

MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT

Agreement No.: _____

Date: _____

LESSEE:
City of Fresno
2600 Fresno Street
Fresno, California 93721

LESSOR: Banc of America Public Capital Corp
555 California Street, 4th Floor
San Francisco, California 94104
Attention: Contract Administration
Fax No.: (415) 765-7373

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

1. *Definitions.* Unless the context otherwise clearly requires, the following terms shall have the respective meanings set forth below for all purposes of this Agreement and of each Lease:

"Acceptance Certificate" means a certificate in substantially the form attached as *Exhibit A-1* to each Lease and which shall be delivered by Lessee to Lessor upon receipt and acceptance of the Equipment subject to such Lease as provided therein.

"Acquisition Period" means the period commencing on the execution of this Agreement and, unless mutually extended as provided herein, ending on the earlier of (a) December 31, 2021, or (b) the aggregate leasing of \$65,000,000 (Sixty-five Million Dollars) of Equipment, or (c) the occurrence of a Material Adverse Change (as defined below). During the Acquisition Period of this Agreement, there will be an initial amount of financing of (i) \$11,550,000 from the date of execution of this Agreement until June 30, 2019, \$36,354,000 from July 1, 2019 until June 30, 2020, and \$10,554,000 from July 1, 2020 until June 30, 2021, and \$6,542,000 from July 1, 2021 until December 31, 2021, all subject to satisfactory completion of the Lessor's credit review and approval process on an annual basis, which approval may be withheld by Lessor only in the event that Lessee's rating by Moody's or Standard & Poor's has been downgraded two or more levels from Lessee's rating as of the date of the execution of this Agreement. Lessor and Lessee by mutual consent may extend this Agreement for two successive one-year acquisition periods for an amount to be determined upon mutual agreement, subject to satisfactory completion of the Lessor's credit and pricing reviews and approval processes on an annual basis, for which credit approval may be withheld by Lessor only in the event that Lessee's rating by Moody's or Standard & Poor's has been downgraded two or more levels from Lessee's rating as of the date of the execution of this Agreement. Any extension shall be memorialized in a written amendment duly executed by Lessor and Lessee. Based on the needs of the Lessee, the amount set forth above for annual financing can be increased upon mutual agreement, subject to satisfactory completion of the Lessor's credit

review and approval process on an annual basis, which approval may be withheld by Lessor only in the event that Lessee's rating by Moody's or Standard & Poor's has been downgraded two or more levels from Lessee's rating as of the date of the execution of this Agreement.

"Additional Payments" means any amounts (other than Rental Payments) required to be paid by Lessee pursuant to the terms of each Lease.

"Agreement" means this Master Equipment Lease-Purchase Agreement, as supplemented and amended from time to time as herein provided.

"Code" means the Internal Revenue Code of 1986, as it may be amended from time to time. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

"Agreement Documents" means the "Notice Inviting Proposals," "Instructions to Proposers," "Proposal" and the "Specifications" for the following: Master Equipment Lease Purchase Agreement (Request for Proposals No. 09182018PH).

"Equipment" means (a) the equipment, vehicles, aircraft and other personal property identified in each Schedule, (b) any property acquired in substitution, renewal, repair or replacement for, or as additions, improvements, accessions and accumulations to, any of such equipment and (c) any accessories, equipment, vehicles, aircraft and other personal property, parts and appurtenances appertaining or attached to any of such equipment, vehicles, aircraft and other personal property or from time to time incorporated therein or installed thereon.

"Event of Default" is defined in Paragraph 24 of this Agreement.

"Event of Non-appropriation" means the failure of the City Council to appropriate money for any Fiscal Year of Lessee sufficient for the continued performance by Lessee of all of Lessee's obligations under a Lease.

"Fiscal Period" means the annual period used from time to time by Lessee for its financial accounting and budgeting purposes. Lessee's current Fiscal Period is identified in each Schedule.

"Index" means the then current average-life SWAP Rate as set forth below and as applicable to two, three, four, five, six, seven, eight, nine and ten year terms each as published on the Intercontinental Exchange Inc. website as of the Notification Date. Index for two year term is the one-Year SWAP Rate x 79%, for three and four year terms is two-Year SWAP Rate x 79%, for five and six year terms is three-Year SWAP Rate x 79%, for seven and eight year terms is four-Year SWAP Rate x 79%, and for nine and ten year terms is five-Year SWAP Rate x 79%. If the Intercontinental Exchange, Inc. website discontinues such announcement or posting of SWAP Rates, then the Lessor and Lessee shall agree to substitute a comparable source of information.

"Initial Term" means, with respect to each Lease, the period determined as provided in Paragraph 3 hereof.

"Lease" means a Schedule and the terms of this Agreement which are incorporated by reference into such Schedule, together with the Exhibits attached to each such Schedule.

"Legally Available Funds" means funds that the governing body of Lessee duly appropriates and are legally available for the purpose of making Payments under each Lease.

"Lessee" means the entity referred to as Lessee in the heading for this Agreement.

"Lessor" means (a) the entity referred to as Lessor in the heading for this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to any Lease (including Rental Payments and the Equipment thereunder) pursuant to Paragraph 27 hereof, but does not include any entity solely by reason of that entity's retaining or assuming any obligation of Lessor to perform under any Lease.

"Material Adverse Change" means that the Lessee's general obligation bonds credit rating (or if no general obligation bonds are currently rated, then the issuer's long-term credit rating) without regard to credit enhancements, has been reduced two or more levels from Lessee's rating as of the date of the execution of this Agreement by Moody's Investors Service or Standard & Poor's Ratings Group (or any successor to either such rating agency).

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including reasonable attorneys' fees) incurred in the collection of such claim or award.

"Notification Date" means the date as of which the Index is established for each Lease. The Notification Date for each Lease shall be set forth in the applicable Schedule.

"Payments" means, with respect to each Lease, the Rental Payments and the Additional Payments thereunder, collectively.

"Prepayment Option Amount" means, with respect to each Lease for which a Prepayment Option Amount is identified under the column titled "PREPAYMENT OPTION AMOUNT" on the related Schedule, the amount determined pursuant to such Lease at which Lessee may prepay the aggregate principal component of Rental Payments thereunder on any Rental Payment date provided in such Lease prior to the scheduled payment of all Rental Payments to be paid thereunder for the Equipment identified therein.

"Purchase Price" means, with respect to each Lease, the total cost of the Equipment subject to such Lease, including all delivery charges, installation charges, capitalizable consulting and training fees, legal fees, financing costs, motor vehicle registration fees, recording and filing fees and other costs necessary to vest full, clear legal title to such Equipment in Lessee, subject to the security interest granted to and retained by Lessor as set forth in such Lease, and otherwise incurred in connection with the financing provided by the lease-purchase of the Equipment as provided in such Lease.

"Renewal Term" means, with respect to each Lease, each successive period, in addition to the applicable Initial Term, that is coextensive with Lessee's Fiscal Period and for which Lessee has extended the term of such Lease as provided therein.

"Rental Payments" means, with respect to each Lease, the amounts (allocable to a principal component, and an interest component) payable by Lessee pursuant to such Lease, as payments for the installment financing of the Purchase Price for the Equipment as set forth in such Lease. The interest component of Rental Payments shall be a fixed rate of interest established on the Notification Date of each Lease by adding the Spread Bid to the Index published for the term on the Notification Date.

"Schedule" means a Lease Schedule in substantially the form attached to this Agreement as *Exhibit A* that may be executed by Lessor and Lessee from time to time pursuant to this Agreement.

"Spread Bid" means the spread in basis points ("bps.") bid by the Lessor which is to be applied to the Index in the calculation of the Rental Payments in a Lease. The Spread Bid for leases of a two-year term is +65.86 bps., the Spread Bid for leases of a three-year term is +59.02 bps., the Spread Bid for leases of a four-year term is +68.07 bps., the Spread Bid for leases of a five-year term is +71.05 bps., the Spread Bid for leases of a six-year term is +78.07 bps., the Spread Bid for leases of a seven-year term is +78.43 bps., the Spread Bid for leases of an eight-year term is +89.72 bps., the Spread Bid for leases of a nine-year term is +94.99 bps., and the Spread Bid for leases of a ten-year term is +101.51 bps.

