

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Financial Services Department

AGENDA DATE: March 26, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Carmen Arrieta-Candelaria 915-541-4293
Chief Samuel Peña, Fire Department 915-485-5605

DISTRICT(S) AFFECTED:

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Discussion and action on a resolution authorizing the City Manager to execute Schedule A No. 2 to the Master Lease Agreement approved on November 29, 2011, a tax-exempt lease-purchase agreement with Compass Mortgage Corporation ("**Compass**") in a principal amount not to exceed \$5,020,000 to purchase, finance and lease certain equipment for the Fire Department of the City of El Paso. It is also requested that the City Manager of the City of El Paso be authorized to execute any and all necessary documents, including budget transfers, relating to this lease-purchase agreement, which are necessary to carry out the intent of this agreement.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On November 29, 2011, the City entered into an agreement with Compass Bank to issue \$5 million for equipment for the Fire Department. This Tax-Exempt Lease-Purchase Agreement between the City of El Paso and Compass in the amount of \$5,025,000 was for the purchase of various fleet vehicles and heavy equipment that was needed by the Fire Department. Ambulances, pumper fire trucks, quints and ladder fire trucks were purchased with this first allotment. As of March 12, 2013, only \$68,000 of these funds remained to be drawn down.

Given the continued need for Fire Department fleet and heavy equipment, City staff proposes to issue another \$5 million in new money to allow for the additional purchase of equipment and vehicles for the Fire Department. Needed vehicles have been identified in the City's Fleet Vehicle Replacement Plan as prepared by General Services in cooperation with the Fire Department.

Proposals were solicited from various financing entities that would finance these types of equipment purchases. Based on these proposals, Compass had the most favorable terms overall. Based on the proposal submitted by Compass, the rate for the financing will be 1.52%. This will amount to quarterly payments in the amount of \$195,691.56 for a total annual payment of \$782,766.24. The term of this financing will be for a period of seven years (27 payments) and the first payment will commence on or about 9/1/13. Quarterly payments will begin to be included in the general fund budget for fiscal year 2014 and in budgets thereafter until the term of the lease expires (3/01/2020 is the last payment).

The acquisition process of the equipment will commence upon execution of the lease documents and will follow the general procurement process which will more than likely need Council approval for award given the cost of the equipment (i.e. over \$50,000)

The following types of vehicles/equipment will be procured with this funding and may change as unit pricing and other factors are finalized:

- One 101' Platform Apparatus for Station 5
- One Quint Apparatus for Station 17
- 5 Pumper Apparatus (Station 10, 16, 19, 20, and 22)
- 3 Ambulances
- 3 ambulance remounts

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

On November 29, 2011, City Council approved a \$5 million tax-exempt lease with Compass Bank to purchase Fire Department Equipment. As of March 12, 2013, all but approximately \$68,000 of this amount had been expended.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Repayments for this loan will come from the general fund with the first payment to begin on or about 9/1/13 and the lease payments will be incorporated into the 2014 budget and beyond over the course of the seven year period.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Carmen Orietta Candelario

RESOLUTION

A RESOLUTION OF THE CITY OF EL PASO, TEXAS, AUTHORIZING THE EXECUTION AND DELIVERY OF SCHEDULE A NO. 2 TO A MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ACQUISITION FUND AGREEMENT IN CONNECTION THEREWITH; RESOLVING OTHER MATTERS RELATED THERETO; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of El Paso, Texas (the "City"), a body corporate and politic existing under the laws of the State of Texas, is authorized by the laws of the State of Texas 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 purchase, acquire and lease certain equipment constituting personal property necessary for the City to perform essential governmental functions (the "Equipment"); and

WHEREAS, the City entered into a Master Equipment Lease/Purchase Agreement dated as of November 29, 2011 (the "Master Agreement") by and between the City and Compass Mortgage Corporation, an Alabama corporation (or one of its affiliates) (the "Lessor"), attached hereto as **Exhibit A** and incorporated herein by reference as a part of this resolution for all purposes, to provide a means for the City to purchase, acquire and lease certain equipment constituting personal property from time to time; and

WHEREAS, in order to acquire such Equipment under the Master Agreement, the City proposes to execute Schedule A No. 2 to the Master Agreement (the "Schedule", and together with the Master Agreement referred to collectively as the "Agreement") substantially in the form attached hereto as **Exhibit B** and incorporated herein by reference as a part of this resolution for all purposes, and that certain Acquisition Fund Agreement (the "Acquisition Fund Agreement") with the Lessor and Amegy Bank National Association, as escrow agent, attached hereto as **Exhibit C** and incorporated herein by reference as a part of this resolution for all purposes; and,

