstaff, Arizona, a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona (hereinafter referred to as "*Lessee*") and Deutsche Bank Trust Company Americas (hereinafter referred to as "*Acquisition Fund Custodian*").

Reference is made to that certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 between Lessor and Lessee (hereinafter referred to as the "*Lease*"), covering the acquisition, installation and lease of certain Renewable Energy Equipment described therein (the "*Renewable Energy Equipment*"). It is a requirement of the Lease that the Acquisition Amount (\$ \_\_\_\_\_) be deposited into an escrow 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 acquisition and installation of and payment for the Renewable Energy Equipment and payment of a portion of the Delivery Costs.

The parties agree as follows:

1. *Creation of Acquisition Fund.*

(a) There is hereby created a special trust fund to be known as the "City of Flagstaff, Arizona Renewable Energy Equipment Acquisition Fund" (the "*Acquisition Fund*") to be held in trust by the Acquisition Fund Custodian 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) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from Lessee. 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 Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian 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 Acquisition Fund, and Lessee agrees to and does hereby release the Acquisition Fund Custodian and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this Agreement, "Qualified Investments" means any investment permitted in accordance with Arizona Revised Statutes Section 35-323; *provided, however*, that each such investment shall be insured at all times by United States federal deposit insurance and the investment shall never be placed in an off-shore account.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition and installation of the Renewable Energy Equipment. Any moneys remaining in the Acquisition Fund 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 and in accordance with Section 4.07 of the Lease.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lessor of the occurrence of a default under the Lease or termination of the Lease due to non-appropriation.

(e) The Acquisition Fund Custodian 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 Acquisition Fund Custodian 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 Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Acquisition Fund Custodian 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 Acquisition Fund Custodian under this Agreement; and in connection therewith, does to the extent permitted by law indemnify the Acquisition Fund Custodian 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 Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Acquisition Fund Custodian 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 Acquisition Fund Custodian may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Acquisition Fund Custodian 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.

(i) Lessee shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian'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 Acquisition Fund.

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 and installation of the Renewable Energy Equipment, with moneys available in the Acquisition Fund. Lessee represents that the estimated costs of the Renewable Energy 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, installation or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Renewable Energy Equipment, and the operation and maintenance thereof.

(b) *Authorized Acquisition Fund Disbursements.* Disbursements from the Acquisition Fund 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 Renewable Energy Equipment and a portion of the Delivery Costs.

(c) *Requisition Procedure.* No disbursement from the Acquisition Fund shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Acquisition Fund for the payment of Delivery Costs there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 2, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due, and that: (i) an obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for Delivery Costs identified in the Lease, and has not been paid and attached thereto is the original invoice with respect to such obligation, (ii) the Renewable Energy Equipment is insured in accordance with the Lease, (iii) no event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or Event of Default, under the Lease has occurred and is continuing at the date thereof, (iv) the disbursement shall occur prior to \_\_\_\_\_, 2013, (v) no Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease and (vi) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date thereof. Prior to disbursement from the Acquisition Fund for payment of Equipment Costs there shall be filed with the Acquisition Fund Custodian 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 certifying the date of Equipment Acceptance for the portion of Renewable Energy Equipment for which disbursement is requested. 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:



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

(i) Equipment Acceptance has occurred as of the date identified therein with respect to the portion of Renewable Energy Equipment for which disbursement is requested; (ii) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Acquisition Fund for costs relating to the Renewable Energy Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof) and the Renewable Energy Equipment relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment relating to such obligation as it deems necessary and appropriate in order to determine the Renewable Energy Equipment's operability and functionality in order to accept such Renewable Energy Equipment; (iii) 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; (iv) 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); (v) the Renewable Energy Equipment is insured in accordance with the Lease; (vi) no event of nonappropriation or Event of Default (nor any event which, with notice or lapse of time or both, would become an event of nonappropriation or an Event of Default) has occurred and is continuing; (vii) no Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease; and (viii) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date thereof.

2. Delivery to Lessor of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Renewable Energy 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 Acquisition Fund to pay Equipment Costs relating to a portion of the Renewable Energy Equipment prior to the date on which Lessee has certified to Acquisition Fund Custodian in the related disbursement request that Equipment Acceptance has occurred with respect to such portion of Renewable Energy Equipment for which funds are requested for disbursement from the Acquisition Fund.

3. *Deposit to Acquisition Fund.* Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited in the Acquisition Fund. Lessee agrees to pay any costs with respect to the Renewable Energy Equipment in excess of amounts available therefor in the Acquisition Fund and to pay Delivery Costs in excess of amounts available therefor in the Acquisition Fund.

4. *Excessive Acquisition Fund.* Any funds remaining in the Acquisition Fund on or after the earliest of (a) the expiration of the Acquisition Period, (b) the date on which Lessee executes an Acceptance Certificate, or (c) a termination of the Acquisition Fund as otherwise provided herein, shall be applied by the Acquisition Fund Custodian to amounts owed under the Lease in accordance with Section 4.07 of the Lease.

5. *Security Interest.* The Acquisition Fund Custodian and Lessee acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Acquisition Fund Custodian for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth in this Agreement, such investments shall be made in the name of Acquisition Fund Custodian and the Acquisition Fund Custodian 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 Acquisition Fund established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (iii) all of Lessee's rights in respect of the Acquisition Fund, 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 Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the State of Arizona (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, treating Chapter 9, Title 47 of the Arizona Revised Statutes as applicable to Lessee notwithstanding the express provisions of Section 47.9109.D.14 thereof, and any attempts to realize on the security interests granted by Lessee will be conducted in accordance with the Arizona law.

