



City of San Leandro

Meeting Date: January 4, 2021

Staff Report

File Number: 20-593

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.M.

TO: City Council

FROM: Fran Robustelli
Interim City Manager

BY: Debbie Pollart
Public Works Director

FINANCE REVIEW: Susan Hsieh
Finance Director

TITLE: Staff Report for a City of San Leandro City Council Resolution Authorizing the Execution and Delivery of an Equipment Lease/Purchase Agreement with Respect to the Acquisition, Financing and Leasing of Certain Equipment for the Public Benefit; Authorizing the Execution and Delivery of Documents Required in Connection Therewith; and Authorizing the Taking of All Other Actions Necessary to the Consummation of the Transactions Contemplated by this Resolution (approval to finance energy conservation and resiliency equipment to be installed at the City's Water Pollution Control Plant for \$8,893,876.20)

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council approve the resolution and documents required to execute and deliver an equipment lease/purchase agreement (Agreement) with Banc of America Public Capital Corp. (Bank), as lessor, to finance energy conservation and resiliency equipment (Equipment) to be installed at the City's Water Pollution Control Plant (WPCP) pursuant to the executed Installation Agreement between the City and Climatec. The principal amount to be financed under the Agreement is estimated at \$7,624,924 (which is equal to the total estimated project cost of \$8,045,781 minus a PG&E grant of \$420,857). Annual lease payments on the 15-year Agreement are expected to equal \$592,925.08, with total principal plus interest paid anticipated to equal \$8,893,876.20.

The Agreement is an appropriation lease, which means that the City will need to budget and appropriate lease payments (to come from the WPCP Enterprise Fund or any other legally available funds of the City) in each year. In the event the City elects not to budget and appropriate lease payments in a given year, the Bank, as lessor, will have the right to remove the leased equipment. The General Fund is not obligated to pay for any amounts due under the Agreement.

DISCUSSION

On September 28, 2020, the City Council approved an Installation Agreement for a proposed energy efficiency/resiliency project at the WPCP, to be financed with a \$420,857 PG&E Self Generation Incentive Program (SGIP) grant plus a tax-exempt lease with a bank or other financial

institution selected through an informal RFP process. Per the Installation Agreement, Climatec will install at the City's WPCP up to \$8,045,781 of energy saving and resiliency equipment. Fifteen-year lifecycle savings/revenue are projected at \$14,322,177 with an estimated net positive fiscal impact of \$6,276,396 over the same period. First year savings/revenue are anticipated to be \$842,517. It is noted that this project also includes new revenue-generating aspects, but for a worse-case scenario and due to anticipated market fluctuations for the revenues, only the total debt costs are indicated here.

In November 2020, staff received four proposals from financial institutions offering to finance the equipment installation. Proposals were received from Bank of America, Holman Capital, the California Infrastructure and Economic Development Bank (Ibank), and US Bank (Union Bank and Wells Fargo did not respond). Proposals were evaluated based on interest rate, business terms and experience. Bank of America provided the proposal most advantageous to the City. The bid allows for a 15-year amortization of the principal amount financed. Annual lease payments are expected to be \$592,925.08 (includes Principal + Interest) based on the lease rate in effect on the bid date. The interest rate is 1.989%, assuming the financing closes as scheduled on January 22, 2021.

It is noted that the Phase I citywide energy and water-efficiency work (started in 2016 and completed in 2018 at various sites throughout the City and including upgraded streetlighting), was also financed through Bank of America (up to \$5,500,000 over 16 years and at a rate of 2.19%).

Financing Structure

Over the years, the City had used certificates of participation and lease revenue bonds to finance the construction and retrofitting of its public facilities. Certificates of participation are a variation of the general lease-purchase financing method that had been commonly used in California. Due to a perceived preference for private placement tax-exempt leases in today's market, the short-term nature of the financing, and the disclosures required to be made by the City compared to a public offering, the financing will be structured as a tax-exempt private placement lease. For the proposed lease, the Bank will lease the equipment to the City and the City will make lease payments to the Bank from the WPCP Enterprise Fund. As noted above, the Equipment is the collateral, securing the City's payment obligations under the Agreement during the intended 15-year lease period.

The Financing Team

Staff worked with the firms listed below to bring this financing transaction to the Council for approval. Therefore, the resolution of issuance to be adopted by the Council directs staff to enter into agreements for services with the following firms in the following capacities:

<u>Name of Firm</u>	<u>Capacity</u>
Banc of America Public Capital Corp.	Lessor
Jones Hall, APLC	Special Counsel
Bank of America, NA	Escrow Agent

The Bank was chosen via a request for proposals. The Bank was deemed to be the most advantageous lessor from a group of four proposals received by the City. The primary reasons for the Bank's selection are its pricing, experience, and structuring

creativity.

Jones Hall, A Professional Law Corporation (APLC), has been the City's bond or special counsel dating back to 1979. Jones Hall ranks among the top three bond counsel in the number of State and local bond issues in California during each of the past ten years, and has worked with the City as Special Counsel/Bond Counsel with respect to the 2016 energy-efficiency financing as well as numerous other financings over the years.

Bank of America, NA will serve as the lease escrow agent. The Bank is one of the top municipal financing providers in the country. The Bank also serves the City with three local branches.

All fees of the Bank and its special counsel are included within the financing rate quoted above and are not separately payable by the City. Jones Hall's fees associated with entrance into the Equipment Lease/Purchase Agreement will be paid from WPCP Enterprise Fund monies (not financing proceeds).

Lease Documents

The City Council must approve the following documents to complete the 2020 Equipment Lease/Purchase transaction with the Bank:

- Equipment Lease/Purchase Agreement - This agreement establishes the lease between the City and the Bank, and all key representations, warranties and covenants of the City related thereto. This agreement also specifies the term of the agreement (15 years) and the amount of payments (estimated at \$592,925.08 annually).
- Escrow and Account Control Agreement - This trust agreement is between the City and the Escrow Agent. It sets forth the guidelines for the administration, investment and treatment of the proceeds of the Agreement, which will be used by the City to pay Climatec.
- Memorandum of Understanding - The purpose of this Memorandum is to set forth the understanding of Climatec, the City and the Bank with respect to the rights of the parties relating to the Equipment being financed. Because the Bank's security for repayment under the Agreement is tied to its interest in the Equipment, the Bank wants to ensure that title to the Equipment passes free and clear to the City once the Equipment is installed by Climatec and paid for by the City.

Current City Council Policy

The City Council must approve municipal debt issues that impact the City's financial position.

Previous City Council Action(s)

On September 28, 2020, the City Council approved Resolution No. 2020-121 to approve an Installation Agreement with Climatec, LLC for implementation/construction of energy-efficiency and resiliency projects for a total cost of \$8,045,781 (includes SGIP grant monies) over 15 years.

Fiscal Impact

The acquisition and installment of the energy-efficiency equipment at the WPCP is expected to more than pay for itself over its expected useful life. Fifteen-year lifecycle savings/revenue are projected at \$14,322,177 with an estimated net positive fiscal impact of \$6,276,396 over the

same period.

In accordance with Government Code Section 5852.1, the following good-faith estimates are provided to the City Council regarding the financing:

- The estimated true interest cost of the Agreement (being the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Agreement) is approximately 2.0%.
- The estimated finance charge of the Agreement (being the sum of all fees and charges paid to third parties) is approximately \$20,000.
- The estimated amount of proceeds expected to be received by the City, less the finance charges described above paid from the principal amount of the Agreement is approximately \$7,624,924. There are no reserve funds or capitalized interest being paid or funded with the Agreement.
- The estimated total payment amount (being the sum of principal and interest paid to final maturity, plus any financing costs not paid from proceeds of the Agreement) is approximately \$8,893,876.

The foregoing good-faith estimates are based on the interest rate and amortization schedule provided to the City by the Bank.

Budget Authority

City of San Leandro Charter

Attachments:

- City of San Leandro Resolution Authorizing the Execution and Delivery of an Equipment Lease/Purchase Agreement with Respect to the Acquisition, Financing and Leasing of Certain Equipment for the Public Benefit; Authorizing the Execution and Delivery of Documents Required in Connection Therewith; and Authorizing the Taking of All Other Actions Necessary to the Consummation of the Transactions Contemplated by this Resolution.
- The following financing documents (in substantially final form):
 - Equipment Lease/Purchase Agreement
 - Escrow and Account Control Agreement
 - Memorandum of Understanding

CONCLUSION

Staff recommends that City Council approve the resolution and authorize execution of all documents required to finance the energy-efficiency improvements at the WPCP on the terms proposed by Banc of America Public Capital Corp.