WHEREAS, the City Council of the City deems it for the benefit of the City and for the efficient and effective administration thereof to execute the Schedule and the Acquisition Fund Agreement for the purchase, acquisition and leasing of the Equipment referenced in such schedule to be therein described on the terms and conditions therein provided; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. Approval of Documents. The Master Lease is affirmed. The form, terms and provisions of the Schedule and the Acquisition Fund Agreement are hereby approved in substantially the forms attached hereto as **Exhibit B** and **Exhibit C**, with such insertions, omissions and changes as shall be approved by the City Manager of the City or other members of

the governing body of the City executing the same, the execution of such documents being conclusive evidence of such approval; and the City Manager of the City is hereby authorized and directed to execute, and the Chief Financial Officer of the City is hereby authorized and directed to attest and countersign, the Schedule and any related exhibits attached thereto, and the City Manager is authorized to execute the Acquisition Fund Agreement and any related exhibits attached thereto and to deliver the Schedule and the Acquisition Fund Agreement (including such exhibits) to the respective parties thereto, and the City Clerk of the City is hereby authorized to affix the seal of the City to such documents.

SECTION 2. Other Actions Authorized. The City Manager, the Chief Financial Officer of the City, the City Comptroller and other officers and employees of the City are hereby authorized to take all action necessary or reasonably required by the parties to the Agreement and the Acquisition Fund Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and the Acquisition Fund Agreement.

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

SECTION 4. Appointment of Authorized City Representatives. The City Manager, the Chief Financial Officer of the City, the Comptroller of the City and the City's Treasury Services Coordinator are each hereby designated to act as Authorized Officers of the City for purposes of the Agreement and the Acquisition Fund Agreement until such time as the governing body of the City shall designate any other or different authorized representative for purposes of the Agreement and the Acquisition Fund Agreement.

SECTION 5. Severability. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and the City Council of the City hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 6. Incorporation of Findings and Determinations. The findings and determinations of the City Council of the City contained in the preamble hereof are hereby incorporated by reference and made a part of this Resolution for all purposes as if the same were restated in full in this Section.

SECTION 7. Public Meeting. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551 of the Texas Government Code, as amended.

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

ADOPTED this _____ day of _____, 2013.

CITY OF EL PASO, TEXAS, as lessee

John F. Cook
Mayor, City of El Paso, Texas

ATTEST:

Richarda Duffy Momsen
City Clerk, City of El Paso, Texas

(SEAL)

APPROVED AS TO FORM:

Sol M. Cortez
Sol M. Cortez
Assistant City Attorney
City of El Paso

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer
City of El Paso, Texas

EXHIBIT A

(See attachment.)

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

By and Between

COMPASS MORTGAGE CORPORATION, AN ALABAMA CORPORATION

as Lessor,

and

CITY OF EL PASO, TEXAS

as Lessee

Dated as of November 29, 2011

CLOSING INDEX

1. Master Equipment Lease/Purchase Agreement
2. Schedule A No. 1
 - Attachment A. Lessee's Acceptance Certificate
 - Attachment B. Essential Use Certificate
 - Attachment C. Certificate of Appropriation
 - Attachment D. General and No-Litigation Certificate
 - Attachment E. Opinion of Counsel to Lessee
 - Attachment F. Resolution of Lessee
 - Attachment G. Financing Statement(s)
 - Attachment H. Information Report on Form 8038-G (or 8038-GC)
 - Attachment I. Cross-Receipt
 - Attachment J. No-Arbitrage Certificate
3. Acquisition Fund Agreement

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

By and Between

COMPASS MORTGAGE CORPORATION, AN ALABAMA CORPORATION

as Lessor,

and

CITY OF EL PASO, TEXAS

as Lessee

Dated as of November 29, 2011

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

THIS MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT (the "Agreement"), dated as of November 29, 2011, is by and between COMPASS MORTGAGE CORPORATION, an Alabama corporation ("Lessor"), and CITY OF EL PASO, TEXAS ("Lessee").

WITNESSETH:

WHEREAS, Lessee is a political subdivision of the State of Texas and is authorized and empowered under the laws of the State, particularly the Public Property Finance Act, Texas Loc. Gov't. Code Ann. § 271.001 et seq. (the "Act") to lease, as lessee, to purchase and receive, and to control and dispose of personal property, whether movable or fixed, considered by the City Council of Lessee to be necessary, useful or appropriate to one or more governmental purposes of Lessee.