(b) Acquisition Fund Custodian 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) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that Lessee is the sole owner of the Collateral, (b) that the Acquisition Fund Custodian 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 (c) that the Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lessor under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian 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. Acquisition Fund Custodian shall promptly notify Lessor if any person requests Acquisition Fund Custodian 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(c) hereof, Acquisition Fund Custodian may allow Lessee to effect sales, trades, transfers and exchanges of Collateral within the Acquisition Fund, but will not, without the prior written consent of Lessor, allow Lessee to withdraw any Collateral from the Acquisition Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to Acquisition Fund Custodian, 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 Acquisition Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lessor to Acquisition Fund Custodian (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 Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lessor to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian 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 Acquisition Fund Custodian 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) Acquisition Fund Custodian and Lessee hereby agree that any property held in the Acquisition Fund 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 Acquisition Fund Custodian may be a party.

(i) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 7 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to Lessee with respect to the Acquisition Fund.

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 the Acquisition Fund Custodian such information as it may request, from time to time, in order for the Custodian 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.* (a) *Transactional Conflicts of Interest.* As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that Lessee may, within three (3) years of the execution hereof, cancel this Agreement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Agreement on behalf of Lessee is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of Acquisition Fund Custodian or a consultant to Acquisition Fund Custodian with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice from Lessee is received by Acquisition Fund Custodian unless the notice specifies a later time.

(b) 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:

If to Lessor:	Banc of America Public Capital Corp 11333 McCormick Road Mail Code: MD5-032-07-05 Hunt Valley, Maryland 21031 Attn: Contract Administration Fax: 443-556-6977
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If to Lessee: City of Flagstaff, Arizona  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

If to Acquisition  
Fund Custodian: Deutsche Bank Trust Company Americas  
60 Wall Street, 27th Floor  
New York, New York 10005  
Attn: Lisa McDermid  
Phone: 212-250-6674  
Fax: 917-472-1575

(c) *Business with Iran and Sudan.* Pursuant to Arizona Revised Statutes Sections 35-391.06 and 35-393.06, Acquisition Fund Custodian certifies that it does not have scrutinized business operations in either Iran or the Sudan.

(d) *Immigration Laws and Regulations.* As required by the provisions of Arizona Revised Statutes Section 41-4401, Acquisition Fund Custodian warrants Acquisition Fund Custodian's compliance with all Federal and State immigration laws and regulations that relate to Acquisition Fund Custodian's employees, as well as subcontractors of Acquisition Fund Custodian of any tier relating to this Agreement, and their compliance with Arizona Revised Statutes Section 23-214(A); and acknowledges that a breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to including termination of this Agreement. Lessee retains the legal right to inspect the records of Acquisition Fund Custodian and any contractor's or subcontractor's employee of any tier who performed work pursuant to this Agreement, to ensure compliance with the warranty set forth herein.

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

LESSOR:  
Banc of America Public Capital Corp

LESSEE:  
City of Flagstaff, Arizona

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Acquisition Fund Custodian

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 1**  
**to the Acquisition Fund and Account Control Agreement**

**FORM OF DISBURSEMENT REQUEST FOR EQUIPMENT COSTS**

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 by and between Banc of America Public Capital Corp, as Lessor and the City of Flagstaff, Arizona, 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 Acquisition Fund and Account Control Agreement, dated as of May (the “*Acquisition Fund and Account Control Agreement*”) by and among Banc of America Public Capital Corp (“*Lessor*”), the City of Flagstaff, Arizona (“*Lessee*”) and Deutsche Bank Trust Company Americas, (the “*Acquisition Fund Custodian*”), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement for the following purposes:

PAYEE’S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE

The undersigned hereby certifies as follows:

(i) The date on which Equipment Acceptance occurred with respect to the portion of the Renewable Energy Equipment for which disbursement is hereby requested is \_\_\_\_\_, and such portion of Renewable Energy Equipment is hereby accepted by Lessee for all purposes of the Lease.

(ii) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for costs relating to the Renewable Energy Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Renewable Energy Equipment relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer’s intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment relating to such obligation as it deems

necessary and appropriate in order to determine the Renewable Energy Equipment's operability and functionality in order to accept such Renewable Energy Equipment. Attached hereto is the original invoice with respect to 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 Renewable Energy Equipment is insured in accordance with the Lease.

(vi) No event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or 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) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

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

Dated: \_\_\_\_\_

CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Authorized Representative



Disbursement of funds from the Acquisition  
Fund 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 2**  
**to the Acquisition Fund and Account Control Agreement**

**FORM OF DISBURSEMENT REQUEST FOR DELIVERY COSTS**

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May \_\_, 2013 by and between Banc of America Public Capital Corp, as Lessor and the City of Flagstaff, Arizona, 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 Acquisition Fund and Account Control Agreement, dated as of May (the “*Acquisition Fund and Account Control Agreement*”) by and among Banc of America Public Capital Corp (“*Lessor*”), the City of Flagstaff, Arizona (“*Lessee*”) and Deutsche Bank Trust Company Americas, (the “*Acquisition Fund Custodian*”), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts constituting Delivery Costs from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement for the following purposes:

PAYEE’S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for Delivery Costs identified in the Lease, and has not been paid. Attached hereto is the original invoice with respect to such obligation.

(ii) The Renewable Energy Equipment is insured in accordance with the Lease.

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

(iv) The disbursement shall occur prior to \_\_\_\_\_, 2013.

(v) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

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

Dated: \_\_\_\_\_

CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Authorized Representative

Disbursement of funds to pay Delivery Costs  
from the Acquisition Fund in accordance with the  
foregoing Disbursement Request hereby is authorized

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_