PREPARED BY: Susan Hsieh, Director, Finance Department

Debbie Pollart, Director, Public Works

**EQUIPMENT LEASE/PURCHASE AGREEMENT
(ESCROW ACCOUNT)**

This Equipment Lease/Purchase Agreement (this “*Agreement*”) dated as of January 22, 2021, and entered into by and between Banc of America Public Capital Corp, a Kansas corporation (together with its successors, assigns and transferees, and as more particularly defined herein, “*Lessor*”), and City of San Leandro, California, a charter city existing under the laws of the State of California (“*Lessee*”).

WITNESSETH:

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

WHEREAS, Lessee is authorized under the constitution and laws of the State (as such term is defined herein) to enter into this Agreement for the purposes set forth herein;

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

ARTICLE I

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

“*Acquisition Amount*” means \$7,624,924.00. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose of acquiring and installing the Equipment.

“*Acquisition Period*” means the period ending five (5) business days prior to July 22, 2022.

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

“*Clean Water Project*” has the meaning assigned to the term “Project” as set forth in the Project Finance Agreement.

“*Climatec Contract*” means the Installation Agreement dated September 21, 2020, between the Lessee and Climatec, as amended and modified by that certain Memorandum of Understanding dated as of January 22, 2021 (the “*MOU*”), among the Lessor, the Lessee and Climatec.

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

“Collateral” has the meaning set forth in Section 6.02.

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

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

“Disbursement Request” means the disbursement request attached to the Escrow Agreement as Schedule 1 and made a part thereof.

“Enterprise Fund” means the Water Pollution Control Plant Enterprise Fund established and held by the City, and referred to as the “Enterprise Fund” in the Project Finance Agreement.

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

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

“Equipment Schedule” means the Equipment Schedule attached hereto as *Exhibit A* and made a part hereof (including any duly authorized and executed amendments thereto).

“Escrow Account” means the account established and held by the Escrow Agent pursuant to the Escrow Agreement.

“Escrow Agent” means the Escrow Agent identified in the Escrow Agreement, and its successors and assigns.

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

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

“Event of Non-appropriation” means the failure of Lessee’s governing body to appropriate or otherwise make available funds to pay Rental Payments under this Agreement

following the Original Term or then current Renewal Term sufficient for the continued performance of this Agreement by Lessee.

“*Lease Term*” means the Original Term and all Renewal Terms, with a final Renewal Term ending on January 22, 2036.

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

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

“*Lien*” means any lien (statutory or otherwise), security interest, mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, preference, priority or other security or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

“*Material Adverse Change*” means any change in Lessee’s creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Lessee, or (ii) Lessee’s ability to perform its obligations under this Agreement.

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

“*Outstanding Balance*” means the amount that is shown for each Rental Payment Date under the column titled “Outstanding Balance” on the Payment Schedule.

“*Payment Schedule*” means the Payment Schedule attached hereto as *Exhibit B* and made a part hereof.

“*Prepayment Price*” means the amount that is shown for each Rental Payment Date under the column titled “Prepayment Price” on the Payment Schedule.

“*Principal Portion*” means the amount that is shown for each Rental Payment Date under the column titled “Principal Portion” on the Payment Schedule.

“*Private Business Use*” means any use, control, ownership or operation of the Equipment by any Person (including the federal government) other than a state or local governmental unit, including, but not limited to, as a result of (i) ownership, (ii) actual or beneficial use pursuant to a lease or a management, service, incentive payment, research or output contract, or (iii) any

other similar arrangement, agreement or understanding, whether written or oral, except for use of the Equipment on the same basis as the general public. Private Business Use includes any formal or informal arrangement with any Person other than a state or local governmental unit (A) that conveys special legal entitlements to any portion of the Equipment, or (B) under which any Person other than a state or local governmental unit has any special economic benefit with respect to any portion of the Equipment that is not available for use by the general public.

“Project Finance Agreement” means the Project Finance Agreement dated August 4, 2011, between the Lessee and the California State Water Resources Control Board, relating to State Revolving Fund Project No. C-06-7002-110, Agreement No. 11-806-550, pursuant to which Lessee financed the Clean Water Project, as supplemented and amended.

“Related Documents” means this Agreement, the Escrow Agreement and the Vendor Agreement, each as may be amended and supplemented.

“Renewal Terms” means the consecutive renewal terms of this Agreement, the first of which commences immediately after the end of the Original Term and each having a duration and a term coextensive with each successive fiscal year of Lessee; *provided* that the final such Renewal Term shall commence on the first day of the last such fiscal year and end on the first business day after the last scheduled Rental Payment Date.

“Rental Payment Date” means each date on which Lessee is required to make a Rental Payment under this Agreement as specified in the Payment Schedule.

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

“Scheduled Term” means the Original Term and all Renewal Terms, with a final Renewal Term ending on January 22, 2036 as set forth in *Exhibit B* attached hereto.

“SEC” means the U.S. Securities and Exchange Commission.

“Special Counsel” means Jones Hall, A Professional Law Corporation.

“State” means the State of California.

“Taxable Rate” means, for each day that the interest component of Rental Payments is taxable for Federal income tax purposes, an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any Rental Payment Date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“*Vendor*” means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessee arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Equipment, and includes, without limitation, Climatec, LLC (“*Climatec*”).

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment, and includes, without limitation, the Climatec Contract.

ARTICLE II

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

(a) Lessee is a political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the constitution and laws of the State, with full power and authority to enter into the Related Documents and the transactions contemplated thereby and to perform all of its obligations thereunder.

(b) Lessee has duly authorized the execution and delivery of the Related Documents by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of the Related Documents.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof. No Event of Non-appropriation has occurred or is threatened with respect to this Agreement.

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

(e) Lessee has complied with such procurement and public bidding requirements as may be applicable to the Related Documents and the acquisition and installation by Lessee of the Equipment.

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

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements

(including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within two hundred seventy (270) days after the end of its fiscal year, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or for the following fiscal year when approved but not later than thirty (30) days prior to the end of its current fiscal year. The financial statements described in this subsection (g)(i) shall be accompanied by an unqualified opinion of Lessee's independent auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

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

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

(j) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations under the Related Documents. Lessee will, at its expense, maintain its legal existence and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Equipment and the Escrow Account and Lessor's rights and benefits under the Related Documents.

(k) Lessee is the fee owner of the real estate where the Equipment is and will be located (the "*Real Property*") and has good and marketable title thereto, and there exists no mortgage, pledge, encumbrance, security interest, charge or other Lien of any nature whatsoever on or with respect to such Real Property. In the event any lien, encumbrance, restriction, asserted encumbrance, claim, dispute or other issue exists or arises with respect to the Lessee's legal title to or valid and marketable, beneficial use and enjoyment of the Real Property or impairs or adversely impacts Lessor's right, title or interest in the Equipment or any of Lessor's rights or remedies under this Agreement with respect to the Equipment (each of the foregoing referred to as a "*Real Property*")

Issue”), Lessee will take all steps necessary to promptly quiet, resolve and/or eliminate such Real Property Issue to the satisfaction of Lessor and ensure that Lessee and Lessor have adequate access to and use of (including beneficial use and enjoyment of) the Real Property for all purposes of the Equipment contemplated herein and Lessee shall ensure that its fee interest in the Real Property and Lessor’s right, title or interest in the Equipment and rights or remedies under this Agreement with respect to the Equipment remain free and clear of Real Property Issues.

(l) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(m) Lessee represents to Lessor that that it has adopted a debt policy in compliance with SB 1029 and Section 8855 of the Government Code of California *et seq.* and covenants that it shall comply with Section 8855 of the Government Code of California *et seq.* as amended (the “*CDIAC Act*”) throughout the Lease Term, including (i) preparing, submitting and filing the report of the proposed debt issuance relating to this Agreement by the method required by the California Debt and Investment Advisory Commission (“*CDIAC*”), (ii) preparing, submitting and filing the report of final sale (and accompanying documents) relating to this Agreement by the method required by CDIAC, (iii) submitting an annual report relating to the report of final sale for this Agreement by the method required by CDIAC, and (iv) paying all fees charged by CDIAC or the CDIAC Act relating to this Agreement, including, but not limited to the fee in an amount equal to one-fortieth of one percent of the Acquisition Amount or as otherwise prescribed by the CDIAC Act.

(n) As of the date of execution and delivery of this Agreement, Lessee has not granted any Lien on the Collateral that would be senior in priority to, or *pari passu* with, the first priority Lien on the Collateral granted to Lessor under Section 6.02 of this Agreement.