WHEREAS, the parties hereto desire that Lessee from time to time lease from Lessor Equipment (defined below) to be identified by Lessee on the terms and conditions set forth below, which Equipment the City Council of Lessee shall determine is necessary, useful and appropriate to one or more governmental purposes of Lessee and shall be specifically identified in any Schedule A (as hereinafter defined) attached hereto and made a part hereof; and

WHEREAS, Lessee shall make Rental Payments (as hereinafter defined) and certain other payments directly to Lessor for the possession, use and ownership of the Equipment; and

WHEREAS, this Agreement shall not constitute a debt or liability obligation of the State (as hereinafter defined) or Lessee or any political subdivision of the State, or a pledge of the faith and credit or taxing power of the State, or Lessee, or any political subdivision of the State, but shall be a special obligation payable solely from the current revenues of Lessee in accordance with the provisions hereof; and

WHEREAS, Lessee shall assign to Lessor a first priority perfected security interest in the Equipment as security for the payment of all of Lessee's obligations under this Agreement;

NOW, THEREFORE, for and in consideration of the premises and of the covenants hereinafter contained, and other valuable considerations, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this Agreement and related documents, the following definitions will apply:

1.1 Acceptance Certificate. A Certificate of the Lessee, in substantially the form set forth on Attachment A to Schedule A hereunder by which Lessee accepts delivery of the Equipment and authorizes Lessor to disburse funds for said Equipment.

1.2 Acceptance Date. Unless otherwise agreed to by the prior written consent of Lessor, the date on which the Acceptance Certificate is executed and delivered by the Lessee to the Lessor pursuant to the terms of this Agreement.

1.3 Acquisition Fund Agreement. The Acquisition Fund Agreement dated as of the Closing Date between the Lessee and the Escrow Agent named therein with respect to the deposit of funds for the acquisition of the Equipment.

1.4 Additional Rents. The amounts, other than Rental Payments, payable by Lessee pursuant to the provisions of this Agreement, as set forth in Section 4.7 hereof.

1.5 Authorized Officer. (i) In the case of Lessor, any President or Vice President, and when used in reference to an act or document of Lessor, also means any other person authorized to perform the act or sign the document, and (ii) in the case of Lessee, the City Manager of the Lessee or the Chief Financial Officer of the Lessee, or any other person authorized by the City Council of the Lessee.

1.6 Closing. The date of delivery of all executed documents related to this Agreement and any Schedule A hereunder as required under this Agreement and such related Schedule A.

1.7 **Code.** The Internal Revenue Code of 1986, as amended, and the related regulations and rulings thereunder.

1.8 **Contract Price.** The all-inclusive price of an item of Equipment, including the cost of installation, freight, taxes and training (such costs not to exceed 20% of the total cost of the Equipment), but excluding the cost of any service contract, as set forth in the applicable Purchase Agreement.

1.9 **Determination of Taxability.** One of the following determinations, made in regard to section 103 of the Code (as defined herein) to the effect that by reason of any action or inaction by the Lessee or any violation by the Lessee of any of its covenants or representations in this Agreement or any misrepresentation in any certificate furnished in connection with any Schedule A hereunder, the interest payable on such Schedule A is includable in the gross income of owner of such obligation: (i) a final determination, decision or decree by the Commissioner or any District Director of Internal Revenue, or by any court of competent jurisdiction, which is not subject to further review, or (ii) an opinion of a nationally recognized bond counsel furnished by the Lessor to the Lessee.

1.10 **Equipment.** The goods enumerated on each Schedule A that is now or may hereafter from time to time become attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, replacements and parts thereof.

1.11 **Equipment Acquisition Account.** The account so designated and established by the Lessee with the Lessor pursuant to Section 14.2 hereof.

1.12 **Lease Proceeds.** With respect to any Schedule A, the total amount of money or other consideration to be paid or provided by Lessor, in no event to exceed the Maximum Contract Amount, for application in accordance with such Schedule A and Section 14 hereof, including (a) the Contract Price of each item of Equipment set forth on such Schedule A payable to the Vendor thereof upon acceptance by Lessee and (b) the amount, if any, paid by Lessor and applied to the reasonable costs of issuance of such Schedule A.

1.13 **Lease Term.** With respect to this Agreement and any Schedule A hereunder, the term specified in the applicable Schedule A in accordance with Section 3 hereof.

1.14 **Lease Term Commencement Date.** The date as set forth on each Schedule A hereto.

1.15 **Lease Term Interest Rate.** The interest rate per annum on the Lease Proceeds as set forth on each Schedule A hereto as adjusted pursuant to the provisions of Section 4.4 hereof.

1.16 **Maximum Amount.** The amount as set forth on each Schedule A hereto.

1.17 **Permitted Investments.** Any investment authorized pursuant to the Public Funds Investment Act, Texas Government Code §2256.001 et seq. and the written investment policy of the Lessee.

