

ESCROW AGREEMENT

BANC OF AMERICA PUBLIC CAPITAL CORP, a national banking corporation duly qualified to transact business in the State of California (the "*Lessor*"), and City of Fresno, municipal corporation and charter city, duly organized and existing under the laws of the State of California (the "*Lessee*"), hereby deliver to BOK Financial, NA, a national banking corporation, as escrow agent (the "*Escrow Agent*"), the sum of \$_____, RECEIPT OF WHICH THE ESCROW AGENT HEREBY ACKNOWLEDGES, for deposit into the Escrow Fund (as hereinafter defined), to be held and disposed of by the Escrow Agent upon the terms and conditions hereinafter set forth to which the undersigned hereby agrees as follows:

1. The Escrow Agent hereby acknowledges receipt of a true and correct copy of an executed Lease Schedule No. _____ dated as of _____, 20__, to Master Equipment Lease Purchase Agreement dated as of _____, 20__ (the "*Lease*"), whereby the Lessor leases to the Lessee, and the Lessee leases from the Lessor, the equipment and other property described in the Lease (the "*Equipment*"). From and after the Escrow Agent's receipt of a written notice from the Lessor that the Lessor has assigned its right, title and interest in the Lease to an assignee, and of any further assignments, all references to the "*Lessor*" herein shall mean and refer to such assignee or assignees.

2. (a) There is hereby created and established with the Escrow Agent a special escrow fund designated the _____ (_____ Project) Escrow Fund (the "*Escrow Fund*") to be held by the Escrow Agent in the name of the Lessee separate and apart from all other funds of the Lessor, the Lessee or the Escrow Agent.

(b) The moneys and investments held in the Escrow Fund are irrevocably held in trust for the benefit of the Lessee and the Lessor, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either the Lessee or the Lessor. The Lessor, the Lessee, and the Escrow Agent intend that the Escrow Fund constitute an escrow account in which the Lessee has no legal or equitable right, title, or interest until satisfaction in full of all conditions contained herein for the disbursement of funds by the Escrow Agent therefrom. However, if the parties' intention that the Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in full is not respected in any legal proceeding, the parties hereto intend that the Lessor have a security interest in the Escrow Fund, and such security interest is hereby granted by the Lessee to secure payment of all sums due to the Lessor under the Lease. For such purpose, the Escrow Agent hereby agrees to act as agent for the Lessor in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to the Escrow Fund, the Lessor's interest therein.

3. (a) The Escrow Agent shall disburse funds from the Escrow Fund to the manufacturer, seller or supplier of items of Equipment (the "*Vendor*") within three business days after receipt of a completed payment request form from the Lessee, substantially in the form attached as *Exhibit B-1* hereto (the "*Payment Request Form*"), executed by the _____ of the Lessee or his or her designee, and approved by the Lessor. Each Payment Request Form shall have attached thereto such bills, receipts, invoices or other documents acceptable to the Lessee and the Lessor evidencing the amount and purposes for which the disbursement is requested. The Lessee agrees to submit to the Lessor each Payment Request Form for approval by the Lessor and such other documents and certificates as the Lessor may reasonably request to evidence the proper expenditure of the moneys in the

Escrow Fund for the purpose of paying costs to acquire the Equipment to be leased pursuant to the Lease. The Lessee is responsible for making any and all payments required that exceed \$_____ due to Equipment modifications and change orders authorized or ordered by the Lessee. The Escrow Agent assumes no responsibility for the expenditure of moneys paid out of the Escrow Fund pursuant to a Payment Request Form properly signed, approved by the Lessor, and delivered to the Escrow Agent as provided herein.

(b) If an Event of Nonappropriation or an Event of Default occurs prior to Lessee's acceptance of all the Equipment, the amount then on deposit in the Escrow Fund shall be applied to prepay the unpaid principal component of the Rental Payments in whole on the first business day of the month next succeeding the occurrence of either such Event plus accrued interest to the prepayment date; *provided, however*, that the amount to be prepaid by Lessee pursuant to this Escrow Agreement shall first be paid from moneys in the Escrow Fund and then from Legally Available Funds and other moneys available for such purpose as a result of the exercise by Lessor of its rights and remedies under the Lease. Any funds on deposit in the Escrow Fund on the prepayment date described in this subparagraph (b) in excess of the unpaid principal component of the Rental Payments to be prepaid plus accrued interest thereon to the prepayment date shall be paid promptly to Lessee.