(o) The street addresses and legal descriptions affixed to the UCC-1 financing statements and fixture filings filed and recorded pursuant to Section 3.04(vi), Section 6.01 and/or Section 6.02 hereof are true, accurate and complete street addresses and legal descriptions of all the properties on which the Equipment is located or to be installed. In the event any street address, legal description, other information, UCC-1 financing statement or fixture filing (or continuations or amendments thereof) filed or recorded with respect to the Lessor’s interests in the Equipment or any of the real property on which the Equipment is located or to be installed reflects any incorrect or incomplete real property legal description, equipment description or other information, Lessee shall take all steps necessary (with the Lessor’s prior written approval) to promptly correct any errors or deficiencies with respect to such legal descriptions, street address, other information, UCC-1 financing statements and/or fixture filings and to protect Lessor’s interests in the Equipment.

(p) All financial statements and other information delivered to Lessor by the Lessee is correct as of the date thereof. Since June 30, 2019, no material adverse change has occurred in the Lessee's financial condition that would adversely affect the Lessee's ability to perform its obligations hereunder.

(q) Lessee will pay all Equipment Costs and costs of issuance in excess of the Acquisition Amount available therefor out of its own funds. Lessor shall not have any responsibility to pay amounts for any Equipment Costs or costs of issuance with respect to the Related Documents or the Equipment that individually or collectively exceed the Acquisition Amount.

(r) Lessee has complied with California Government Code Section 4217.10 *et seq.* and other applicable State law, as and to the extent applicable, with respect to the authorization of this Agreement and the financing and acquisition by the Lessee of the Equipment.

(s) To the extent applicable, as determined by Lessee in its sole discretion, Lessee has complied with the requirements of California Government Code Section 5852.1 *et seq.* in connection with this Agreement and the Equipment.

(t) In connection with the Lessee's compliance with any continuing disclosure undertakings (each, a "*Continuing Disclosure Agreement*") entered into by the Lessee pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "*Rule*"), the Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("*EMMA*"), notice of its incurrence of its obligations under the Related Documents and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with the Related Documents, in each case including posting a full copy thereof or a description of the material terms thereof (each such posting, an "*EMMA Posting*"). Except to the extent required by applicable law, including the Rule, the Lessee shall not file or submit or permit the filing or submission of any EMMA Posting that includes the following unredacted confidential information about the Lessor or its affiliates and the Escrow Agent in any portion of such EMMA Posting: address and account information of the Lessor or its affiliates and the Escrow Agent; e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lessor or its affiliates and the Escrow Agent; and the form of Disbursement Request that is attached to the Escrow Agreement.

The Lessee acknowledges and agrees that the Lessor and its affiliates are not responsible for the Lessee's or any other entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule.

(u) The Lessee represents, warrants, and covenants that no portion of the Equipment constitutes a part of the Clean Water Project, nor has any Equipment been financed with proceeds of the Project Finance Agreement. No consent, approval or other determination is required by the Lessee from the California State Water Resources Control Board, pursuant to the Project Finance Agreement or otherwise, in order to enter into this Agreement or to acquire and install the Equipment or to grant Lessor a first priority and exclusive security interest therein.

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

(B) Federal Guarantee Prohibition. Lessee will not take any action or permit or suffer any action to be taken if the result of such action would be to cause any of the obligations of Lessee under the Agreement to be “federally guaranteed” within the meaning of section 149(b) of the Code.

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

(D) No Arbitrage. Lessee will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Agreement which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of delivery of the Agreement would have caused any of the obligations of Lessee under the Agreement to be “arbitrage bonds” within the meaning of section 148 of the Code.

(E) Maintenance of Tax-Exemption. Lessee will take all actions necessary to assure the exclusion of interest with respect to the Agreement from the gross income of the owner of the Agreement to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of delivery of the Agreement.

(F) Record Retention. Lessee will retain its records of all accounting and monitoring it carries out with respect to the Agreement for at least 3 years after the Agreement matures or is prepaid (whichever is earlier); provided, that if Lessee’s Rental Payments under the Agreement are prepaid and refunded, Lessee will retain its records of accounting and monitoring at least 3 years after the earlier of the maturity or prepayment of the obligations that refunded the Agreement.

(G) Compliance with Tax Documents. Lessee will comply with the provisions of the tax certificate and use of proceeds certificate with respect to the Agreement, which are incorporated herein as if fully set forth herein.

The representations, warranties and covenants of this subsection (v) will survive payment in full of the Agreement.

ARTICLE III

Section 3.01. Lease of Equipment. Subject to the terms and conditions of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire and install the Equipment. Lessor hereby demises, leases and transfers to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Scheduled Term as set forth in the Payment Schedule. At the end of the Original Term and at the end of each Renewal Term until the maximum Scheduled Term has been completed, Lessee shall be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee shall have terminated this Agreement pursuant to Section 3.03 or Section 10.01 of this Agreement. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Payment Schedule.

Section 3.02. Continuation of Lease Term. Lessee intends, subject to Section 3.03 hereof, to continue the Lease Term through the Original Term and all Renewal Terms and to pay the Rental Payments due hereunder. Lessee affirms that sufficient funds are legally available to pay all Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Scheduled Term can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds or to extend the Lease Term for any Renewal Term is within the sole discretion of the governing body of Lessee.

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

deliver to Lessor, at Lessee's sole expense (from legally available funds), the Equipment to Lessor at the location(s) to be specified by Lessor.

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

(i) An Escrow Agreement substantially in the form attached hereto as *Exhibit I*, satisfactory to Lessor and executed by Lessee and the Escrow Agent and a Vendor Agreement satisfactory to Lessor and executed by Lessee and the Vendor;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as *Exhibit C-1*, authorizing the execution and delivery of this Agreement and the Escrow Agreement and performance by Lessee of its obligations under this Agreement and the Escrow Agreement;

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

(iv) Opinions of general counsel to Lessee and Special Counsel, which in the aggregate opine on the matters set forth in the form attached hereto as *Exhibit D-1 and Exhibit D-2, respectively*, and which are otherwise satisfactory to Lessor;

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

(vi) All documents, including financing statements, affidavits, notices and similar instruments which Lessor deems necessary or appropriate at that time pursuant to Section 6.02 hereof;

(vii) A waiver or waivers of interest in the Equipment from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located and amendments and agreements releasing liens and encumbrances, if any, on the real property where the Equipment is and will be located;

(viii) Reserved;

(ix) A copy of the Form 8038-G, fully completed by Special Counsel as paid preparer and executed by Lessee;

(x) In the event that Lessee is to be reimbursed for expenditures that it has paid more than sixty (60) days prior to the Commencement Date, evidence of the adoption of a reimbursement resolution or other official action covering the

reimbursement from tax exempt proceeds of expenditures incurred not more than sixty (60) days prior to the date of such resolution;

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

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

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

(xiv) Such other items reasonably required by Lessor.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lessor of any of its obligations under the Related Documents shall be subject to: (i) no Material Adverse Change having occurred since the date of this Agreement, (ii) no Event of Default having occurred and then be continuing and (iii) no Event of Non-appropriation having occurred or being threatened with respect to this Agreement.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Escrow Agent to be held and disbursed pursuant to the Escrow Agreement.

ARTICLE IV

Section 4.01. Rental Payments. Subject to Section 3.03 of this Agreement, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the Rental Payment Dates and in such amounts as provided in the Payment Schedule. If any Rental Payment or other amount payable hereunder is not paid within ten (10) days of its due date, Lessee shall pay an administrative late charge of five percent (5%) of the amount not timely paid or the maximum amount permitted by law, whichever is less. Rental Payments consist of principal and interest components as more fully detailed on the Payment Schedule, the interest on which begins to accrue as of the Commencement Date.

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

Section 4.03. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable from the Enterprise Fund, or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in

contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee, it being understood that Lessee's obligation to make Rental Payments is not secured by a pledge of, or lien on, the Revenues or the Net Revenues (as such terms are defined in the Project Finance Agreement).

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

Section 4.05. Tax Covenants. Lessee agrees that it will not take any action that would cause the interest component of Rental Payments 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 to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes.