"State" means the State of California.

2. *Agreement to Lease-Purchase Equipment Under Each Lease.* Lessee hereby agrees to acquire, purchase, and lease all of the Equipment identified in each of the Schedules that may from time to time be executed by Lessor and Lessee pursuant hereto, and Lessor hereby agrees to furnish the Equipment under each such Schedule to Lessee, all on the terms and conditions set forth in this Agreement. Each Schedule executed and delivered by Lessor and Lessee pursuant to this Agreement shall constitute a separate and independent Lease. The termination of a Lease as a consequence of an Event of Non-appropriation shall not terminate any other Lease.

Lessor is committed to enter into Leases identified in the Agreement Documents during the Acquisition Period on the terms and conditions provided in this Agreement so long as (a) the Equipment identified in a Schedule (i) is of the type generally described in Lessee's request for proposals related to this Agreement (such as copiers, furniture, public safety equipment, vehicles [including aircraft] and other capital equipment for general governmental purposes), and (ii) constitutes a capital asset that can be financed on a federally tax-exempt basis over the term stated in such Schedule; and (b) no Material Adverse Change has occurred.

Alternative Procedure: Escrow Agreement. Notwithstanding the provisions in this Paragraph 2, if upon agreement by Lessor and Lessee as to any Equipment to be acquired and leased by Lessee under a Lease, Lessor and Lessee may enter into an escrow agreement

in substantially the form attached as *Exhibit B* establishing a fund from which the Equipment cost is to be paid, and an amount equal to such cost is deposited therein by Lessor. Lessor and Lessee shall immediately complete and execute *Exhibits A and B* relating to the Equipment and the Payments relating to the Equipment shall be due and payable commencing upon the date of said deposit of funds as provided in *Exhibit A*.

3. *Term.* The term of this Agreement begins as of the date set forth above and will continue so long as any amount remains unpaid under any Lease. The Initial Term of each Lease begins as of the date identified in such Lease and expires at midnight on the last day of the Fiscal Period during which such Lease is executed and delivered. Beginning at the expiration of its Initial Term, the term of each Lease shall automatically be extended upon the successive appropriation by Lessee's governing body of amounts sufficient to pay Rental Payments and reasonably estimated Additional Payments during the next succeeding Renewal Term, for the number of Renewal Terms, each coextensive with Lessee's Fiscal Period, as are necessary for all Rental Payments identified in the applicable Schedule to be paid in full, unless such Lease is terminated as provided therein.

The term of each Lease will expire upon the first to occur of (a) the expiration of the Initial Term or any Renewal Term of such Lease during which an Event of Non-appropriation occurs, (b) the day after the last scheduled Rental Payment under such Lease is paid in full, (c) the day after the Prepayment Option Amount under such Lease is paid in full or (d) an Event of Default under such Lease and a termination of Lessee's rights thereunder as provided therein.

The term of this Agreement for purposes of the signing of Leases shall be the Acquisition Period.

4. *Rental Payments.* Lessee hereby agrees to pay (but only from Legally Available Funds) Rental Payments for the Equipment identified in each Schedule. All Rental Payments shall be made to Lessor at Lessor's mailing address set forth above (or at such other address as may be designated from time to time pursuant to Paragraph 27 hereof) in the amounts and on the dates provided in the pertinent Schedule. Rental Payments made by check will be accepted subject to collection.

Lessee's obligation under each Lease to make Rental Payments and to pay any Additional Payments thereunder constitutes a current obligation payable exclusively from Legally Available Funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement. Lessee has not pledged its full faith and credit or its taxing power to make any Rental Payments or Additional Payments under any Lease. Lessee shall not permit any person or entity (including the federal government) to guarantee any Rental Payments under any Lease.

5. *Agreement to Seek Appropriations; Notice of Event of Nonappropriation.* Lessee agrees that its primary business official will do all things lawfully within such official's power (a) to include amounts to make Payments under each Lease in each annual or biennial budget (as appropriate) to be submitted to Lessee's governing body and (b) and to maintain and utilize

any such amounts appropriated in any given Fiscal Period for the purpose for which those funds were appropriated.

Lessee hereby agrees to notify Lessor immediately (and in no case later than thirty days prior to the last day of its then current Fiscal Period) of the occurrence of an Event of Non-appropriation under any Lease. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make moneys available for the purpose of this Agreement.

6. *Prepayment Option.* Lessee is hereby granted the option to prepay (in whole but not in part) the aggregate principal component of Rental Payments identified in a Lease, prior to the scheduled payment of the Rental Payments in full pursuant to such Lease, with such prepayment permitted to be made on any Rental Payment date for which a Prepayment Option Amount is identified under the column titled "PREPAYMENT OPTION AMOUNT" in the applicable Schedule. Assuming that all Rental Payments and Additional Payments due under such Lease on and prior to the prepayment date have been paid, such prepayment amount shall equal the Prepayment Option Amount shown for the Rental Payment date on which such prepayment is to be effective under the column titled "PREPAYMENT OPTION AMOUNT" in the applicable Schedule. To exercise the option provided in this Paragraph 6 and granted in a Lease, Lessee shall give Lessor a written notice exercising such option and designating the affected Lease, the Rental Payment date on which such prepayment is to be effective and the applicable Prepayment Option Amount, which notice shall be delivered to Lessor at least thirty days in advance of the proposed prepayment date. The prepayment option herein granted may be exercised by Lessee with respect to a Lease whether or not one or more Events of Default have occurred and are then continuing under such Lease at the time of such exercise; *provided, however,* that the prepayment of such principal component of Rental Payments under the applicable Lease upon the exercise of such option during the continuance of an Event of Default thereunder shall not limit, reduce or otherwise affect liabilities or obligations that Lessee has incurred as a result of such Event of Default.

Immediately upon any such prepayment's being made or the last scheduled Rental Payment under the Lease is paid in full, Lessor shall execute all documents necessary to confirm in Lessee title in and to the Equipment under the affected Lease, free and clear of any lien, encumbrance or other interest created by Lessor, but without warranties and in "As Is, Where Is" condition, and to release Lessor's security interest in such Equipment, and Lessor shall deliver such documents to Lessee. Lessor shall further cooperate in providing for the filing of any necessary releases, termination statements or other similar documents and the release of certificates of title or certificates of origin to Lessee.

7. *Essentiality.* Lessee's present intention is to make Rental Payments and Additional Payments under each Lease for the Initial Term and all Renewal Terms applicable thereto as long as it has Legally Available Funds. In that regard, Lessee represents with respect to each Lease that at the time Lessee enters into each Lease (a) the use and operation of the Equipment under each Lease is essential to its proper, efficient and economic governmental operation and (b) Lessee does not have other equipment or does not have sufficient equipment available to perform the same functions as the Equipment. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last

Rental Payment scheduled (including all applicable Renewal Terms) to be paid under the pertinent Lease. To the extent that Lessee may ultimately decide to use other equipment for the same purpose for which Lessee leased equipment under any given Lease for the benefit of the health, safety and welfare of the public, such decision shall not be considered an Event of Default nor a material misrepresentation under this Agreement.

8. Reserved.

9. *Delivery and Installation.* Lessee shall select the type, quantity and supplier of each item of Equipment designated in a Schedule. Once Lessor and Lessee have executed the related Lease, Lessee (as Lessor's agent for this purpose) shall then order the Equipment identified in such Lease from such supplier. Any executed purchase order existing at the time of the execution of a Lease, and relating to any portion of the Equipment therein identified that has not as of such Lease execution date been delivered and installed, shall be deemed to have been executed by Lessee in its capacity as Lessor's agent for purposes of such Lease. Lessor shall have no liability for any delay in delivery or failure by the supplier to deliver any Equipment under any Lease or to fill any purchase order or meet the conditions thereof. Lessee, at its expense, will pay or cause the supplier to pay all transportation, packing, taxes, duties, insurance, installation, testing and other charges in connection with the delivery, installation and use of the Equipment under all Leases. As soon as practicable after receipt of the Equipment identified in a Lease, Lessee shall furnish Lessor with an executed Acceptance Certificate relating thereto. Execution of an Acceptance Certificate with respect to the Equipment identified in a Lease by any employee, official or agent of Lessee having authority in the premises or having managerial, supervisory or procurement duties with respect to equipment of the same general type as the Equipment described in such Acceptance Certificate shall constitute acceptance of such Equipment on behalf of Lessee. By making a Rental Payment after its receipt of the Equipment identified in a Lease, regardless of whether Lessee has furnished an Acceptance Certificate with respect to such Equipment as herein provided, Lessee shall be deemed to have accepted such Equipment on the date of such Rental Payment for all purposes of such Lease. All Rental Payments paid prior to the delivery of an Acceptance Certificate with respect to the Equipment identified in a Lease shall be credited to Rental Payments as they become due under such Lease.