(c) To the extent that Lessee has not accepted all items of Equipment before the eighteen-month anniversary of the Dated Date or there otherwise remains a balance on deposit in the Escrow Fund on the eighteen-month anniversary of the Dated Date, the amount then on deposit in the Escrow Fund shall be applied to prepay the unpaid principal component of the Rental Payments in part, in inverse order of Rental Payments, on the first business day of the next month plus accrued interest to the prepayment date; *provided, however*, that the amount to be prepaid by Lessee pursuant to this Escrow Agreement shall first be paid from moneys in the Escrow Fund and then from Legally Available Funds. Notwithstanding any such partial prepayment, the Lease shall remain in full force and effect with respect to the portion of the Equipment accepted by Lessee during such eighteen-month period, and the portion of the principal component of Rental Payments remaining unpaid after such prepayment plus accrued interest thereon shall remain payable in accordance with the terms of the Lease. Upon Lessor's request, Lessee shall execute an amendment to the Rental Payment Schedule that reflects the change to the Rental Payments as a result of such partial prepayment. "Dated Date" as used in this agreement shall mean the date on which Lessor deposits funds into the Escrow Fund.

4. (a) This Escrow Agreement expressly and exclusively sets forth the duties of Escrow Agent with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Escrow Agreement against Escrow Agent. This Escrow Agreement constitutes the entire agreement between the Escrow Agent and the other parties hereto in connection with the subject matter of this escrow, and no other agreement entered into between the parties, or any of them, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be referred to herein or deposited with Escrow Agent or the Escrow Agent may have knowledge thereof, and Escrow Agent's rights and responsibilities shall be governed solely by this Escrow Agreement.

(b) Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of this Escrow Agreement or any part thereof, or for the form of execution thereof, or for the identity or authority of any person executing or depositing such subject matter. Escrow Agent shall be under no duty to investigate or inquire as to the validity or accuracy of any

document, agreement, instruction or request furnished to it hereunder believed by it to be genuine and Escrow Agent may rely and act upon, and shall not be liable for acting or not acting upon, any such document, agreement, instruction or request. Escrow Agent shall in no way be responsible for notifying, nor shall it be its duty to notify, any party hereto or any other party interested in this Escrow Agreement of any payment required or maturity occurring under this Escrow Agreement or under the terms of any instrument deposited herewith.

(c) **Indemnification.** The parties to this Escrow Agreement (other than Escrow Agent) hereby jointly and severally agree to indemnify and hold Escrow Agent, its affiliates and their officers, employees, successors, assigns, attorneys and agents (each an "Indemnified Party") harmless from all losses, costs, claims, demands, expenses, damages, penalties and attorney's fees suffered or incurred by any Indemnified Party or Escrow Agent as a result of anything which it may do or refrain from doing in connection with this Escrow Agreement or any litigation or cause of action arising from or in conjunction with this Escrow Agreement or involving the subject matter hereof or Escrow Funds or monies deposited hereunder or for any interest upon any such monies, including, without limitation, arising out of the negligence of Escrow Agent; provided that the foregoing indemnification shall not extend to the gross negligence or willful misconduct of Escrow Agent.. This indemnity shall include, but not be limited to, all costs incurred in conjunction with any interpleader which the Escrow Agent may enter into regarding this Escrow Agreement.

5. (a) To the extent permitted by law, and with such collateral or security as required by law, any moneys held as part of the Escrow Fund shall be promptly invested and reinvested by the Escrow Agent upon the written direction of the Lessee (so long as an Event of Default under the Lease has not occurred and is continuing or an Event of Nonappropriation under the Lease has not occurred) or the written direction of the Lessor (if an Event of Default under the Lease has occurred and is continuing or an Event of Nonappropriation under the Lease has occurred) in any of the following investments: (i) direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America, the guarantee of which constitutes the full faith and credit obligation of the United States of America ("*United States Government Obligations*"); (ii) bonds, debentures, participation certificates or notes issued by, or obligations the prompt payment of principal and interest for which is guaranteed by, any of the following: Bank for Cooperatives, Federal Financing Bank, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal National Mortgage Association, Export-Import Bank of the United States, Student Loan Marketing Association, Farmers Home Administration, Federal Home Loan Mortgage Corporation or Government National Mortgage Association, or any other agency or corporation that has been or may hereafter be created by or pursuant to an Act of Congress of the United States as an agency or instrumentality thereof; or (iii) certificates of deposit, time deposits, bank repurchase agreements or any other interest-bearing banking arrangements with any banking institution (including the Escrow Agent or any bank with which the Escrow Agent is affiliated) that is fully insured by the Federal Deposit Insurance Corporation, or any successor thereto, *provided* that such certificates of deposit or time deposits, bank repurchase agreements or other interest-bearing banking arrangements, if not fully insured by the Federal Deposit Insurance Corporation, or such successor, are either (A) issued by national or state banks having capital and surplus of at least \$100,000,000 and a rating of "A" or better by any nationally recognized securities rating organization or (B) fully secured by United States Government Obligations.