Section 4.06. Event of Taxability. Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for Federal income tax purposes (which retroactive date shall be the earliest date as of which the interest component of any Rental Payment is deemed includible in the gross income of the owner or owners thereof for Federal income tax purposes, which may be earlier than the date of delivery of such determination by the Internal Revenue Service), and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

For purposes of this Section, "*Event of Taxability*" means the circumstance of the interest component of any Rental Payment paid or payable pursuant to this Agreement becoming includible for Federal income tax purposes in an owner's gross income as a consequence of any act, omission or event whatsoever, including but not limited to the matters described in the immediately succeeding sentence, and regardless of whether the same was within or beyond the control of Lessee. An Event of Taxability shall be presumed to have occurred upon (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment is includable in the gross income of the owner thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment is includable in the gross

income of the owner thereof; or (c) receipt by Lessor or Lessee of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, selected by Lessor and acceptable to Lessee, to the effect that the interest component of any Rental Payment has become includable in the gross income of the owner thereof for Federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest component of any Rental Payment is deemed includable in the gross income of the owner thereof for Federal income tax purposes.

Section 4.07. Mandatory Prepayment. (a) Any funds not applied to Equipment Costs and remaining in the Escrow Account on the earliest of (i) the expiration of the Acquisition Period, (ii) the date on which Lessee delivers to the Lessor the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from the Escrow Account or (iii) a termination of the Escrow Account as provided in the Escrow Agreement shall be applied by Lessor on each successive Rental Payment Date thereafter to pay all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months. Any remaining amounts (“*Excess Proceeds*”) shall be applied by Lessor as prepayment to the applicable unpaid Principal Portion of Rental Payments owing hereunder in the inverse order of the Rental Payment Dates on the following terms:

first, the portion of the Excess Proceeds that is equal to 5% or less of the original aggregate principal component of all Rental Payments under this Agreement shall be applied to prepay the applicable unpaid Principal Portion of Rental Payments at a price of 100% of the such prepaid Principal Portion and accrued interest thereon; and

second, remaining Excess Proceeds, if any, shall be applied to further prepay the applicable unpaid Principal Portion of Rental Payments at a price of 102% of such prepaid Principal Portion and accrued interest thereon to the prepayment date.

(b) In connection with any prepayment pursuant to subsection (a) of this Section 4.07, Lessee may pay the prepayment premium and interest portion of Rental Payments accrued to the prepayment date on such principal portion to be prepaid from funds remaining in the Escrow Account pursuant to subsection (a) of this Section 4.07, *provided*, that no portion of such funds may be used to pay the prepayment premium if such payment would, together with any other Private Business Use relating to this Agreement or the Equipment, result in more than 5% of the Acquisition Amount, plus investment earnings corresponding to such 5% portion of the Acquisition Amount, being used, directly or indirectly, in whole or in part, in any Private Business Use; *provided, further*, that prior to applying any excess proceeds to pay premium, Lessor must receive a certification from the Lessee that such application will comply with the foregoing requirements.

(c) Lessee will give Lessor notice of any such prepayment in accordance with this Section 4.07 not less than 30 days in advance of the prepayment date.

(d) In connection with any partial prepayment of Rental Payments, Lessor shall prepare a new Payment Schedule and deliver the same to the Lessee, which shall be binding, absent manifest error.

(e) In lieu of prepayment, Lessee may apply Excess Proceeds to the acquisition of other capital equipment that Lessee identifies and with Lessor's prior written approval, given in Lessor's sole and absolute discretion, and subject to such conditions as Lessor may require, including but not limited to execution of an appropriate amendment to the Equipment Schedule, the filing of financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and Lessee's delivery to Lessor of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, selected by Lessee and acceptable to Lessor, to the effect that Lessee's acquisition of such other capital equipment and the taking of other actions in connection therewith will not adversely affect the tax-exempt status of interest components of Rental Payments pursuant to this Agreement.

ARTICLE V

Section 5.01. Acquisition, Delivery, Installation and Acceptance of Equipment.

(a) Lessee shall order the Equipment to be acquired and financed hereunder, cause the Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering Disbursement Requests to the Lessor pursuant to the Escrow Agreement for the purpose of effecting disbursements from the Escrow Account to pay (or reimburse) Equipment Costs for the Equipment so acquired and installed. In connection with the execution and delivery by Lessee to Lessor of the final Disbursement Request, Lessee shall deliver to Lessor a "Final Acceptance Certificate" in the form attached hereto as *Exhibit E*.

(b) Lessee shall deliver to Lessor together with each Disbursement Request copies of invoices (and proof of payment of such invoices if Lessee seeks reimbursement for prior expenditures) and bills of sale or other evidence of title transfer to Lessee relating to each item of Equipment accepted by Lessee as evidenced by such Disbursement Request. Once approved, Lessor shall deliver such Disbursement Request to the Escrow Agent for disbursement from the Escrow Account in accordance with the Escrow Agreement.

Section 5.02. Quiet Enjoyment of Equipment. So long as no Event of Default and no Event of Non-appropriation exists hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

Section 5.03. Location; Inspection. Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the

right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

Section 5.04. Use and Maintenance of the Equipment. Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body, including, without limitation, all anti-money laundering laws and regulations; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights hereunder.

Lessee agrees that it shall (a) maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer; (b) proceed promptly, at its expense, to protect its rights and exercise its remedies under any warranty then in effect with respect to the Equipment; and (c) replace or rebuild any component of the Equipment that becomes permanently unfit for normal use or inoperable during the Lease Term (herein, the “*Inoperable Component*”) in order to keep the Equipment as a whole in good repair and working order during the Lease Term. Lessee shall promptly notify Lessor in writing when any component of the Equipment is reasonably expected within forty-five (45) days to become an Inoperable Component. Lessee shall promptly replace or rebuild the Inoperable Component with a similar component of comparable or improved make and model that has at least the equivalent value and utility of the Inoperable Component, a remaining useful life of no less than the remaining Scheduled Term and such replacement or rebuilt component shall be in good operating condition. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer’s maintenance upon the return of the Equipment to Lessor as provided for in Sections 3.03 and 12.02(b) of this Agreement.

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

ARTICLE VI

Section 6.01. Title to the Equipment. During the Lease Term, so long as Lessee is not in default under Article XII hereof and an Event of Non-appropriation has not occurred, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof. Lessee shall at all times protect and defend, at its own cost and expense, its title, and Lessor’s first priority security interest, in and to the Equipment (and Lessor’s other Collateral as defined

in Section 6.02 hereof) from and against all claims, Liens and legal processes of its creditors, and keep all Equipment (and such other Collateral) free and clear of all such claims, Liens and processes. Lessee will, at its expense, do any further act and execute, acknowledge, deliver, file, register and record any further documents the Lessor may reasonably request in order to protect Lessor's first priority security interest in the Collateral. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 3.03 or 12.02 of this Agreement, as applicable. Upon payment of all amounts due and owing hereunder by Lessee in accordance with Section 10.01 hereof, Lessor's security interest or other interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the termination of Lessor's security interest in the Equipment.

Section 6.02. Security Interest. As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Equipment, together with all replacements, repairs and restorations thereof or thereto, and all substitutions and renewals to any and all of such Equipment, (b) moneys and investments held from time to time in the Escrow Account, (c) all accounts, chattel paper, deposit accounts, documents, instruments, general intangibles and investment property (including any securities accounts and security entitlements relating thereto) evidenced by or arising out of or otherwise relating to the Equipment or the Escrow Account, as such terms are defined in Article 9 of the California Commercial Code, and (d) any and all proceeds of any and all of the foregoing, including, without limitation, insurance proceeds (collectively, the "*Collateral*"). Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Collateral, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as Lessee.

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

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free of all levies, encumbrances, and other Liens except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the lease, sale, purchase, operation, use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all sales and other taxes, special assessments, governmental and other charges of any kind that are at any time lawfully assessed or levied against or with respect to the Equipment, the Rental Payments or any part of either thereof, or which become due during the Lease Term, whether assessed against Lessee or Lessor. Lessee shall pay all utility and other charges incurred in the operation, use and maintenance of the Equipment. Lessee shall pay such taxes, assessments or charges as the same may become due; *provided* that, with respect to any such taxes, assessments or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term. Lessor will not claim ownership of the Equipment under this Agreement for the purposes of any tax credits, benefits or deductions with respect to such Equipment. Lessee shall pay the fee charged by the California Debt and Investment Advisory Commission with respect to this Agreement pursuant to Section 8856 (or any successor provision) of the California Government Code.