Lessee understands and agrees that neither the manufacturer, seller, nor supplier of any Equipment under any Lease, nor any salesman or other agent of any such manufacturer, seller, or supplier, is an agent of Lessor. No salesman or agent of the manufacturer, seller or supplier of any Equipment under any Lease is authorized to waive or alter any term or condition of any such Lease, and no representation as to Equipment or any other matter by the manufacturer, seller or supplier of any Equipment under any Lease shall in any way affect Lessee's duty to pay the Rental Payments thereunder and perform its other obligations as set forth in such Lease. Lessee hereby acknowledges that it has or will have selected the Equipment identified in each Schedule using its own criteria and not in reliance on any representations of Lessor.

10. *Disclaimer of Warranties.* LESSOR, NOT BEING THE MANUFACTURER, SELLER OR SUPPLIER OF ANY OF THE EQUIPMENT UNDER ANY LEASE, NOR A DEALER IN ANY OF SUCH EQUIPMENT, HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY, REPRESENTATION OR COVENANT, EXPRESS OR

IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE DESIGN OR CONDITION OF THE EQUIPMENT, THE QUALITY OR CAPACITY OF THE EQUIPMENT, THE WORKMANSHIP IN THE EQUIPMENT, THE COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, PATENT INFRINGEMENT OR LATENT DEFECTS. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Specifically as to any Disclaimer of Warranties by Lessor under this Paragraph 10, Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for any direct, indirect, consequential, incidental or special damages or loss of any classification related to such warranties. Lessor shall have no obligation to install, erect, test, adjust, service, or maintain any Equipment under any Lease. Lessee shall look solely to the manufacturer, seller, and/or supplier for any and all claims related to any and all of the Equipment. **AS TO LESSOR (NOT AS TO ANY VENDOR/ MANUFACTURER/ EQUIPMENT SELLER)**, LESSEE ACQUIRES, PURCHASES AND LEASES THE EQUIPMENT "AS IS, WHERE IS" AND "WITH ALL FAULTS."

Lessor hereby acknowledges that, so long as no Event of Default or Event of Nonappropriation has occurred and is continuing under a Lease, the warranties (if any) of the manufacturer, seller and/or supplier of the Equipment under such Lease are for the benefit of Lessee.

11. *Title to Equipment.* During the term of each Lease, title to the Equipment identified therein shall be vested in Lessee, subject to the rights of Lessor under such Lease, unless Lessor terminates such Lease pursuant to Paragraph 25 hereof as provided in such Lease or an Event of Nonappropriation occurs with respect to such Lease, in which event title to the Equipment identified in such Lease shall immediately vest in Lessor free and clear of any right, title or interest of Lessee. Lessee, at its expense, will protect and defend Lessee's title to the Equipment identified in each Lease and Lessor's rights and interests therein and will keep the Equipment under each Lease free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. All items of Equipment shall at all times be and remain personal property notwithstanding that any such Equipment may now or hereafter be affixed to realty.

12. *Tax Covenants; Tax Indemnity Payments.* Lessee agrees that it will not take any action that would cause the interest component of Rental Payments under any Lease to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action, which omission would cause the interest component of Rental Payments under any Lease to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes. Lessee agrees to (a) execute and deliver to Lessor with respect to each Lease, upon Lessor's request, a tax certificate and agreement in form and content acceptable to Lessor and Lessee, relating to the establishment and maintenance of the excludability from gross income of the interest component of Rental Payments under such Lease for federal income tax purposes, and (b) complete and file or cause to be filed in a timely manner an information reporting return (either I.R.S. Form 8038-G or I.R.S. Form 8038-GC, as appropriate) in the form attached as *Exhibit A-2* to each Lease with respect to such Lease as required by the Code.

Lessee represents that neither Lessee nor any agency or unit of Lessee has on hand any property, including cash and securities, that is legally required or would otherwise be considered restricted under the Code or any United States Treasury Regulations (no matter where held or the source thereof) to purchase, directly or indirectly, the Equipment under any Lease. Lessee has not established and will not establish any funds or accounts (no matter where held or the source thereof) which would be construed as "replacement proceeds" or a "sinking fund" under Sections 1.148-1(c)(1) and (c)(2) and any related or replacement provisions of the U.S. Treasury Regulations or the Code for paying Rental Payments, directly or indirectly.

If Lessee breaches the covenant contained in this Paragraph 12 as provided in a Lease, the interest component of Rental Payments under such Lease may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, Lessee agrees to pay to Lessor, promptly after any such determination of taxability by a court of competent jurisdiction, and on each Rental Payment date thereafter, an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludability (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Paragraph 12 as provided in a Lease shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that each Lease not constitute a "true" lease for federal income tax purposes, and therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment under each Lease for federal income tax purposes.

13. *Use of Equipment, Inspection, and Reports.* During the term of each Lease, Lessee shall be entitled to quiet enjoyment of the Equipment identified therein and may possess and use the Equipment in accordance with such Lease, provided that Lessee is in compliance in all respects with the terms of such Lease and that such possession and use are in conformity with all applicable laws, any insurance policies and any installation requirements (including environmental specifications) or warranties of the manufacturer, seller and/or supplier with respect to the Equipment identified in such Lease. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment under each Lease. Lessor shall have the right, upon reasonable prior notice to Lessee and during regular business hours, to inspect the Equipment at the premises of Lessee or wherever the Equipment may be located. Lessee shall promptly notify Lessor of any alleged encumbrances on the Equipment identified in any Lease or any accident allegedly resulting from the use or operation thereof or any claim relating thereto.

During the term of each Lease and at Lessor's request, Lessee shall provide Lessor, on or before July 10th of any calendar year (commencing with Lessee's current Fiscal Period), with current budgets or other proof of appropriation for the ensuing Fiscal Period and such other information relating to Lessee's ability to continue the term of each Lease for the next succeeding Renewal Term as may be reasonably requested by Lessor. In the event Lessee shall have failed to approve its budget by July 10 of any calendar year and upon proof of such failure by Lessee, Lessor shall grant to Lessee a reasonable extension of time within which Lessee must provide the proof of appropriation described in this Paragraph 13.

During the term of each Lease, Lessee shall furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available and in any event not later than 180 days after the close of each Fiscal Period, the audited financial statements of Lessee as at the close of and for such Fiscal Period, all in reasonable detail, audited by and with the report of Lessee's auditor.

14. *Security Agreement; Further Assurances.* To secure the performance of all of Lessee's obligations under each Lease, Lessee grants to Lessor, and Lessor shall have and retain, a security interest constituting a first and exclusive lien on the Equipment delivered under each respective Lease, on all attachments, repairs, replacements and modifications thereto or therefor and on any proceeds therefrom. Lessee agrees to execute and deliver such additional documents, including, without limitation, financing statements, certificates of title or certificates of origin (or applications therefor) noting Lessor's interest thereon, opinions of counsel, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment under each Lease or for the confirmation or perfection of each Lease and Lessor's rights under each Lease. Upon the occurrence of an Event of Default or an Event of Nonappropriation under a Lease or if Lessee refuses or is otherwise unwilling to execute and file financing statements to which Lessor is entitled in accordance with such Lease within ten days after Lessor's written request to Lessee therefor, Lessor is authorized to file financing statements signed only by Lessor in accordance with the applicable Uniform Commercial Code or signed by Lessor as Lessee's attorney-in-fact.