1.18 **Prepayment Premium.** If prepayment is made beginning with the 24th month through the 35th month following the Lease Term Commencement Date, an amount equal to two percent (2%) of the principal amount of Rental Payments being pre-paid; if prepayment is made beginning with the 36th month through the 48th month following the Lease Term Commencement Date, an amount equal to one percent (1%) of the principal amount of Rental Payments being pre-paid; and if prepayment is made beginning with the 48th month following the Lease Term Commencement Date through the end of the Lease Term, an amount equal to zero (0). There is no optional prepayment prior to the 24th month following the Lease Term Commencement Date.

1.19 **Purchase Agreement or Purchase Agreements.** Each of the purchase agreements between Lessee and the Vendors of the Equipment.

1.20 **Purchase Price.** The amount which Lessee may from time to time pay or cause to be paid to Lessor in order to purchase the Equipment, as provided in Section 5 hereof, such amount being set forth in the Schedule A relating to such Equipment, plus all other amounts then owed hereunder by Lessee as Additional Rents or otherwise.

1.21 Rebate Account. The account so designated by Lessee if so established pursuant to this Agreement.

1.22 Rental Payments. The scheduled payments (but excluding indemnifications and reimbursements and Additional Rents payable to Lessor hereunder) payable by Lessee pursuant to the provisions of this Agreement and each Schedule A.

1.23 Schedule A. The document(s) now or hereafter from time to time attached hereto and incorporated herein by reference and signed by the parties which, among other things, describes the equipment to be leased by the Lessor to the Lessee, describes the Lease Term for the Equipment listed thereon and Lessee's obligations with respect to payment and which shall be numbered consequentially from No. 1 upward.

1.24 State. The State of Texas.

1.25 Taxable Rate. The interest rate representing the equivalent yield to the Lessor of the Lease Term Interest Rate if the interest component of the Rental Payments is included in the gross income of the Lessor under the Code.

1.26 Total Contract Price. The amount as set forth in each Schedule A hereto.

1.27 UCC. The State's Uniform Commercial Code.

1.28 Vendor or Vendors. The manufacturer or manufacturers of an item of Equipment, as well as the agents or dealers of the manufacturer, from whom Lessor has purchased or is purchasing items of Equipment.

SECTION 2. LEASE OF EQUIPMENT

2.1 Acquisition of Equipment; Conditions Precedent.

(a) Lessee either has ordered or shall order the Equipment pursuant to one or more Purchase Agreements from one or more Vendors. Lessee shall remain liable to each such Vendor with respect to its duties and obligations in accordance with the Purchase Agreement, and as among Lessor and Lessee, Lessee shall bear the risk of loss with respect to any loss or claim relating to any item of Equipment covered by any Purchase Agreement.

(b) The obligation of Lessor to purchase, pay or provide other consideration for, or provide an item of Equipment is subject to the receipt by Lessor of the following documents and the satisfaction of the following conditions, all of which shall be satisfactory to Lessor in form and substance:

(i) Lessee shall have accepted the Equipment by delivery to Lessor of an Acceptance Certificate, whereupon the item of Equipment shall immediately become subject to and governed by the provisions of this Agreement and the related Schedule A;

(ii) There shall exist no Event of Default (as defined in Section 12.1 hereof) under this Agreement or any Schedule A hereunder, or any condition, event or act which with notice or lapse of time, or both, would become an Event of Default thereunder which has not been remedied or waived;

(iii) There shall exist no material adverse change in the financial condition of Lessee;

(iv) This Agreement, the applicable Schedule A (including all attachments) and an Acquisition Fund Agreement duly executed by Lessee;

(v) Evidence of insurance as required under Section 6.7 hereof; and

(vi) Financial information and such other documents, instruments or other items as may be reasonably required by Lessor.

2.2 Lease of Equipment. Upon execution of each Schedule A, Lessor shall provide the consideration specified in such Schedule A to be provided by it to acquire the Equipment and to lease to Lessee, and Lessee shall

lease from Lessor the Equipment, all in accordance with the provisions of this Agreement and the related Schedule A, to have and to hold for the Lease Term. Lessee hereby acknowledges and agrees that Lessor shall retain a perfected first priority security interest in the Equipment in accordance with this Agreement. The execution and delivery of this Agreement and any Schedule A hereunder shall not obligate Lessor to execute and deliver any Schedule A or to provide any funds or other consideration with respect to any Schedule A unless and until such Schedule A has been executed and delivered by all other parties thereto and all conditions set forth in this Agreement and such Schedule A have been satisfied.

SECTION 3. LEASE TERM

3.1 Lease Term.

(a) The Lease Term applicable to any Schedule A shall commence on the Lease Term Commencement Date and shall terminate on the last business day of Lessee's then current fiscal budget period (such period hereinafter referred to as the "*Original Lease Term*") unless renewed pursuant to Section 3.1(b) hereof.