Section 7.02. Insurance. Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Prepayment Price of the Equipment or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$5,000,000 per occurrence for bodily injury and property damage coverage (such liability insurance coverage may be in a combination of primary general liability and/or excess liability umbrella coverage), and in all events under clauses (a) and (b) above issued in form and amount satisfactory to Lessor and by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of "A-" or better; and (c) worker's compensation coverage as required by the laws of the State. Notwithstanding the foregoing, Lessee may self-insure against the risks described in clauses (a) and/or (b) through a government pooling arrangement, self-funded loss reserves, risk retention program or other self-insurance program, in each case with Lessor's prior written consent (which Lessor may grant, withhold or deny in its sole discretion) and *provided* that Lessee has delivered to Lessor such information as Lessor may request with respect to the adequacy of such self-insurance to cover the risks proposed to be self-insured and otherwise in form and substance acceptable to Lessor. In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section 7.02, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as *Exhibit F*. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without

first giving written notice thereof to Lessor at least thirty (30) days in advance of such cancellation or modification.

Section 7.03. Risk of Loss. Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into this Agreement or any of the transactions contemplated hereby (except to the extent caused by Lessor's own gross negligence or willful misconduct), (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this Section 7.03 shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

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

In the event of a material default by any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, Lessee will promptly proceed to exhaust its

remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations hereunder.

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

ARTICLE VIII

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

If Lessee elects to replace any item of the Equipment (the "*Replaced Equipment*") pursuant to this Section 8.01, the replacement equipment (the "*Replacement Equipment*") shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation and shall have an expected remaining useful life at least through the final Renewal Term. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, Liens, security interests and encumbrances, excepting only those Liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment Date after the occurrence of a casualty event, or be required to exercise its

option to prepay the obligations hereunder with respect to the damaged Equipment in accordance with Section 10.01(b) hereof.

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

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

ARTICLE IX

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

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

ARTICLE X

Section 10.01. Prepayment; Payment in Full.

(a) *Prepayment.* Lessee shall have the option to prepay or satisfy all, but not less than all, of its obligations hereunder, at the following times and upon the following terms:

(i) *Optional Prepayment.* From and after the date specified (if any) in the Payment Schedule (the "*Prepayment Option Commencement Date*"), on the Rental Payment Dates specified in the Payment Schedule, upon not less than thirty (30) days prior written notice, and upon payment in full of the sum of all Rental Payments then due *plus* the then applicable Prepayment Price, which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* all other amounts then owing hereunder; or

(ii) *Casualty or Condemnation Prepayment.* In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment Date or sixty (60) days after the casualty event) upon payment in full to Lessor of (A) in the event such prepayment occurs on a Rental Payment Date, the sum of (i) all Rental Payments then due *plus* (ii) the then applicable Prepayment Price *plus* (iii) all other amounts then owing hereunder OR, (B) in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of (i) the applicable Prepayment Price shown on the Payment Schedule for the Rental Payment Date immediately preceding the applicable date of such prepayment (or if the date of such prepayment occurs prior to the first Rental Payment Date, the earliest Prepayment Price shown on the Payment Schedule) *plus* (ii) accrued interest at the Contract Rate (or the Taxable Rate if then in effect) on the Outstanding Balance as of the Rental Payment Date immediately preceding the applicable date of such prepayment from such Rental Payment Date (or if the date of such prepayment occurs prior to the first Rental Payment Date, the Commencement Date) to the date of such prepayment *plus* (iii) all other amounts then owing hereunder.

(b) *Payment in Full.* Upon the expiration of the Scheduled Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder to Lessor.

(c) After either (i) payment of the applicable Prepayment Price and all other amounts then owing hereunder in accordance with either Section 10.01(a)(i) or Section 10.01(a)(ii) of this Agreement or (ii) upon the expiration of the Scheduled Term and payment in full of all Rental Payments then due and all other amounts then owing hereunder in accordance with Section 10.01(b) of this Agreement, Lessor's security interests in and to the Equipment will be terminated and Lessee will own such Equipment free and clear of Lessor's security interest in such Equipment.

ARTICLE XI

Section 11.01. Assignment by Lessor. (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Escrow Agreement, its security interest in the Collateral (collectively, the "*Assigned Rights*"), may be assigned and reassigned by Lessor at any time, in whole or in part, to one or more assignees or sub-assignees without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom Lessor reasonably believes is a "*qualified institutional buyer*" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "*accredited investor*" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing the Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute such Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Assigned Rights (or any interest therein) as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000 and (iii) shall not require Lessee to make Rental Payments, to send notices or otherwise to deal with respect to matters arising hereunder or under the Escrow Agreement with or to more than one Lease Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "*Lease Servicer*") to act on their behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies of Lessor on behalf of such owners upon the occurrence of an Event of Default or an Event of Non-appropriation under this Agreement. Lessor and Lessee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 11.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein).

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective as against Lessee until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank, trust company or other entity that acts as the Lease Servicer. Notices of assignment provided pursuant to this Section 11.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 11.01(a) hereof. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Lease Servicer last designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have

against Lessor or the Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of Lessor's security interest in and to the Collateral, or all rights in, to and under the Escrow Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of *Exhibit H* attached hereto within five (5) business days after its receipt of such request.

Section 11.02. Assignment and Subleasing by Lessee. **None of Lessee's right, title, and interest in, to and under this Agreement or any portion of the Equipment, the Escrow Agreement, the Escrow Account or the other Collateral may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.**

ARTICLE XII

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

(a) Failure by Lessee to (i) subject to Section 3.03, pay any Rental Payment or other payment required to be paid under this Agreement within ten (10) days after the date when due as specified herein, (ii) maintain insurance as required herein, or (iii) observe and perform any covenant, condition or agreement on its part to be observed or performed under Section 2.01(u), 6.01 or 6.02 hereof;

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

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

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit 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, or (ii) arises under any obligation under which there is outstanding, owing or committed an

aggregated amount in excess of \$100,000.00; provided, that agreements and obligations referenced in the preceding sentence do not include bonds issued by Lessee solely as a conduit issuer and special tax or assessment bonds and other similar obligations for which Lessee is never ultimately responsible to pay from its own funds;

(e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable Federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, liquidation, readjustment, reorganization, moratorium or insolvency proceeding; or

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

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

(a) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be immediately due and payable;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03 of this Agreement. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or with respect to the Equipment;

(c) Lessor may terminate the Escrow Agreement and apply any proceeds in the Escrow Account to the Rental Payments scheduled to be paid hereunder; and/or

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

Section 12.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article XII it shall not be necessary to give any notice other than such notice as may be required in this Article XII.

ARTICLE XIII

Section 13.01. Notices. All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

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

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

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

Section 13.05. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided*, that only Counterpart No. 1 of this Agreement shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

Section 13.06. Applicable Law; Venue; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State. The parties hereto consent and submit to the jurisdiction of the State and venue in any state or Federal court of such State for the purposes of any suit, action or other proceeding arising in connection with this

Agreement, and each party expressly waives any objections that it may have to the venue of such courts. The parties hereto expressly waive any right to trial by jury in any action brought on or with respect to this Agreement. If the waiver of jury trial contained herein is unenforceable for any reason, then the parties hereto agree that the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision.

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

Section 13.08. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated by this Agreement (including in connection with any amendment, waiver or other modification hereof or of any other related document), the Lessee acknowledges and agrees that: (a) (i) the transactions regarding this Agreement provided by the Lessor and any affiliate thereof are arm's-length commercial transactions between the Lessee, on the one hand, and the Lessor and its affiliates, on the other hand, (ii) the Lessee has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Lessee is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and by the other related documents; (b) (i) the Lessor and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Lessee, or any other person and (ii) neither the Lessor nor any of its affiliates has any obligation to the Lessee with respect to the transactions contemplated by this Agreement except those obligations expressly set forth herein and in the other related documents; and (c) the Lessor and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Lessee, and neither the Lessor nor any of its affiliates has any obligation to disclose any of such interests to the Lessee. To the fullest extent permitted by law, the Lessee, hereby waives and releases any claims that it may have against the Lessor or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated by this Agreement.

Section 13.09. Entire Agreement. The parties agree that this Agreement constitutes the final and entire agreement between the parties superseding all conflicting terms or provisions of any prior proposals, term sheets, solicitation documents, requests for proposals, award notices, approval letters or any other agreements or understandings between the parties.