15. *Risk of Loss.* All risk of loss, damage, theft or destruction to each item of Equipment under each Lease shall be borne by Lessee. No such loss, damage, theft or destruction of the Equipment under any Lease, in whole or in part, shall impair the obligations of Lessee under any Lease (including, but not limited to, the obligation to pay Rental Payments under each such Lease when due), all of which shall continue in full force and effect subject to the terms of the applicable Lease. If (a) the Equipment or any portion thereof under a Lease is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof under a Lease is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the Net Proceeds of any insurance claim or condemnation award to be applied, at Lessor's option, to (i) the prompt repair, restoration, modification or replacement of the Equipment so affected or (ii) the payment in full of the then applicable Prepayment Option Amount. Any balance of Net Proceeds remaining after completion of such work or payment of such Prepayment Option Amount shall be paid promptly to Lessee. If the Net Proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Prepayment Option Amount in full, Lessee shall, at Lessor's direction, either complete the work or pay the then applicable Prepayment Option Amount in full and in either case pay any cost in excess of the amount of Net Proceeds, but only from Legally Available Funds.

16. *Insurance.* If Lessee is not self-insured as hereinafter provided, Lessee, at its expense, shall throughout the term of each Lease keep the Equipment thereunder insured against theft, fire, collision (in the case of vehicles) and such other risks as may be customary for each item of Equipment, under a policy or policies containing a loss payable endorsement in favor of Lessor. The policy required hereby shall provide that they may not be canceled or

materially altered without at least thirty days' prior written notice to Lessor. Lessee shall deliver to Lessor a certificate of insurance in evidence of each insurance policy and each renewal thereof. Failure by Lessor to request evidence of such insurance policies or renewals, or otherwise to verify the existence of such insurance, shall not constitute a waiver of the requirements hereof. If Lessee is self-insured with respect to equipment such as the Equipment under a Lease, Lessee shall maintain during the term of such Lease an actuarially sound self-insurance program and shall provide evidence thereof to Lessor.

17. *Maintenance and Repairs.* Lessee shall use the Equipment under each Lease in a careful and proper manner, in compliance with all applicable laws and regulations and, at its expense, keep and maintain the Equipment under each Lease in good repair and working order, performing all maintenance and servicing necessary to maintain the value and utility of the Equipment, reasonable wear and tear excepted. Without the prior written consent of Lessor, Lessee shall not make any alterations, modifications or attachments to the Equipment under any Lease which cannot be removed without materially damaging the functional capabilities, economic value or utility of such Equipment.

18. *Taxes.* Unless Lessee has provided Lessor with evidence necessary to sustain an exemption therefrom, Lessee shall timely pay all assessments, license fees, taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lessor or Lessee, now or hereafter imposed by any governmental body or agency on or relating to the Equipment under each Lease, the Rental Payments under each Lease (to the extent such Rental Payments are appropriated by Lessee) or the use, registration, rental, shipment, transportation, delivery, ownership or operation of the Equipment under each Lease and on or relating to each Lease; *provided, however*, that the foregoing shall not include any federal, state or local income or franchise taxes of Lessor.

19. *Lessor's Performance of Lessee's Obligations.* If Lessee shall fail duly and promptly to perform any of its obligations under a Lease, Lessor may, at its option, perform any act or make any payment that Lessor deems necessary for the maintenance and preservation of the Equipment under such Lease and Lessor's interests therein, including, but not limited to, payments for satisfaction of liens, repairs, taxes, levies and insurance. All expenses incurred by Lessor in performing such acts and all such payments made by Lessor, together with late charges described in Paragraph 20 below as provided in each Lease, and any reasonable attorneys' fees and expenses incurred by Lessor in connection therewith, shall be payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of Lessee. In the Event of Non-appropriation any obligations of Lessee under this Paragraph 19 shall be limited to costs or liability incurred by Lessor to the end of the fiscal period represented by the last Renewal Term or the end of the last Fiscal Period for which Lessee appropriated revenues necessary to pay for Rental Payments under this Agreement, whichever is earlier.

20. *Reserved.*

21. *Reserved*

22. *No Offset; Unconditional Obligation.* Except as provided in Paragraph 3, or in the Event of Non-appropriation, the obligation of Lessee to make Rental Payments or any other Payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between Lessee and Lessor or between Lessee and an Equipment vendor or manufacturer or any other person, Lessee shall make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make Rental Payments or other payments required hereunder. Lessee's obligation to make Rental Payments shall not be abated through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment.

23. *Representations and Warranties of Lessee.* Lessee hereby represents and warrants to and agrees with Lessor that:

(a) Lessee is a state or a political subdivision thereof within the meaning of Section 103(c) of the Code.

(b) Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Agreement and each Lease and has been duly authorized to execute and deliver this Agreement and each Lease and to carry out its obligations under each Lease. Attached to each Lease as *Exhibit A-3* is a full, true and correct copy or an original of a resolution or other appropriate official action of Lessee's governing body specifically authorizing Lessee to execute and deliver this Agreement and the applicable Lease. Attached to each Lease as *Exhibit A-4* is a full, true and correct copy or an original of an Incumbency Certificate relating to the authority of the officers who have executed and delivered, or will execute and deliver, this Agreement and the applicable Lease on behalf of Lessee. Attached to each Lease as *Exhibit A-5*, is a full, true and correct copy or an original of an opinion of Lessee's legal counsel regarding the legal, valid and binding nature of this Agreement and each Lease on Lessee and certain other related matters. For any Lease that is funded under this Agreement in the amount of \$5,000,000.00 or more, Lessor may require Lessee to deliver an opinion from its bond counsel to the effect that the interest component of the Rental Payment is not includable in the gross income of Lessor.

(c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement and each Lease, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Agreement and each Lease.

(d) Lessee is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Lessee from entering into this Agreement or any Lease or performing any of its obligations under this Agreement or any Lease, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement, any Lease or any other agreement or instrument to which Lessee is a party and which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or any Lease. All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement and each Lease or in connection with the carrying out by Lessee of its obligations hereunder and thereunder have been obtained, except with respect to annual budgeting and appropriation procedures as required by State law relating to each Lease.

(f) The payment of the Rental Payments or any portion thereof under each Lease is not (under the terms of such Lease or any underlying arrangement) directly or indirectly (i) 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 (ii) 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. No Equipment under any Lease will 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 Purchase Price for the Equipment under any Lease will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into a contract with a private third party for the used or operation of the Equipment that would result in the related Lease being treated as a "private activity bond" within the meaning of Section 141(b) of the Code, or would violate Lessee's tax covenants set forth in Section 12 hereof.

(g) The entering into and performance of this Agreement and each Lease will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment under any Lease pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in each Lease with respect to the granting of security interests in and to the Equipment therein described.

(h) Reserved.

(i) The useful life of the Equipment identified in each Lease will not be less than the stated full term of the applicable Lease, including all contemplated Renewal Terms.

(j) Lessee has entered into, or will enter into, each Lease for the purpose of purchasing, acquiring and leasing the Equipment identified therein and not for the purpose of refinancing any outstanding obligation of Lessee more than ninety days in

advance of its payment or prepayment date. The Purchase Price for the Equipment will be paid directly by Lessor, at the direction of Lessee and upon presentation of proper documentation, to the manufacturer, seller or supplier thereof, and no portion of the Purchase Price for the Equipment under any Lease will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than sixty days prior to the execution and delivery of the applicable Lease.

(k) Lessee has made sufficient appropriations to pay all Rental Payments due during the Initial Term under each Lease.

(l) Lessee has not previously failed (for whatever reason) to appropriate amounts sufficient to pay its obligations that are subject to annual appropriation.

24. *Events of Default.* Each of the following events constitutes an "Event of Default" with respect to a Lease:

(a) Lessee fails to pay in full the Rental Payment due under such Lease on any date upon which such Rental Payment is due;

(b) Lessee fails to comply with any other agreement or covenant of Lessee under such Lease for a period of thirty days following receipt of written notice of violation of such agreement or covenant and demand that such violation be remedied;

(c) Lessee institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar officer is appointed for Lessee or any of its property.

(d) any warranty, representation or statement made in writing by or on behalf of Lessee in connection with such Lease is found to be incorrect or misleading in any material respect on the date made; or

(e) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor (including, without limitation, the occurrence of any event of default under any other Lease), or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregate amount in excess of \$100,000;

(f) Lessee's actual or attempted sale, lease or encumbrance of any of the Equipment under such Lease or the making of any levy, seizure or attachment thereof or thereon.