(b) No investment shall be made in a security maturing later than the date on which the Lessee reasonably anticipates needing such funds for the payment of the costs to acquire

the Equipment from the Escrow Fund. The Lessee shall notify the Escrow Agent from time to time as to the dates on which funds are needed for disbursement from the Escrow Fund and the estimated amount of each such disbursement and the Escrow Agent may rely upon such information in connection with the investment or reinvestment of funds. Until further notice from the Lessee to the Escrow Agent, the schedule of disbursements attached as *Exhibit B-2* hereto (the "*Escrow Fund Draw Schedule*") shall constitute such notice from the Lessee upon which the Escrow Agent may rely for such purposes.

(c) So long as an Event of Default under the Lease has not occurred and is not continuing or an Event of Nonappropriation under the Lease has not occurred, earnings and income realized from the investment and reinvestment of moneys in the Escrow Fund shall be applied as directed by the Lessee either to (i) payment of costs to acquire Equipment or (ii) payment of the interest component of Rental Payments. After the occurrence of an Event of Default under the Lease and so long as it continues or after the occurrence of an Event of Nonappropriation under the Lease, earnings and income realized from the investment and reinvestment of moneys in the Escrow Fund shall be applied as directed by the Lessor to the payment or prepayment of the principal and interest component of Rental Payments.

(d) All investments shall be held for the benefit of the Lessor and the Lessee as herein provided, shall be disbursed to pay costs to acquire the Equipment to be leased pursuant to the Lease (but only upon satisfaction of the conditions contained herein for disbursement of such funds), shall be registered in the name of the Escrow Agent only, solely and specifically for purposes of the escrow hereunder, and shall be held by the Escrow Agent.

6. For purposes of this Escrow Agreement:

(a) The Escrow Agent shall not incur any liability in acting upon any Payment Request Form delivered hereunder and believed by the Escrow Agent to be genuine and to be signed and approved by the proper parties.

(b) The Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of the Escrow Agent's duties hereunder and shall not be held to any liability for acting in accordance with advice so received.

(c) Subject to the security interest granted to the Lessor pursuant to Paragraph 14 of the Lease and in Paragraph 2 of this Escrow Agreement, the Escrow Agent shall have a first lien on the moneys held by it hereunder for its compensation and for any costs, liability or expense or counsel fees it may incur.

7. In the event of any disagreement between the undersigned or any of them, and/or any other person, resulting in adverse claims and demands being made in connection with or for any moneys involved herein or affected hereby, the Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in so refusing the Escrow Agent may refrain from making any delivery or other disposition of any moneys involved herein or affected hereby and in so doing the Escrow Agent shall not be or become liable to the undersigned or any of them or to any person or party for its failure or refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to continue so to refrain and refuse so to act until:

(a) the rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the moneys involved herein or affected hereby; or

(b) all differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing signed by all of the persons interested.

8. (a) The fees for the usual services of the Escrow Agent under the terms of this Escrow Agreement are set forth in the schedule attached hereto as *Exhibit B-3*. In addition, the Escrow Agent shall be entitled to reimbursement for all out-of-pocket expenses reasonably incurred hereunder (including, without limitation, fees of counsel). A statement of the fees and out-of-pocket expenses owed to the Escrow Agent by the Lessee shall be mailed periodically to the Lessee at the mailing address set forth in the Lease.

(b) In the event that the fees charged and due the Escrow Agent remain unpaid for a period of one year, the Escrow Agent shall have the right, and is hereby authorized, in its sole and absolute discretion, and without liability to any person, to terminate all duties hereunder upon thirty days written notice to the Lessee and the Lessor at their respective addresses.

(c) All fees and out-of-pocket expenses charged by the Escrow Agent shall be paid by the Lessee within thirty days after receipt of the statement therefor as provided in subparagraph (a) of this Paragraph, but only from Legally Available Funds (as such term is defined in the Lease).