Section 13.10. Electronic Signatures. The Related Documents may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe's Portable Document Format ("PDF")). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of the Related Documents and the related signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party,

the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

[Remainder of Page Intentionally Left Blank]

[Signature Page Follows]

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

LESSOR:

LESSEE:

BANC OF AMERICA PUBLIC CAPITAL CORP

CITY OF SAN LEANDRO, CALIFORNIA

11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration
Fax No.: (443) 541-3057

835 E. 14th Street
San Leandro, CA 94577
Attn: Finance Director
Phone: 510-577-3330
Email: SHsieh@sanleandro.org

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

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

LIST OF EXHIBITS

EXHIBIT A	—	Form of Equipment Schedule
EXHIBIT B	—	Form of Payment Schedule
EXHIBIT C	—	Form of Incumbency and Authorization Certificate
EXHIBIT D-1	—	Form of Opinion of Lessee's General Counsel
EXHIBIT D-2	—	Form of Opinion of Special Counsel to Lessee
EXHIBIT E	—	Form of Final Acceptance Certificate
EXHIBIT F	—	Form of Self-Insurance Certificate
EXHIBIT G	—	Reserved
EXHIBIT H	—	Form of Notice and Acknowledgement of Assignment
EXHIBIT I	—	Form of Escrow and Account Control Agreement

EXHIBIT A

EQUIPMENT SCHEDULE

Location of Equipment:

The equipment includes, but is not limited to installation of the scope of work items described below and as further described in Attachment “A” Scope of Work to the Climatec Contract, and located at: Public Works, 3000 Davis Street, San Leandro, California 94577.

Equipment Description (Scope of Work):

- High Strength Waste Receiving Facility
- Biogas to RNC (Renewable Natural Gas) System
- Digester Mixer Replacement
- Blower Replacement and New Shelter Structure with Pad
- Heat Loop Pump Replacement
- Battery Storage System with Micro grid Controller

EXHIBIT B

PAYMENT SCHEDULE

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST PORTION	PRINCIPAL PORTION	OUTSTANDING BALANCE	PREPAYMENT PRICE (including prepayment premium, if applicable)
1/22/21				\$7,624,924.00	
1/22/22	\$ 592,925.08	\$ 151,659.74	\$ 441,265.34	7,183,658.66	\$7,327,331.83
1/22/23	592,925.08	142,882.97	450,042.11	6,733,616.55	6,868,288.88
1/22/24	592,925.08	133,931.64	458,993.44	6,274,623.11	6,400,115.57
1/22/25	592,925.08	124,802.26	468,122.82	5,806,500.29	5,922,630.30
1/22/26	592,925.08	115,491.29	477,433.79	5,329,066.50	5,435,647.83
1/22/27	592,925.08	105,995.13	486,929.95	4,842,136.55	4,938,979.28
1/22/28	592,925.08	96,310.10	496,614.98	4,345,521.57	4,432,432.00
1/22/29	592,925.08	86,432.43	506,492.65	3,839,028.92	3,915,809.50
1/22/30	592,925.08	76,358.29	516,566.79	3,322,462.13	3,388,911.37
1/22/31	592,925.08	66,083.77	526,841.31	2,795,620.82	2,851,533.24
1/22/32	592,925.08	55,604.90	537,320.18	2,258,300.64	2,303,466.65
1/22/33	592,925.08	44,917.60	548,007.48	1,710,293.16	1,744,499.02
1/22/34	592,925.08	34,017.73	558,907.35	1,151,385.81	1,174,413.53
1/22/35	592,925.08	22,901.06	570,024.02	581,361.79	592,989.03
1/22/36	<u>592,925.08</u>	<u>11,563.29</u>	<u>581,361.79</u>	0.00	0.00
	\$8,893,876.20	\$1,268,952.20	\$7,624,924.00		

Contract Rate. The Contract Rate is 1.989% per annum.

Prepayment Option Commencement Date. For purposes of Section 10.01 of the Agreement, the Prepayment Option Commencement Date is January 22, 2022.

LESSOR:

LESSEE:

BANC OF AMERICA PUBLIC CAPITAL CORP

CITY OF SAN LEANDRO, CALIFORNIA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT C

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

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

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the “*Officials*”) in the capacity set forth opposite their respective names below and 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, in writing or electronically, and deliver the Equipment Lease/Purchase Agreement dated as of January 22, 2021 by and between Lessee and Banc of America Public Capital Corp (“*Lessor*”), the Escrow and Account Control Agreement dated as of January 22, 2021 by and among Lessor, Lessee and Bank of America, N.A., as Escrow Agent, the Installation Agreement dated September 21, 2020, between the Lessee and Climatec, as amended and modified by that certain Memorandum of Understanding dated as of January 22, 2021, among the Lessor, the Lessee and Climatec, 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: January 22, 2021

By: _____
Name: _____
Title: _____

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

EXHIBIT D-1

**FORM OF OPINION OF GENERAL COUNSEL TO LESSEE
(TO BE TYPED ON LETTERHEAD OF COUNSEL)**

[Closing Date]

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

Re: Equipment Lease/Purchase Agreement,
dated as of January 22, 2021, by and between
Banc of America Public Capital Corp, as Lessor,
and the City of San Leandro, California, as Lessee

Ladies and Gentlemen:

As legal counsel to the City of San Leandro, California (“*Lessee*”), I have examined (a) an executed counterpart of that certain Equipment Lease/Purchase Agreement, dated as of January 22, 2021, and Exhibits thereto by and between Banc of America Public Capital Corp (“*Lessor*”) and Lessee (the “*Agreement*”), which, among other things, provides for the lease of certain property (the “*Equipment*”) and a certain Escrow and Account Control Agreement dated as of January 22, 2021 by and among Lessor, Lessee, and Bank of America, N.A. as Escrow Agent (the “*Escrow Agreement*”), the Installation Agreement dated September 21, 2020, between the Lessee and Climatec, LLC (“*Climatec*”), as amended and modified by that certain Memorandum of Understanding dated as of January 22, 2021 (the “*MOU*”), among the Lessor, the Lessee and Climatec (collectively, the “*Climatec Contract(s)*”), (b) an executed counterpart of the ordinances or resolutions of Lessee with respect to authorization of the transaction contemplated by the Agreement, the Escrow Agreement, the Climatec Contract(s) and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Escrow Agreement, Climatec Contract(s) and the documents relating thereto are herein collectively referred to as the “*Transaction Documents*”.

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

1. Lessee is a charter city, duly organized and existing under the laws of the State.

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

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms, except to the extent limited by state and federal law affecting creditor's remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights.

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

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

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns are entitled to rely on this opinion.

Sincerely,

EXHIBIT D-2

**FORM OF OPINION OF SPECIAL COUNSEL TO LESSEE
(TO BE TYPED ON LETTERHEAD OF COUNSEL)**

[Closing Date]

City Council
City of San Leandro
835 East 14th Street
San Leandro, California 94577

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

OPINION: \$7,624,924.00 aggregate principal amount of Rental Payment obligations of the City of San Leandro under that certain Equipment Lease/Purchase Agreement, dated as of January 22, 2021, by and between City of San Leandro and Banc of America Public Capital Corp

Ladies and Gentlemen:

We have acted as special counsel to the City of San Leandro (the “City”) in connection with the delivery by the City of the Equipment Lease/Purchase Agreement, dated as of January 22, 2021 (the “Agreement”), by and between the City and Banc of America Public Capital Corp, as lessor (the “Lessor”). The City is obligated under the Agreement to pay certain rental payments thereunder (the “Rental Payments”) to Lessor. This opinion is being delivered in our capacity as special counsel to the City, and not as counsel to the other addressee.

We have examined the Agreement and such other documents and matters of law as we have deemed necessary in connection with the following opinions.

As to questions of fact material to our opinion, we have relied upon representations of the City contained in the Agreement, and in certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1. The City is duly established and validly existing as a charter city under the laws of the State of California, is a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the “Code”) and the obligations of Lessee under the Agreement constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code.

2. The City has the power to enter into the Agreement and perform the obligations on its part to be performed that are contained therein.
3. The Agreement has been duly authorized, executed and delivered by the City, and is a valid and binding obligation of the City, enforceable against the City in accordance with its terms.
4. The portion of the Rental Payments designated as and comprising interest is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. The opinions set forth in the preceding sentences are subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the delivery of the Agreement in order that such interest be, or continue to be, excluded from gross income for federal income tax purposes. The City has covenanted to comply with each of such requirements. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of delivery of the Agreement.
5. The portion of the Rental Payments designated as and comprising interest is exempt from personal income taxation imposed by the State of California.

We express no opinion regarding other federal tax consequences arising with respect to the Agreement, the ownership, sale or disposition of any interests in the Agreement, or the amount, accrual or receipt of interest with respect to the Agreement.

The rights of Lessor and the enforceability of the Agreement are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and may also be subject to the exercise of judicial discretion in appropriate cases.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. Our engagement with respect to this matter has terminated as of the date hereof.