25. *Repossession and Lessor's Other Rights Upon Event of Default or Event of Nonappropriation.* Immediately upon the occurrence of an Event of Default under a Lease or immediately after the expiration of the Initial Term or any Renewal Term during which an Event of Nonappropriation occurs, Lessor may terminate the affected Lease or Lessee's rights

thereunder and in any such event repossess the Equipment, thereunder, which Lessee hereby agrees, at its expense, to surrender promptly to Lessor at such location in the continental United States as Lessor shall direct. Such right of repossession and other rights as specifically provided in this Paragraph 25 shall constitute the sole remedies for Lessee's failure to make payments or otherwise perform its obligations when required under a Lease. If Lessor is entitled to repossess the Equipment under a Lease, Lessee shall permit Lessor or its agents to enter the premises where the affected Equipment is then located. In the event of any such repossession, Lessee shall execute and deliver such documents as may reasonably be required to transfer title to and possession of the Equipment under the affected Lease to Lessor, free and clear of all liens and security interests to which such Equipment may have become subject.

Any termination of a Lease at Lessor's option as described in this Paragraph 25 and as provided in the applicable Lease shall take effect at the end of the Initial Term or the Renewal Term then in effect under such Lease, unless Lessor at its option elects to terminate such Lease on an earlier date.

Upon repossession, if the Equipment under the affected Lease is damaged or otherwise made less suitable for the purposes for which it was manufactured than when delivered to Lessee (reasonable wear and tear excepted), Lessee agrees, at its option, to: (a) repair and restore such Equipment to the same condition in which it was received by Lessee (reasonable wear and tear excepted) and, at its expense, promptly return such Equipment to Lessor (or to a location identified in a written notice to Lessee) or (b) pay to Lessor the actual costs of such repair, restoration and return.

If Lessor terminates a Lease as described in this Paragraph 25 and as provided in the applicable Lease, or if an Event of Nonappropriation occurs under a Lease and Lessee continues to use the Equipment after the Initial Term or any Renewal Term under such Lease during which the Event of Default or the Event of Nonappropriation occurs, or if Lessee otherwise refuses to pay Rental Payments due during a Renewal Term under a Lease for which Lessee's governing body has appropriated sufficient Legally Available Funds to pay such Rental Payments, Lessor shall be entitled to bring such action at law or in equity to recover damages attributable to such holdover period for the Equipment subject to such Lease that Lessee continues to use or to the remainder of such Renewal Term under such Lease for which such appropriations have been made.

Lessor shall also be entitled to exercise any or all remedies available to a secured party under the applicable Uniform Commercial Code and all other rights and remedies that Lessor may have at law or in equity.

No right or remedy conferred upon or reserved to Lessor as described herein and as provided in each Lease is exclusive of any other right or remedy herein or in any Lease or at law or in equity or otherwise provided or permitted, but each shall be cumulative of every other right or remedy given as described herein and as provided in each Lease or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

No waiver of or delay or omission in the exercise of any right or remedy as described herein and as provided in each Lease or otherwise available to Lessor shall impair, affect or be construed as a waiver of its rights thereafter to exercise the same. Any single or partial exercise by Lessor of any right hereunder or with respect to any Lease shall not preclude any other or further exercise of any right as described herein and as provided in each Lease. The exercise of any right or remedy herein provided with respect to a Lease shall not relieve Lessee of any other obligations under any other Lease or the Equipment identified therein.

26. *No Sale, Assignment or Other Disposition by Lessee.* Lessee agrees not to (a) sell, assign, transfer, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Agreement, any Lease or the Equipment under any Lease, (b) remove the Equipment from its Equipment Location identified in the applicable Lease, with the understanding that the "Equipment Location" is a base location for rolling stock, shall remain at a Lessee location within the City of Fresno, or (c) enter into any contract or agreement, with respect to the use and operation of any of the Equipment, under any Lease that would result in the related Lease being treated as a "private activity bond" within the meaning of Section 141(b) of the Code. Lessee shall at all times remain liable for the performance of the covenants and conditions on its part to be performed, notwithstanding any assigning, transferring or other conveyance that may be made with such consent. Lessee shall at all times comply with Section 12 of this Agreement regarding tax covenants.

27. *Assignment by Lessor.*

(a) Lessor may, at any time and from time to time without Lessee's consent, assign, transfer or otherwise convey all or any part of its interest in the Equipment under any Lease or in any Lease, including Lessor's rights to receive the Rental Payments or any part thereof under any Lease (in which event Lessee agrees to make all Rental Payments under the affected Lease thereafter to the assignee designated by Lessor), to terminate any Lease or Lessee's rights under any Lease, to receive tax indemnity payments as provided in each Lease and to repossess the Equipment and exercise Lessor's other rights and remedies under each Lease; *provided, however,* 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 Paragraph 27 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance with respect to a Lease 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, interests in which are offered and sold in a private placement or limited offering only to investors whom Lessor reasonably believes are qualified institutional buyers or accredited investors within the meaning of the applicable federal securities law; *provided, however,* that in any event, Lessee shall not be required to make Rental Payments under any Lease, to send notices or to otherwise deal with respect to matters arising under any Lease with or to more than one individual or entity with respect to each Lease. No assignment, transfer or conveyance permitted by this Paragraph 27 with respect to a Lease shall be effective until Lessee's registration agent (Lessor, as provided below) shall have received a written notice of assignment (in substantially the form attached as *Exhibit A-6* to each Lease) that discloses the name and address of each such assignee; *provided, however,* 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 any Lease, it shall thereafter be sufficient that a copy of the agency or trust agreement shall have been deposited with Lessee's registration agent until Lessee's registration agent shall have been advised that such agency or trust agreement is no longer in effect. During the term of this Agreement, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments with respect to each Lease in form necessary to comply with Section 149 of the Code. For this purpose, Lessee appoints Lessor to act as its registration agent, which appointment Lessor hereby accepts. Lessor agrees on Lessee's behalf to maintain such record of all assignments. Lessee agrees, if so requested, to acknowledge each such assignment in writing within fifteen days after request therefor, but such acknowledgment shall in no way be deemed necessary to make any assignment effective. Lessee further agrees that any moneys or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

(b) In addition to the notice required to be made to the registration agent in Section 27(a), if Lessor assigns the right to collect Rental Payments to anyone other than the Lessor, then Lessee shall not be obligated to make any Rental Payments to any Lease assignee until Lessor notifies City Controller in writing of Lessor's assignment of any Lease, and the name and address of assignee for purposes of notice and payments.

(c) Notwithstanding anything to the contrary with this Paragraph 27 or this Agreement, Lessor hereby acknowledges that Lessee, its counsel and its advisors bear no responsibility for the accuracy or completeness of information (if any) with respect to the Agreement and any Lease or the Lessee, including, without limiting the generality of the foregoing, any information contained in any disclosure document related to the purchase by the purchasers of all or any part of Lessor's interests in the Equipment under any Lease or all or any part of Lessor's interest in any Lease.

(d) Lessor covenants and agrees to undertake all responsibility for compliance with State and Federal securities laws. The Lessor acknowledges and agrees that the Lessee has made no undertaking to provide nor has it approved any disclosure or other information for use in connection with the sale of Lease Interests. The Lessor represents and warrants that the sale of Lease Interests is exempt from Rule 15c2-12, and acknowledges and agrees that the Lessee has made no undertaking to provide any continuing or other disclosure following the execution and delivery of a Lease.

(e) Lessor acknowledges and agrees that the sale or assignment of Lease Interests is subject to the restrictions contained in California Government Code Sections 5950-5955.

28. *Costs.* Lessee shall pay to Lessor all costs and expenses incurred by Lessor in enforcing any of the terms, conditions or provisions of each Lease, including reasonable attorneys' fees and costs related to repossession of the Equipment under any Lease (including, without limitation, the costs and expenses to deliver possession of the Equipment under such Lease to such location as Lessor directs pursuant to Paragraph 25 hereof) and the exercise of remedies with respect to each Lease.

29. *Severability.* If any provision of this Agreement or any Lease is or becomes invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement or any such Lease, which shall be valid and enforceable to the fullest extent permitted by law.