(b) The Original Lease Term with respect to the items of Equipment described in each Schedule A will be automatically and successively renewed at the end of the Original Lease Term under the same terms and conditions for such number of successive renewal periods (such renewal periods hereinafter individually referred to as a "*Renewal Lease Term*") as is set forth on such Schedule A.

3.2 Termination of Lease Term. The Lease Term applicable to any Schedule A will terminate upon the earliest to occur of any of the following events:

(a) The expiration of the Original Lease Term of any Renewal Lease Term with respect to all items of Equipment described in a Schedule A and the non-renewal thereof in accordance with the terms and conditions of this Agreement; or

(b) The exercise by Lessee of the option granted under the provisions of Sections 5.1 or 6.8 hereof to purchase the Equipment identified in such Schedule A; or

(c) Lessor's election to terminate this Agreement under Section 12.2, Section 3.3 or Section 12 hereof due to Lessee's default hereunder; or

(d) The payment by Lessee of all Rental Payments in accordance with this Agreement with respect to such Schedule A and any Additional Rents required to be paid by Lessee hereunder.

3.3 Non-appropriation. Subject to the provisions of Section 15 hereof, in the event sufficient funds are not appropriated for the payment of all Rental Payments required to be paid in the next succeeding Renewal Lease Term, then Lessee may terminate this Agreement at the end of the Original Lease Term or the then current Renewal Lease Term, as the case may be, and Lessee shall not be obligated to make payment of the Rental Payments provided for in such Schedule A beyond the Original Lease Term or the then current Renewal Lease Term, as the case may be. LESSEE AGREES TO DELIVER NOTICE TO LESSOR OF SUCH TERMINATION AT LEAST NINETY (90) DAYS PRIOR TO THE END OF THE ORIGINAL LEASE TERM OR THE THEN CURRENT RENEWAL LEASE TERM, AS THE CASE MAY BE.

SECTION 4. RENTAL PAYMENTS

4.1 Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder and under any Schedule A shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything construed herein constitute a pledge of the general tax revenues, funds or moneys of Lessee. No provision, covenant or agreement contained in this Agreement or any obligation herein imposed on Lessee, or the breach thereof, shall constitute or give rise to or impose upon Lessee a pecuniary liability, a charge upon its general credit or taxing powers, (if any), or a pledge of its general revenues. In making the provisions, covenants and agreements set forth in this Agreement, Lessee has not obligated itself except with respect to the Equipment and the application of Rental Payments to be paid by Lessee hereunder.

4.2 Amount and Times of Payment. As rental for the Equipment, Lessee hereby agrees to pay Lessor the amounts specified in each Schedule A at the times and in the manner set forth therein.

4.3 Allocation of Interest. A portion of each Rental Payment shall be allocated to interest in accordance with the amortization schedule attached to the Schedule A and its corresponding Acceptance Certificate.

4.4 Lease Term Interest Rate. The Rental Payments shall bear interest during the Lease Term at the rate and in the manner set forth in each Schedule A; provided, however, in the event of a Determination of Taxability, such interest rate set forth in each Schedule A shall automatically increase to the Taxable Rate retroactive to the date of the occurrence of the Determination of Taxability and Lessee will pay such additional amount as will result in the Lessor receiving the interest component of the Rental Payments at the Taxable Rate; provided, further, that such interest rate set forth in each Schedule A or such interest rate set forth in each Schedule A as increased by the terms hereof, respectively, shall never exceed the then maximum interest rate allowed for similar governmental obligations pursuant to Chapter 1204, Texas Government Code, as amended, or other applicable laws in effect as of the date of such Schedule A or as of the date of any increase to such interest rate, respectively.

4.5 Place of Payments. All payments required to be made to Lessor hereunder shall be made at Lessor's principal office or as may be otherwise directed by Lessor or its assignee.

4.6 Late Payment. Should Lessee fail to pay any part of the Rental Payments or any other sum required to be paid by Lessor on or before the due date thereof, such unpaid amount shall continue to accrue interest at the maximum rate allowed under Texas law until paid.