Respectfully submitted,

A Professional Law Corporation

EXHIBIT E

FORM OF FINAL ACCEPTANCE CERTIFICATE

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

Re: Equipment Lease/Purchase Agreement,
dated as of January 22, 2021, by and between
Banc of America Public Capital Corp, as Lessor,
and the City of San Leandro, California, as Lessee

Ladies and Gentlemen:

In accordance with the above-referenced Equipment Lease/Purchase Agreement (the "*Agreement*"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Equipment has been delivered, installed and accepted on the date hereof.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.
4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.
5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default exists at the date hereof.
6. No Material Adverse Change has occurred since the date of the execution and delivery of the Agreement.
7. No Event of Non-appropriation has occurred or been threatened.

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

Date: _____ -

LESSEE:

CITY OF SAN LEANDRO, CALIFORNIA

By: _____

Name: _____

Title: _____

EXHIBIT F

FORM OF SELF INSURANCE CERTIFICATE

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

Re: Equipment Lease/Purchase Agreement,
dated as of January 22, 2021, (the “*Agreement*”)
by and between Banc of America Public Capital Corp, as Lessor,
and the City of San Leandro, California, as Lessee

In connection with the above-referenced Agreement, the City of San Leandro, California (the “*Lessee*”) hereby warrants and represents to Banc of America Public Capital Corp the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

1. The Lessee is self-insured for damage or destruction to the Equipment. The dollar amount limit for property damage to the Equipment under such self-insurance program is \$25,000. The Lessee maintains an umbrella insurance policy for claims in excess of Lessee’s self-insurance limits for property damage to the Equipment which policy has a dollar limit for property damage to the Equipment under such policy of \$400 million (\$400,000,000); Boiler and Machinery of \$100 million (\$100,000,000).

2. The Lessee is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Equipment. The dollar limit for such liability claims under the Lessee’s self-insurance program is \$500,000. The Lessee maintains an umbrella insurance policy for claims in excess of Lessee’s self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Equipment in the amount of \$40 million (\$40,000,000).

3. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund are subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee’s self-insurance liabilities is a minimum of \$500,000. Amounts paid from the Lessee’s self-insurance fund are subject to a dollar per occurrence of \$40 million (\$40,000,000).

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

LESSEE:

CITY OF SAN LEANDRO, CALIFORNIA

By: _____

Name: _____

Title: _____

EXHIBIT G

RESERVED

EXHIBIT H

FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

Dated _____

Banc of America Public Capital Corp (“*Assignor*”) hereby gives notice that it has assigned and sold to _____ (“*Assignee*”) all of Assignor’s right, title and interest in, to and under the Equipment Lease/Purchase Agreement dated as of January __, 2021 (the “*Agreement*”), by and between Assignor and the City of San Leandro, California (“*Lessee*”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor’s right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Escrow and Account Control Agreement dated as of January __, 2021 (the “*Escrow Agreement*”) by and among Lessee, Assignor and Bank of America, N.A., as Escrow Agent, together with the Escrow Account and other Collateral (collectively, the “*Assigned Property*”). Each capitalized term used but not defined herein has the meaning set forth in the Agreement.

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

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

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this “*Acknowledgement*”), the following information about the Agreement is true, accurate and complete:

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

4. The Agreement remains in full force and effect, has not been amended, no Event of Default (or event which with the passage of time or the giving of notice or both would constitute an Event of Default) has occurred thereunder and no Event of Non-appropriation has occurred or is threatened with respect thereto.

5. Assignor hereby acknowledges the transfer restrictions imposed by Section 11.01 of the Agreement and confirms that the assignment to Assignee has been made in accordance with the provisions of that Section.

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

ACKNOWLEDGED AND AGREED:

LESSEE: CITY OF SAN LEANDRO, CALIFORNIA

By: _____
Name: _____
Title: _____

ASSIGNOR: BANC OF AMERICA PUBLIC CAPITAL CORP

By: _____
Name: _____
Title: _____

EXHIBIT I

ESCROW AND ACCOUNT CONTROL AGREEMENT

See Item #[_] in Transcript

EXHIBIT I
ESCROW AND ACCOUNT CONTROL AGREEMENT

This Escrow and Account Control Agreement (this “*Agreement*”), dated as of January 22, 2021, by and among Banc of America Public Capital Corp, a Kansas corporation (together with its successors and assigns, hereinafter referred to as “*Lessor*”), City of San Leandro, California, a city existing under the laws of the State of California (hereinafter referred to as “*Lessee*”) and Bank of America, National Association, a national banking association organized under the laws of the United States of America (hereinafter referred to as “*Escrow Agent*”).

Reference is made to that certain Equipment Lease/Purchase Agreement dated as of January 22, 2021 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 (\$7,624,924.00) 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:

Section 1. Creation of Escrow Account. (a) There is hereby created an escrow fund to be known as the “City of San Leandro, California 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. “*Business Day*” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in Chicago, Illinois, San Francisco, California or New York, New York. 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 Lessee. 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 California Government Code Sections 53600 *et seq.*

(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 provide any balance of the 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, to the extent permitted by law, 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.

Section 2. Acquisition and Installation of Equipment.

(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 in writing 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. All disbursements shall be made by wire transfer. 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 Disbursement Request 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 of copies of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale therefor or other evidence of title transfer, and release by Vendor of any security interest, 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. *Excess Proceeds in 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 earliest of (a) the expiration of the Acquisition Period, (b) the date on which Lessee delivers to the Lessor the executed Final Acceptance Certificate or the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from the Escrow Account or (c) a termination of the Escrow Account as provided in this Agreement, 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 California Commercial Code (the "*Commercial Code*") but are not otherwise defined herein shall

have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

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

(c) Provided that account investments shall be held in the name of the Escrow Agent, Escrow Agent hereby represents and warrants (i) that the records of Escrow Agent show that Lessee is the sole owner of the Collateral, (ii) 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 Lessor's claim pursuant to this Agreement, and (iii) 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
Attention: Contract Administration
Fax: (443) 541-3057

If to Lessee: City of San Leandro, California
835 E. 14th Street
San Leandro, CA 94577
Attention: Finance Director
Telephone: 510-577-3330
Email: SHsieh@sanleandro.org

If to Escrow Agent: Bank of America, National Association
Global Custody and Agency Services
540 W. Madison St
IL4-540-21-03
Chicago, Illinois 60661
Attention: GCAS AMRS Escrow Client Services
Telephone: (312) 992-3272
Fax: (312) 453-4443
Email: gcas_amrs_escrow_client_service@bofa.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 California and the parties hereto consent to jurisdiction in the State of California and venue in any state or Federal court located in the State of California, and each party expressly waives any objections that it may have to the venue of such courts. The parties hereto expressly waive any right to trial by jury in any action brought on or with respect to this Agreement. If the waiver of jury trial contained herein is unenforceable for any reason, then the parties hereto agree that the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision.

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.

15. The Related Documents may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe’s Portable Document Format (“PDF”)). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of the Related Documents and the related signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

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

BANC OF AMERICA PUBLIC CAPITAL CORP, as
Lessor

CITY OF SAN LEANDRO, CALIFORNIA, as
Lessee

By: _____
Name: _____
Title: _____

By: _____
Name: _____
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: Equipment Lease/Purchase Agreement dated as of January 22, 2021 by and between Banc of America Public Capital Corp, as Lessor, and the City of San Leandro, California, as Lessee (the “Lease”) (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow and Account Control Agreement, dated as of January 22, 2021 (the “Escrow and Account Control Agreement”) by and among Banc of America Public Capital Corp (“Lessor”), the City of San Leandro, California (“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 and Account Control Agreement for the following purposes:

DISBURSEMENT AMOUNTS:

Payee’s Name and Address (disbursement via wire, must include wire transfer instructions)	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 and Payee Bank information is required.>	<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*> <*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>	[<mobilization fee that is payable to the Vendor under the Vendor Agreement>]

Lessee hereby represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(i) Each obligation specified in the table herein titled as "Disbursement Amounts" (a) has been incurred by Lessee in the stated amount, (b) the same is a proper charge against the Escrow Account for (i) Equipment Costs relating to the Equipment identified above and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof) and (ii) the mobilization fee in the amount of \$ _____, which has been approved by Lessor, and (c) has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Equipment relating to such obligation has been delivered, installed and accepted by Lessee.

(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, and certification from Vendor as to title transfer and release by Vendor of any security interest with respect to such obligation and the related AIA forms.