30. *Notices.* All notices, reports and other documents provided for in this Agreement or under any Lease shall be deemed to have been given or made when delivered (including by facsimile transmission) or three days after being mailed by certified mail, postage prepaid, addressed to Lessor or Lessee at their respective mailing addresses set forth above or at such other addresses as either of the parties hereto may designate in writing to the other from time to time for such purpose.

31. *Amendments.* This Agreement and each Lease (including the exhibits attached thereto) constitute the entire agreement between Lessor and Lessee with respect to the Equipment therein described and the subject matter hereof and thereof. No term or provision of this Agreement or any Lease may be changed, waived, amended or terminated except by a written agreement signed by both Lessor and Lessee, except that Lessor may insert in any Schedule the serial number and additional description details of any item of Equipment after delivery thereof.

32. *Construction.* This Agreement and each Lease shall in all respects be governed by and construed in accordance with the laws of the State. The titles of the Paragraphs of this Agreement are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence of this Agreement and each Lease in each of their respective provisions.

33. *Parties; Survival of Certain Obligations and Indemnities.*

(a) The provisions of this Agreement and each Lease shall be binding upon, and (subject to the limitations of Paragraph 26 hereof) shall inure to the benefit of, the respective assignees and successors of Lessor and Lessee.

(b) The indemnities, assumptions of liabilities and obligations of Lessee provided for in Paragraphs 12 and 21 of this Agreement and incorporated into each Lease shall continue in full force and effect notwithstanding the expiration or termination of the term of this Agreement or any applicable Lease, until the later of four years after the expiration or termination of the term of this Agreement or any applicable Lease.

34. *Counterparts.* This Agreement and each Lease may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same instrument; *provided, however,* that only one counterpart shall constitute the original for each Lease for purposes of the sale or transfer of a Lease as chattel paper as provided in such Lease.

35. *Interest.* If under applicable law any part of the Rental Payments under any Lease is deemed or determined to be imputed interest, finance charges or time-price differential ("*Interest*"), Lessor and Lessee agree that the Rental Payments under such Lease shall be

deemed to be level payments of principal and Interest, with such Interest accruing on principal amounts outstanding from time to time. The rate of such Interest is not intended to exceed the maximum rate or amount of interest permitted by applicable law. If the Interest exceeds such maximum, then at Lessor's option, if permitted by law, the Interest payable under such Lease will be reduced to the legally permitted maximum amount of interest, and any excessive Interest under such Lease will be used to reduce the principal amount of Lessee's obligation under such Lease or be refunded to Lessee.

36. *Recycling Program.* In the event Lessor maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Lessor at its sole cost and expense shall:

(a) After award, immediately establish and maintain a viable and ongoing recycling program, approved by Lessee's Solid Waste Management Division for each office and facility. Literature describing Lessee recycling programs is available from Lessee's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(b) Immediately contact Lessee's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(c) Cooperate with and demonstrate to the satisfaction of Lessee's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

37. *Conflict of Interest and Non-Solicitation.*

(a) Prior to Lessee's execution of this Agreement, Lessor shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in Exhibit C. During the term of this Agreement, Lessor shall have the obligation and duty to immediately notify Lessee in writing of any change to the information provided by Lessor in such statement.

(b) Lessor shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). Lessor shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Lessor shall immediately notify Lessee of these facts in writing.

(c) In performing the work or services to be provided hereunder, Lessor shall not employ or retain the services of any person while such person either is employed by Lessee or is a member of any Lessee council, commission, board, committee, or similar Lessee

body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) Lessor shall not employ an individual who, within twelve months immediately preceding such employment did, in the individual's capacity as a Lessee official, officer or employee, participate in, negotiate with or otherwise have an influence on the recommendation made to the Administrator or City Council in connection with the selection of, or award of this Agreement to, Lessor.

(e) Lessor represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit, or procure this Agreement or any rights/benefits hereunder.

(f) Neither Lessor, nor any of Lessor's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. Lessor and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Lessor shall remain responsible for complying with Section 12(b), above.

(g) If Lessor should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Lessor shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(h) This section shall survive termination or expiration of this Agreement.

38. *Nondiscrimination.* Lessor shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. During the performance of this Agreement, Lessor agrees as follows:

(a) Lessor will comply with all laws and regulations, as applicable. No person in the United States shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) Lessor will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Lessor shall take affirmative action to ensure

that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Lessor will, in all solicitations or advertisements for employees placed by or on behalf of Lessor, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era.

(d) Lessor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Lessor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

39. *Federal Immigration Reform and Control Act of 1986:* As a material part of any contract for a City of Fresno project, every Contractor who has employees who will work on a City of Fresno project, is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). This requirement includes compliance with all of the employee documentation provisions.

40. *Alteration of Terms:* No alterations or variations of the terms of this Agreement shall be valid unless made in writing and signed by both parties.

41. *Agreement Changes:* No changes or modifications to the Agreement shall be made unless agreed to and signed by both parties. No prior, current or post award verbal agreement or agreements with any officer, agent, or employee of the Lessee shall affect or modify any terms or obligations of these Specifications or any Agreement resulting from this procurement.

42. *Independent Contractor:* In the furnishing of the services provided for herein, the Lessor is acting as an independent contractor. Neither the Lessor, nor any of its officers, associates, agents, or employees shall be deemed an employee, joint venturer, partner, or agent of the Lessee for any purpose. However, the Lessee shall retain the right to verify that the Lessor is performing its respective obligations in accordance with the terms of the Agreement.

Because of its status as an independent contractor, Lessor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to Lessee employees. Lessor shall be solely liable and responsible for all payroll and tax

withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Lessor shall be solely responsible, indemnify, defend and save Lessee harmless from all matters relating to employment and tax withholding for and payment of Lessor's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in Lessee's employment benefits, entitlements, programs and/or funds offered employees of Lessee whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Lessor may be providing services to others unrelated to Lessee or to this Agreement.

43. *Governing Law and Venue:* The Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of the Agreement and any rights and duties thereunder shall be Fresno County, California.

44. *Compliance with Law:* In providing the services required under the Agreement, Lessor shall at all times comply with all applicable laws of the United States, the State of California and the City of Fresno, and with all applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of the Agreement.

45. *Interpretation:* The Lessor acknowledges that the Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of the Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing the Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

46. *Maintenance of Records:* Records of Lessor pertaining to the services hereunder shall be kept on a generally recognized accounting basis and shall be provided to City or its authorized representatives upon request during regular business hours throughout the life of the Agreement and for a period of three years after final payment and for the period of time required by law. In addition, all Records pertaining to the Agreement shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. For the purposes of this Section, "Records" means all documents related to the Agreement and delivered to Lessor in connection therewith, and any future modifications or amendments thereof. This Section shall survive expiration or termination of the Agreement.

47. *Notices:* Any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given when delivered or mailed by registered or certified mail, postage prepaid, or delivered by overnight courier, addressed to the party to which notice is to be given at the party's address set forth on the signature page of the Proposal in the case of the Contractor and at the address in the Special

Conditions for mailing of invoices in the case of City, or at such other address as the parties may from time to time designate by written notice.

48. *Waiver*: The waiver by either party of a breach by the other of any provision of this Contract shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Contract. No provisions of this Contract may be waived unless in writing and signed by all parties to this Contract. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

49. *Cumulative Remedies*: No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

50. *No Third Party Beneficiaries*: The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

51. *Extent of Agreement*: Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both Lessee and Lessor.

52. *Headings*: The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

LESSOR AND LESSEE EACH HEREBY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT.

[Signatures on following page.]

IN WITNESS WHEREOF, Lessor, and Lessee have each caused this Master Equipment Lease-Purchase Agreement to be duly executed and delivered as of the date first above written.

Lessee:

CITY OF FRESNO

By: _____
Printed Name Michael Lima
Title: City Controller

Lessor:

BANC OF AMERICA PUBLIC CAPITAL CORP

By: Bridgett Arnold
Printed Name: Bridgett Arnold
Title: Authorized Agent

ATTEST
YVONNE SPENCE, MMC
City Clerk

By: _____
Printed Name: _____
Title: _____

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
BRANDON M. COLLET
Senior Deputy City Attorney

EXHIBIT A

Lease Schedule

MASTER EQUIPMENT LEASE-PURCHASE

AGREEMENT NO.: _____

DATE OF MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT: _____

LEASE SCHEDULE NO.: _____

DATE OF LEASE SCHEDULE: _____

NOTIFICATION DATE: _____

LESSEE: CITY OF FRESNO

1. DESCRIPTION OF THE EQUIPMENT:

SUPPLIER	QUANTITY	DESCRIPTION OF UNITS OF EQUIPMENT	SERIAL NUMBERS ¹ (IF AVAILABLE)

together with all accessories, attachments, substitutions and accessions.