9. Within fifteen days after the Escrow Agent's receipt of a written request from the Lessee or the Lessor for such information, the Escrow Agent shall provide to the requesting party a written summary of the receipts, disbursements, and status of moneys and investments in the Escrow Fund.

10. All notices and other communications provided for hereunder shall be in writing and, if to the Lessee, mailed or delivered to it, addressed to it at **City of Fresno, 2600 Fresno Street, Fresno, CA 93721**, Attention: **City Controller**; if to the Lessor, mailed or delivered to it, addressed to it at 555 California Street, 4th Floor, San Francisco, California 94104, Attention: Contract Administration; and if to the Escrow Agent, mailed or delivered to it at 1600 Broadway, Denver Colorado 80126, Attention: Corporate Trust, or as to any party at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this Paragraph. All such notices and other communications, when mailed shall be effective when within three days after being deposited in the mails, addressed as aforesaid or upon delivery if delivered by courier, except that directions to the Escrow Agent shall be effective only upon actual receipt by the Escrow Agent.

11. This Escrow Agreement may be modified or amended only with the written consent of all parties hereto.

12. This Escrow Agreement shall terminate on the earlier of _____, or when all transfers required to be made by the Escrow Agent under the provisions hereof shall have been made.

13. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Lessor, the Lessee or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

14. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

15. This Escrow Agreement shall be construed and enforced in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed by their duly authorized officers as of this ____ day of _____, 20____.

CITY OF FRESNO,
_____ as Lessee

By: _____
Printed Name: _____
Title: _____

Banc of America Public Capital Corp_ as Lessor

By: _____
Printed Name: _____
Title: _____

BOK Financial, NA, as Escrow Agent

By: _____

Printed Name: George F. Kubin
Title: Senior Vice President

Acknowledgement and Acceptance of Agent

_____ hereby acknowledges and
accepts its appointment as Agent pursuant to Section 10 hereof, as
of this _____ day of _____, 20____.

_____ as Agent

By: _____

Printed Name: _____

Title: _____

EXHIBIT 1

PAYMENT REQUEST FORM No. _____

LESSEE: CITY OF FRESNO

DATE: _____

ESCROW AGREEMENT ("AGREEMENT") DATED AS OF: _____

THE UNDERSIGNED ACKNOWLEDGES AND REPRESENTS THAT:

IN ACCORDANCE WITH PARAGRAPH 3 OF THE AGREEMENT, THE LESSEE HEREBY AUTHORIZES AND REQUESTS A DISBURSEMENT FROM THE ESCROW FUND TO PAY THE AMOUNTS TO THE PAYEES IDENTIFIED HEREIN FOR CERTAIN EQUIPMENT COSTS.

THE LESSEE HEREBY REPRESENTS AND WARRANTS FOR ALL PURPOSES THAT:

1. Pursuant to the invoice attached hereto, the amount to be disbursed is \$_____.
2. PAYMENT IS TO BE MADE TO: PAYEE: _____

3. The amount to be disbursed constitutes the Purchase Price, or portion thereof, of the Equipment cost, said amount is required to be disbursed pursuant to a purchase contract entered into therefor by and on behalf of the Lessee, or was necessarily or reasonably incurred, and said amount is not being paid in advance of time, if any, fixed for any payment.
4. The Equipment relating to such Purchase Price, or portion thereof, has been delivered and accepted or the materials have been furnished for which disbursement is required.
5. No amount set forth in this Payment Request Form was included in any Payment Request Form previously submitted.
6. Acquisition and installation of the applicable portion of the Equipment for which payment is being requested has been completed in accordance with plans and specifications approved by the Lessee and in accordance with the terms and conditions of the purchase contract. Said applicable portion of the Equipment is suitable and sufficient for the expected uses thereof, but this statement is made without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being.

7. If the amount to be disbursed constitutes final payment for all of the Equipment, there is attached hereto an original of the Acceptance Certificate, *Exhibit A-1* to the Lease (as such term is defined in the Agreement), executed by an authorized officer of Lessee.

8. Each disbursement hereby requested has been incurred and is a proper charge against the Escrow Fund. No amount hereby requested to be disbursed will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the date of execution and delivery of the Lease.

APPROVED:

LESSEE:

LESSOR:

CITY OF FRESNO

BANC OF AMERICA PUBLIC CAPITAL

By: _____, as Agent

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT B-2

ESCROW FUND DRAW SCHEDULE

ANTICIPATED PAYMENT DATE

PAYMENT AMOUNT

TOTAL:

EXHIBIT B-3

[ATTACH ESCROW AGENT FEE SCHEDULE]