4.7 Additional Rents. Lessee shall pay to Lessor, as additional rents (the "Additional Rents") hereunder, in addition to the Rental Payments payable by Lessee, such amounts in each year as shall be required by Lessor in payment of any reasonable costs and expenses, incurred by Lessor in connection with the execution, performance or enforcement of this Agreement, the lease of the Equipment to Lessee including but not limited to payment of all reasonable fees, costs and expenses of Lessor in connection with the Equipment, reasonable expenses (including, without limitation, attorneys' fees and disbursements), reasonable fees of auditors, insurance premiums not otherwise paid hereunder and all other reasonable, direct and necessary costs of Lessor or charges required to be paid by it in order to comply with the terms of, or to enforce its rights under, this Agreement and any Schedule A hereunder; provided, however, it is expressly understood and agreed by Lessor and Lessee, that any Additional Rents payable hereunder shall be limited to such costs and expenses related to or associated with the execution and delivery of any Schedule A or any default by Lessee under the terms of this Agreement or any Schedule A hereunder and nothing herein shall be construed as authorizing Lessor to charge Lessee for any expenses incurred by Lessor in the normal course of business in the administration of this Agreement and any Schedule A hereunder. Such Additional Rents shall be billed to Lessee by Lessor from time to time, together with a statement certifying that the amount so billed has been paid by Lessor for one or more of the items described, or that such amount is then payable by Lessor for such items. Undisputed amounts so billed shall be due and payable by Lessee within thirty days after receipt of the bill by Lessee.

4.8 Abatement of Payments. There will be no abatement or reduction of payments by Lessee for any reason, including but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or imaginary) arising out of or related to any defects, damages, malfunctions, breakdowns or infirmities of the Equipment. Lessee assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever, it being the intention of the parties that the Rental Payments shall be made in all events unless the obligation to make Rental Payments is terminated as otherwise provided herein.

4.9 Rental Payments to Be Unconditional. The obligations of Lessee to make payment of the Rental Payments and all other payments and fees due hereunder, as well as to perform and observe all other covenants hereunder, 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 to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation, destruction or unforeseen circumstances. Notwithstanding any dispute between Lessee and Lessor, any vendor or any other person, Lessee shall make all Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments required under this Agreement.

4.10 Appointment of Servicer. Lessor shall have the right to designate an entity to act as the "Servicer" for the collection of Rental Payments payable by Lessee, the enforcement of remedies or the distribution of funds to one or more holders of interests in this Agreement, all as provided herein. Any Servicer appointed under this Section shall be a trust company or a bank having the powers of a trust company, having a capital and surplus of not less than \$25,000,000. Any such Servicer shall notify Lessee and Lessor of its acceptance of the appointment and, upon giving such notice, shall become Servicer, vested with all the property, rights and powers of the Servicer hereunder, without any further act or conveyance. Such Servicer shall execute, deliver, record and file such instruments as are required to confirm or perfect its acceptance hereunder and set forth its duties hereunder.

SECTION 5. PREPAYMENT; PURCHASE

5.1 Purchase Rights. Lessee shall be entitled to full title and all ownership interests in the Equipment identified on a particular Schedule A, and Lessor's security interest therein shall be terminated:

(a) Upon payment in full of all Rental Payments of the applicable Schedule A and all other amounts due under this Agreement, with respect to such Schedule A; or

(b) Upon written notice by Lessee delivered at least thirty (30) days in advance of any date on which a Rental Payment is due, and upon the payment on such date of the Rental Payments due and the Purchase Price.

5.2 Optional Prepayment. From and after 24 months from the Lease Term Commencement Date, Lessee shall have the right to prepay the outstanding principal balance of each Schedule A hereunder, in full at any time or in part from time to time, provided, that as conditions precedent to Lessee's right to make, and Lessor's obligation to accept, any such prepayment: (i) Lessor shall have actually received the notice required in Section 5.1(b) above providing the amount of principal which will be prepaid (the "Prepaid Principal") and the date (the "Prepayment Date") on which the prepayment will be made; (ii) each prepayment of principal shall be in the amount of \$100,000.00 or a larger integral multiple of \$5,000.00 (unless the prepayment retires the outstanding balance of such Schedule A in full); and (iii) each such prepayment shall be in the amount of 100% of the principal amount to be prepaid, plus accrued unpaid interest thereon to the Prepayment Date, plus the Prepayment Premium and plus any other sums which have become due to Lessor under such Schedule A on or before the Prepayment Date but have not been paid, provided, however, in no event shall any prepayment cause the interest rate on any Schedule A to exceed the maximum interest rate allowed for similar governmental obligations pursuant to Chapter 1204, Texas Government Code, as amended, or other applicable laws in effect as of the date of such Schedule A. All prepayments of principal shall be applied to principal in inverse order of maturity.

5.3 Consummation of Purchase. Lessor's security interest in the Equipment identified in a particular Schedule A shall be terminated and released automatically in conjunction with the receipt of the full Purchase Price or the final Rental Payment due thereunder unless an Event of Default hereunder shall have occurred and be continuing as of such date. Such date may at the discretion of Lessor be extended for such additional period as Lessor's counsel reasonably determines to be necessary to reflect the impact of, and avoid the risks related to, bankruptcy-related laws. On such date, Lessor shall deliver to Lessee such deeds, termination statements, bills of sale and other documents and instruments as Lessee shall reasonably require to evidence the transfer of all right, title and interest of Lessor in such Equipment to Lessee free and clear of all liens and encumbrances created by or arising, directly or indirectly, through Lessor.