2. EQUIPMENT LOCATION: _____

3. The Rental Payments shall be made for the Equipment as follows:

	PRINCIPAL	INTEREST	TOTAL RENTAL	PREPAYMENT
--	-----------	----------	--------------	------------

¹ As provided in Paragraph 31 of the Master Equipment Lease Purchase Agreement, Lessee authorizes Lessor to insert serial numbers and additional description details of Equipment when determined by Lessor.

DATE DUE	COMPONENT	COMPONENT	PAYMENT DUE	OPTION AMOUNT ²

4. For purposes of this Lease, "State" means the State of California.

5. Lessee's current Fiscal Period extends from **July 1, 20__** to **June 30, 20__**.

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

7. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in such Master Equipment Lease Purchase Agreement (particularly Paragraph 23 thereof) are true and correct as though made on the date of execution of this Lease Schedule

Lessee:
City of Fresno

Lessor:

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

This is Counterpart No. ____ of ____ manually executed and serially numbered counterparts. To the extent that this Lease 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.

² Assumes all Rental Payments and Additional Payments due on and prior to that date have been paid.

EXHIBIT A-1

Acceptance Certificate

LESSEE: CITY OF FRESNO

MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT NO.

LEASE SCHEDULE NO.

THE UNDERSIGNED ACKNOWLEDGES AND REPRESENTS THAT:

- 1. The Equipment identified in the above-referenced Lease Schedule is delivered, installed, available for use and is placed in service as of the Acceptance Date indicated below.
- 2. Such Equipment is in good operating condition and repair and is accepted as satisfactory in all respects for the purpose of the applicable Lease.
- 3.

ACCEPTANCE DATE: X

AUTHORIZED SIGNATURE: X

PRINTED NAME: X

TITLE: X

EXHIBIT A-2

(To Lease Schedule No. __)

[Attach I.R.S. Form 8038-G or 8038-GC, as Appropriate]

EXHIBIT A-3

(TO LEASE SCHEDULE NO. __)

[ATTACH FORM OF AUTHORIZING RESOLUTION]

EXHIBIT A-4

**(TO LEASE SCHEDULE NO. __)
INCUMBENCY CERTIFICATE OF LESSEE**

The undersigned, the duly authorized representative of the named Lessee under that certain Master Equipment Lease Purchase Agreement dated _____ (the "Agreement"), with _____, as Lessor, hereby certifies as follows in accordance with the requirements of the Agreement, which is incorporated by reference into the above-referenced Lease Schedule. Capitalized terms used herein have the same meaning as in the Agreement.

I hold the position noted under my signature, and I have all authority necessary to execute and deliver this Certificate. The following officers of the Lessee are duly elected or appointed, and the signatures above the respective name and title are true and correct and, where required, have been filed with the appropriate officials of the State.

Signature: _____
Printed Name: _____
Title: _____

Signature: _____
Printed Name: _____
Title: _____

IN WITNESS WHEREOF, I have executed and delivered this certificate as of this ___ day of _____, 20__.

Lessee: CITY OF FRESNO

By: _____
Printed Name: _____
Title: _____

EXHIBIT A-5

[Attach Opinion of Lessee's Counsel]

EXHIBIT A-6
(To Lease Schedule No. ____)

**NOTICE AND ACKNOWLEDGMENT OF SALE OF
RENTAL PAYMENTS AND ASSIGNMENT OF LEASE**

_____ ("*Lessor*") and CITY OF FRESNO ("*Lessee*") have entered into a Master Equipment Lease-Purchase Agreement No. _____ dated _____, and Lease Schedule No. ____ dated _____ (collectively the "*Lease*"), under which Lessee has, or will have prior to its execution hereof, leased equipment (the "*Equipment*") described in such Lease Schedule.

Lessee is hereby notified that Lessor has assigned to the assignee named below ("*Assignee*") all of Lessor's right, title and interest in and to the Lease, the leased Equipment and the Rental Payments, all as permitted by the Lease.

Lessee is hereby directed to pay any and all Rental Payments and other amounts due with respect to which Lessor's Assignee renders an invoice, at the address set out immediately below or as otherwise directed in said invoice:

"Assignee" _____

By signing this Notice and Acknowledgment, Lessee agrees that it will pay all amounts due under the Lease as directed in the invoice without any set-off or deduction whatsoever notwithstanding any defect in, damage to or requisition of any of the Equipment leased under the Lease, any other similar or dissimilar event, or any defense, set-off, counterclaim or recoupment arising out of any claim of Lessee against Lessor or Assignee.

Lessee further acknowledges and agrees that Assignee has not assumed any of Lessor's obligations or duties under the Lease or made any warranties whatsoever as to the Lease or the Equipment. Lessee agrees that no change may be made to the Lease without the prior written consent of Assignee.

By signing this Notice and Acknowledgment, Lessee warrants that its representations and warranties under the Lease are true and correct on the date hereof.

Date: _____

Lessee: CITY OF FRESNO

By: _____
Printed Name: _____
Title: _____

EXHIBIT B

[Form of] Escrow and Account Control Agreement

This Escrow and Account Control Agreement (this "Agreement"), dated as of _____, by and among Banc of America Public Capital Corp, a Kansas corporation (together with its successors and assigns, hereinafter referred to as "Lessor"), _____, a [city] [county] [special district] [body corporate and politic] existing under the laws of the State of _____ (hereinafter referred to as "Lessee") and Bank of America, National Association, a national banking association organized under the laws of the United States of America (hereinafter referred to as "Escrow Agent").

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

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

1. Creation of Escrow Account.

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

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

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

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

(d) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account, (ii) the date on which Lessee executes a Final Acceptance Certificate or (iii) written notice given by Lessor of the occurrence of an Event of Default under the Lease or termination of the Lease due to an Event of Non-appropriation. Notwithstanding the foregoing, this Agreement shall not terminate nor shall the Escrow Account be closed until all funds deposited hereunder have been disbursed.

(e) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume

the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. Notwithstanding and without limiting the generality of the foregoing, concurrent with the execution of this Agreement, Lessee and Lessor, respectively, shall deliver to the Escrow Agent an authorized signers form in the form of Exhibit A-1 (Lessee) and Exhibit A-2 (Lessor) attached hereto. Notwithstanding the foregoing sentence, the Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the parties or by a person or persons authorized by the parties. The Escrow Agent specifically allows for receiving direction by written or electronic transmission from an authorized representative with the following caveat, Lessee and Lessor agree to indemnify and hold harmless the Escrow Agent against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees) (collectively, "Losses") incurred or sustained by the Escrow Agent as a result of or in connection with the Escrow Agent's reliance upon and compliance with instructions or directions given by written or electronic transmission given by each, respectively, provided, however, that such Losses have not arisen from the gross negligence or willful misconduct of the Escrow Agent, it being understood that forbearance on the part of the Escrow Agent to verify or confirm that the person giving the instructions or directions, is, in fact, an authorized person shall not be deemed to constitute gross negligence or willful misconduct.

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

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

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

shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

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

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

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

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

2. Acquisition of Property.

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

(b) Authorized Escrow Account Disbursements. It is agreed as between Lessee and Lessor that disbursements from the Escrow Account shall be

made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

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

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

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1.
2. Delivery to Lessor invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Equipment has passed to Lessee) therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and
3. The disbursement shall occur during the Acquisition Period.

Lessee and Lessor agree that their execution of the form attached hereto as Schedule 1 and delivery of the executed form to Escrow Agent confirms that all of the requirements and conditions with respect to disbursements set forth in this Section 2 have been satisfied.