(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: _____

CITY OF SAN LEANDRO, CALIFORNIA

By: _____

Name: _____

Title: _____

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

BANC OF AMERICA PUBLIC CAPITAL CORP
as Lessor under the Lease

By: _____

Name:

Title:

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

EXHIBIT A-1
FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting City Clerk of the City of San Leandro, California ("*Lessee*") certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the "*Officials*") in the capacity set forth opposite their respective names below and 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, in writing or electronically, and deliver the Equipment Lease/Purchase Agreement dated as of January 22, 2021 by and between Lessee and Banc of America Public Capital Corp ("*Lessor*"), the Escrow and Account Control Agreement dated as of January 22, 2021 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: January 22, 2021

By: _____

Name: _____

Title: _____

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

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

EXHIBIT A-2

Escrow and Account Control Agreement dated as of January 22, 2021 by and among Banc of America Public Capital Corp, as Lessor, the City of San Leandro, California, as Lessee and Bank of America, National Association, as 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@bofa.com
Signature: _____

Fund Transfer / Disbursement Authority Level:

- 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@bofa.com
Signature: _____

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

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

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

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

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

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

Banc of America Public Capital Corp

By: _____

Name:

Title:

Date: January 22, 2021

MEMORANDUM OF UNDERSTANDING

Climatec LLC (“*Climatec*”), the City of San Leandro, California (the “*City*”) and Banc of America Public Capital Corp desire to enter into this Memorandum of Understanding (this “*Memorandum*”) entered into as of January 22, 2021, relating to that certain Installation Agreement dated as of September 21, 2020 (the “*Vendor Agreement*”) by and between Climatec and the City. Pursuant to the Vendor Agreement, Climatec has agreed to (i) install certain materials and equipment financed or to be financed with the proceeds of the hereinafter defined Financing Agreement (the “*Equipment*”), (ii) provide other services related to the installation of the Equipment and (iii) reduce energy-related operating costs for the City through the project development and implementation, including, engineering, system design, fabrication and installation of energy efficiency measures that will result in energy savings to the City and which shall be a supply of energy to the City. Banc of America Public Capital Corp (with its successors and assigns, “*BAPCC*”) and the City will be entering into an Equipment Lease/Purchase Agreement (Escrow Account), dated January 22, 2021 (the “*Financing Agreement*”) to finance the cost of the Equipment under the Vendor Agreement. BAPCC, Climatec, and the City are collectively referred to in this memorandum as the “*Parties.*” Unless specifically defined in this Memorandum, defined terms have the meanings set forth in the Vendor Agreement.

The purpose of this Memorandum is to set forth the understanding of the Parties with respect to the rights of the Parties relating to the Equipment and certain other matters herein.

Under Section 6.02 of the Financing Agreement, the City grants to BAPCC a first priority security interest constituting a first lien on (a) the Equipment, together with all replacements, repairs and restorations thereof or thereto, and all substitutions and renewals to any and all of such Equipment, (b) moneys and investments held from time to time in the Escrow Account (as defined in the Financing Agreement), (c) all accounts, chattel paper, deposit accounts, documents, instruments, general intangibles and investment property (including any securities accounts and security entitlements relating thereto) evidenced by or arising out of or otherwise relating to the Equipment or the Escrow Account, as such terms are defined in Article 9 of the California Commercial Code, and (d) any and all proceeds of any and all of the foregoing, including, without limitation, insurance proceeds. For purposes of the Vendor Agreement, Climatec hereby consents to the City’s grant of a security interest to BAPCC in and to the Equipment to be installed or furnished under the Vendor Agreement and consents to the lien and security interest in favor of BAPCC described in the preceding sentence.

The Parties hereto acknowledge and agree that, notwithstanding any provision in the Vendor Agreement to the contrary:

1. Notwithstanding the provisions of the Vendor Agreement, title to the Equipment (or portion thereof) shall pass free and clear to the City from Climatec upon payment by the City for the Equipment, Work or services corresponding to such Equipment (or portion thereof);

2. BAPCC is paying for the costs of the Equipment, pursuant to and in accordance with the Financing Agreement and related escrow agreement, and shall have all rights and remedies set forth in the Financing Agreement regarding return of the Equipment in the event of termination, due to non-appropriation, default or otherwise; and

3. Climatec's remedies with respect to any amounts due under the Vendor Agreement, whether due to any default of the City, non-appropriation, termination or otherwise, shall not include return of the Equipment to Climatec and Climatec shall not enter upon the job sites for the Work and disconnect and/or remove any Equipment without the prior written consent of BAPCC.

Dated January 22, 2021

CLIMATEC LLC

BANC OF AMERICA PUBLIC CAPITAL CORP

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CITY OF SAN LEANDRO, CALIFORNIA

By: _____
Name: _____
Title: _____



City of San Leandro

Meeting Date: January 4, 2021

Resolution - Council

File Number: 20-594

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Fran Robustelli
Interim City Manager

BY: Debbie Pollart
Public Works Director

FINANCE REVIEW: Susan Hsieh
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council Authorizing the Execution and Delivery of an Equipment Lease/Purchase Agreement with Respect to the Acquisition, Financing and Leasing of Certain Equipment for the Public Benefit; Authorizing the Execution and Delivery of Documents Required in Connection Therewith; and Authorizing the Taking of All Other Actions Necessary to the Consummation of the Transactions Contemplated by this Resolution (approval to finance energy conservation and resiliency equipment to be installed at the City's Water Pollution Control Plant for \$8,893,876.20)

WHEREAS, the City of San Leandro (the "City"), a charter city duly organized and existing under the Constitution and laws of the State of California, is authorized by the laws of the State of California to purchase, acquire and lease personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the City desires to acquire and lease certain equipment constituting personal property necessary for the City to perform essential governmental functions and/or functions incidental thereto at the Water Pollution Control Plant in the estimated amount of \$8,045,781 (the "Equipment"); and

WHEREAS, in order to finance the acquisition and installation of the Equipment, the City proposes to enter into an Equipment Lease/Purchase Agreement (the "Agreement") with Banc of America Public Capital Corp (or one of its affiliates), as lessor (the "Lessor"), an Escrow and Account Control Agreement (the "Escrow Agreement") with the Lessor and Bank of America, National Association (or one of its affiliates), as escrow agent, and a Memorandum of Understanding (the "MOU") with the Lessor and Climatec LLC, the forms of which have been presented to this City Council at this meeting; and

WHEREAS, this City Council deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement and the Escrow Agreement, and the other documentation related to the financing of the Equipment for the acquisition and leasing of the Equipment on the terms and conditions therein provided;

WHEREAS, the information required to be obtained and disclosed by the City Council with respect to the Agreement by Government Code Section 5852.1 is set forth in the staff report

accompanying this Resolution.

NOW, Therefore, Be It and It Is Hereby RESOLVED by the City Council of the City of San Leandro as follows:

Section 1. Findings and Determinations. It is hereby found and determined that the terms of the Agreement, in the form presented to the City Council at this meeting, are in the best interests of the City for the acquisition, financing and leasing of the Equipment.

Section 2. Approval of Documents. The form, terms and provisions of the Agreement, the MOU and the Escrow Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the City Manager, Assistant City Manager, Finance Director or any of them (each, an "Authorized Officer"), the execution of the Agreement, the MOU and the Escrow Agreement being conclusive evidence of such approval; and each of the Authorized Officers is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the Agreement, the MOU and the Escrow Agreement.

Section 3. Other Actions Authorized. Each of the Authorized Officers and each of the other officers and employees of the City shall take all actions necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of certificates and disbursement requests and any other tax certificates and agreements, as contemplated in the Agreement) and to take all actions necessary in conformity therewith, including, without limitation, the execution and delivery of any tax certificates and other documents required to be delivered in connection with the Agreement, the MOU and the Escrow Agreement. Whenever in this Resolution any officer of the City is authorized to execute or attest any document or take any action, such execution, attestation or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable, and any references to any officer of the City shall include any person holding such office in an "interim" or "acting" capacity.

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

Section 5. Appointment of Authorized City Representatives. Each of the Authorized Officers is hereby designated to act as authorized representatives of the City for purposes of the Agreement, the MOU and the Escrow Agreement until such time as the City Council shall designate any other or different authorized representative for purposes of the Agreement, the MOU and/or the Escrow Agreement.

Section 6. Professional Services. Jones Hall, A Professional Law Corporation, is hereby appointed as special counsel to the City in connection with the financing contemplated by this Resolution, and any legal services agreement with said firm previously executed is hereby ratified and confirmed.

Section 7. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 8.Repealer. All resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any resolution or part thereof.

Section 9.Effective Date. This Resolution shall be effective immediately upon its approval and adoption.