5.4 Mandatory Prepayment. Subject to Section 13.1, all or substantially all of the assets of Lessee, including Lessee's interest in this Agreement and the Equipment, may be acquired in any manner by another entity, subject to the opinion of counsel acceptable to Lessor as to the continued exclusion from gross income of the interest component of the Rental Payments. However, if all or substantially all of the assets of Lessee, including Lessee's interest in this Agreement and the Equipment, are acquired in any manner by another entity, Lessee may be required, at the direction of Lessor to prepay in whole the Purchase Price.

5.5 Eminent Domain by Lessee. Lessee expressly agrees that in connection with any exercise of its eminent domain powers, the fair market value of the Equipment shall be the sum of all remaining Rental Payments.

SECTION 6. RESPONSIBILITIES OF LESSEE

6.1 Care and Use of Equipment. Lessee shall use the Equipment in a careful and proper manner, in compliance with all applicable laws and regulations, and at its sole cost and expense, service, repair and maintain the Equipment so as to keep the Equipment in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Equipment as may from time to time become worn out, lost, stolen, destroyed or damaged or is unit for use. Subject to the terms of Section 6.5 hereof, any and all such additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement or in any Schedule A hereunder. If requested by Lessor, Lessee shall enter into or cause to be entered into, and maintained in full force and effect during the term of this Agreement, standard maintenance contracts satisfactory to Lessor covering the Equipment and shall comply with all its obligations thereunder. Lessee shall furnish evidence to Lessor of such signed maintenance agreement at or prior to the date of this Agreement and the payment of all charges and premiums therefor. Substitute maintenance may be used if necessary and if first approved by Lessor in writing. Upon the early termination of this Agreement pursuant to Section 12.2, Lessee shall return the Equipment at its sole expense to Lessor at a place designated by Lessor in the same condition as originally received, ordinary wear and tear excepted, and in a condition which will permit the Lessor to be eligible for such standard maintenance contract without incurring any expense to repair or rehabilitate the Equipment.

6.2 Inspection. Lessor shall have the right upon reasonable prior notice to Lessee to enter onto and upon the premises where the Equipment is located to inspect the Equipment and observe its use during normal business hours.

6.3 Utilities. Lessee shall pay all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility service furnished to or used on or connection with the Equipment during the Lease Term. There shall be no abatement of Rental Payments on account of interruption of any such services.

6.4 Taxes. Lessee agrees to pay when due any and all taxes relating to the Equipment and Lessee's obligations hereunder, including but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes licenses and charges imposed on the ownership, possession or use of the Equipment by any governmental body or agency, together with any interest and penalties, whether the taxes assessed are assessed against Lessor or Lessee, other than taxes on or measured by the net income of Lessor.

6.5 Alterations. Without the prior written consent of Lessor, which consent shall not be unreasonably withheld, Lessee shall not make any alterations, modifications or attachments to the Equipment which cannot be removed without materially damaging the functional capabilities or economic value of the Equipment. Upon return of the Equipment and at Lessor's request, Lessee at its sole cost and expense, will remove all alterations, additions and attachments and repair the Equipment as necessary to return the Equipment to the condition in which it was furnished, ordinary wear and tear excepted.

6.6 Transportation and Installation Charges. Lessee shall be responsible for all charges relating to the transportation of the Equipment to Lessee's location and the installation at such location. Lessor may at its option either prepay such charges and invoice Lessee or forward invoices to Lessee as they are received and Lessee shall remit payment within ten (10) days upon Lessee's receipt of same.

6.7 Insurance. Lessee shall during each Lease Term maintain or cause to be maintained (a) casualty insurance naming the Lessor and its assigns as additional insured and 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 Purchase Price of the Equipment and with such deductibles as Lessor may require in its sole discretion; (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor; and (c) worker's compensation coverage as required by the laws of the State; *provided* that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clause (a). Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout each 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.

6.8 Risk of Loss. Lessee shall bear all risk of loss to the Equipment, after delivery of the Equipment to Lessee, and in the event of loss or damage thereto, Lessee shall as its option either (i) continue to make the Rental Payments due hereunder and repair or replace the Equipment as mutually agreed between Lessee and Lessor, or (ii) purchase the Equipment for the Purchase Price.

6.9 Performance by Lessor of Lessee's Responsibilities. Any performance required of Lessee or any payments required to be made by Lessee may, if not timely performed or paid, be performed or paid by Lessor, and in that event, Lessor shall be immediately reimbursed as Additional Rents payable under Section 4.7 by Lessee for such payments and for any costs and expense, legal or otherwise associated with the payments or other performance by Lessor, with interest per annum thereon at the maximum rate for governmental obligations under Chapter 1204, Texas Government Code, as amended, or other applicable laws in effect as of the date such Additional Rents are incurred.