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

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

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

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

(a) All terms used in this Section 6 which are defined in the Commercial Code of the state of _____³ ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

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

(c) Provided that account investments shall be held in the name of the Escrow Agent, Escrow Agent hereby represents and warrants (a) that the records of Escrow Agent show that Lessee is the sole owner of the Collateral, (b) that Escrow Agent has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than

3 State where lessee is located.

Lessor's claim pursuant to this Agreement, and (c) that Escrow Agent is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Escrow Agent is obligated to accept from Lessor under this Agreement and entitlement orders that Escrow Agent, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

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

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

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

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

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

(i) Escrow Agent is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 8 below, concurrently with

the sending thereof to Lessee, duplicate copies of any and all monthly Escrow Account statements or reports issued or sent to Lessee with respect to the Escrow Account.

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

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

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

If to Lessor: Banc of America Public Capital Corp
 11333 McCormick Road
 Mail Code: MD5-032-07-05
 Hunt Valley, MD 21031
 Attn: Contract Administration
 Fax: (443) 541-3057

If to Lessee: City of Fresno
 Finance Department
 2600 Fresno Street, Suite 2156

Fresno, CA 93721
Attn: Debt Administration
Fax: (559) 488-4636

If to Escrow Agent

Bank of America, National Association
Global Custody and Agency Services
135 S. LaSalle Street
Mail Code: IL4-135-18-51
Chicago, Illinois 60603
Attention: Niven Mody
Telephone: (312) 904-1838
Fax: (312) 453-4443
Email: gcas_amrs_escrow_client_service@baml.com

9. Lessee and Lessor understand and agree that they are required to provide the Escrow Agent with a properly completed and signed Tax Certification (as defined below) and that the Escrow Agent may not perform its duties hereunder without having been provided with such Tax Certification. As used herein "Tax Certification" shall mean an IRS form W-9 or W-8 as described above. The Escrow Agent will comply with any U.S. tax withholding or backup withholding and reporting requirements that are required by law. With respect to earnings allocable to a foreign person, the Escrow Agent will withhold U.S. tax as required by law and report such earnings and taxes withheld, if any, for the benefit of such foreign person on IRS Form 1042-S (or any other required form), unless such earnings and withheld taxes are exempt from reporting under Treasury Regulation Section 1.1461-1(c)(2)(ii) or under other applicable law. With respect to earnings allocable to a United States person, the Escrow Agent will report such income, if required, on IRS Form 1099 or any other form required by law. The IRS Forms 1099 and/or 1042-S shall show the Escrow Agent as payor and **[Lessee]** as payee. Escrow Agent shall recognize **[Lessee]** as the designated party for regulatory reporting purposes.

Lessee and Lessor agree that they are not relieved of their respective obligations, if any, to prepare and file information reports under Code Section 6041, and the Treasury regulations thereunder, with respect to amounts of imputed interest income, as determined pursuant to Code Sections 483 or 1272. The Escrow Agent shall not be responsible for determining or reporting such imputed interest.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of [] and the parties hereto consent to jurisdiction in the State of [] and venue in any state or Federal court located in the City of [].

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

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

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

13. No party hereto shall assign its rights hereunder until its assignee has submitted to the Escrow Agent (i) Patriot Act disclosure materials and the Escrow Agent has determined that on the basis of such materials it may accept such assignee as a customer and (ii) assignee has delivered an IRS Form W-8 or W-9, as appropriate, to the Escrow Agent which the Escrow Agent has determined to have been properly signed and completed.

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

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

Lessee will treat the terms of this Agreement as confidential except on a "need to know" basis to persons within or outside Lessee's organization (including affiliates of such party), such as attorneys, accountants, bankers, financial advisors, auditors and other consultants of such party and its affiliates, except as required by any law, court, regulator or legal process and except pursuant to the express prior written consent of the other parties, which consent shall not be unreasonably withheld;

In Witness Whereof, the parties have executed this Escrow and Account Control Agreement as of the date first above written.

**Banc of America Public Capital Corp
as Lessor**

_____ as Lessee

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**Bank of America, National Association
As Escrow Agent**

By: _____

Name: _____

Title: _____

**SCHEDULE 1
to the Escrow and Account Control Agreement**

FORM OF DISBURSEMENT REQUEST

Re: Schedule of Property No. ___ dated as of _____ to Master Equipment Lease/Purchase Agreement dated as of _____ by and between Banc of America Public Capital Corp, as Lessor and _____, as Lessee (the "Lease") (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow and Account Control Agreement, dated as of _____ (the "Escrow Account and Account Control Agreement") by and among Banc of America Public Capital Corp ("Lessor"), _____ ("Lessee") and Bank of America, National Association, (the "Escrow Agent"), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow Account and Account Control Agreement for the following purposes:

Disbursement Amounts:

Payee's Name and Address	Invoice Number	Dollar Amount	Purpose
<Payee's Name> <Payee Address 1> <Payee Address 2> <Payee Address 3> <Payee Bank Name*> <Payee Bank ABA/Routing*> <Payee Bank Account No*> <Payee Account Name*> <*Payee Address information is required. Payee Bank information only to be included for wire/EFT.>	<invoice list OR "see attached" with a spreadsheet>	< invoice amount>	<general description of equipment; ex "police cruiser">
<Payee's Name> <Payee Address 1> <Payee Address 2> <Payee Address 3> <Payee Bank Name*> <Payee Bank ABA/Routing*> <Payee Bank Account No*> <Payee Account Name*>	<invoice list OR "see attached" with a spreadsheet>	<invoice amount>	<general description of equipment; ex "police cruiser">

<*Payee Address information is required. Payee Bank information only to be included for wire/EFT.>			
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Lessee hereby represents, covenants, and warrants for the benefit of Lessor on the date hereof as follows:

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

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

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

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

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

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

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

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

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

Dated: _____

By: _____

Name: _____

Title: _____

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

BANC OF AMERICA PUBLIC CAPITAL CORP
as Lessor under the Lease

By: _____

Name:

Title:

[AN "EXHIBIT A-1" MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

EXHIBIT B-1

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting _____
[Secretary] [City Clerk] [County Clerk] of _____ ("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 the facsimile signatures below 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 Schedule of Property No. ___ dated as of _____ to Master Equipment Lease/Purchase Agreement dated as of _____ by and between Lessee and Banc of America Public Capital Corp ("Lessor"), the Escrow and Account Control Agreement dated as of _____ by and among Lessor, Lessee and Bank of America, National Association, as Escrow Agent, all documents related thereto and delivered in connection therewith, and any future modification(s) or amendments thereof (collectively, the "Operative Agreements"), and the Operative Agreements each are the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

Name of Official	Title	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: _____ By: _____
Name: _____
Title: _____

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

[AN "EXHIBIT A-2" MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

EXHIBIT B-2

Escrow and Account Control Agreement dated as of _____ by and among Banc of America Public Capital Corp, Lessor, _____, as Lessee and Bank of America, National Association, Escrow Agent

Certificate of Authorized Representatives – [Lessor]

Name: Terri Preston
Title: Authorized Agent
Phone: 443-541-3642
Facsimile: 443-541-3057
E-mail: Terri.Preston@baml.com
Signature: _____

Name: Nancy Nusenko
Title: Authorized Agent
Phone: 443-541-3646
Facsimile: 443-541-3057
E-mail: Nancy.a.nusenko@baml.com
Signature: _____

Fund Transfer / Disbursement Authority Level: Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others
others

- Initiate
- Verify transactions initiated by
others

Name: Nancy K. Hepner
Title: Authorized Agent
Phone: 443-541-3645
Facsimile: 804-553-2407
E-mail: Nancy.k.hepner@baml.com
Signature: _____

Name: Arlene Sobieck
Title: Authorized Agent
Phone: 443-541-3643
Facsimile: 443-541-3057
E-mail: Arlene.sobieck@baml.com
Signature: _____

Fund Transfer / Disbursement Authority Level: Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others
others

- Initiate
- Verify transactions initiated by
others

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

Banc of America Public Capital Corp

By: _____
Name:
Title:

Date: _____

EXHIBIT C

DISCLOSURE OF CONFLICT OF INTEREST

MASTER EQUIPMENT LEASE PURCHASE AGREEMENT

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Bridgett Arnold

 Signature

Bridgett Arnold

 (name)

Banc of America Public Capital Corp

 (company)

555 California St., 4th floor

 (address)

San Francisco, CA 94104

 (city state zip)

Additional page(s) attached.