6.10 Financial Statements. Lessee shall keep its books and records in accordance with generally accepted accounting principles. Lessee agrees that it will furnish Lessor: (a) Lessee's current audited financial statements within 180 days of each fiscal year end including (i) a balance sheet, (ii) statement of revenues, expenses and changes in fund balances, (iii) statement of cash flows, (iv) operating fund budget analysis, and (v) appropriate notes, schedules and attachments to the financial statements; (b) within 90 days of each fiscal year end a copy of the annual budget for the then current fiscal year; and (c) such other financial information relating to the ability of the Lessee to continue performing hereunder (as submitted or approved) and permit Lessor or its agents and representatives to inspect Lessee's books and records and make extracts therefrom. Lessee represents and warrants to Lessor that all financial statements which have been delivered to Lessor fairly and accurately reflect Lessee's financial condition and there has been no material adverse change in Lessee's financial condition as reflected in the statements since the date thereof.

6.11 No Pledge or Sale of Assets; Contingent Liabilities. During the term of this Agreement and any Schedule A hereunder, Lessee shall not (a) pledge or mortgage any of Lessee's assets without the prior written consent of Lessor except in the ordinary course of Lessee's business; (b) sell assets of more than \$100,000 per fiscal year outside the ordinary course of Lessee's business without the prior written consent of Lessor; and (c) within fifteen (15) days of actual knowledge shall inform Lessor in writing of actual or potential contingent liabilities in excess of \$1,000,000 which have not been previously disclosed to Lessor or disclosed on Lessee's financial statement.

6.12 Payment of Expenses. Lessee shall be obligated to pay all reasonable legal and recording expenses of Lessor associated with the preparation and enforcement of this Agreement and any Schedule A hereunder.

6.13 Purchase Agreement; Installation Contract. Lessee shall provide to Lessor a copy of any Purchase Agreement, installation contract and the projected installation schedule and any amendments thereto entered into for the Equipment being financed pursuant to this Agreement.

6.14 Advances. In the event Lessee shall fail to keep the Equipment in good repair and working order, Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the costs thereof. All amounts so advanced by Lessor shall constitute Additional Rent for the Lease Term and Lessee agrees to pay such amounts so advanced by Lessor with interest thereon from the date of the advance until paid at the maximum interest rate allowed under Chapter 1204, Texas Government Code, as amended.

6.15 Rates and Charges. Lessee will, at all times while this Agreement and any Schedule A issued hereunder are outstanding, establish, fix, prescribe and collect rates and charges for the services produced or furnished by Lessee which are reasonably expected to yield income sufficient to satisfy the Rental Payments due thereunder.

SECTION 7. DAMAGE, DESTRUCTION AND CONDEMNATION

7.1 Damage, Destruction and Condemnation. Unless the Lessee shall have exercised its option to purchase the Equipment by making payment of the Purchase Price as provided in this Agreement and the related Schedule A, if, prior to the termination of the applicable 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, Lessee and Lessor will cause the Net Proceeds (as hereinafter defined) 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. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

Notwithstanding the foregoing, Lessee may elect to replace the Equipment. If the Lessee elects to replace any item of the Equipment (the "*Replaced Equipment*") pursuant to this Section, the replacement equipment (the "*Replacement Equipment*") shall be of similar type, utility and condition to the Replaced Equipment and shall be of equal or greater value than the Replaced Equipment. The 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 the Lessor, and shall provide to the Lessor any and all documents as the 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. The Lessor and the Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement and the related Schedule A. Lessee shall notify Lessor as soon as possible of its election to replace Equipment in accordance with the foregoing, and in any event, 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 the purchase option with respect to the damaged Equipment.

For purposes of this Section, 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.

7.2 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 7.1, 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 the Lessor the amount of the Purchase Price for the Equipment, and, upon such payment, the applicable Lease Term shall terminate and the Lessor's security interest in the Equipment shall terminate as provided in Section 3 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing such Equipment and such other Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Section 4 hereof.

SECTION 8. TITLE TO EQUIPMENT; SECURITY INTEREST

8.1 Title. During the Lease Term, legal title to the Equipment governed by Schedule A shall, so long as Lessee is not in default under such Schedule A and hereunder, be in Lessee. The Equipment shall be registered in the name of Lessee and, if applicable, title thereto shall be evidenced by a certificate of title, or such other instrument as may be required by or utilized by the laws of the State to demonstrate ownership. Such certificate shall be held at all times during the term of this Agreement by Lessor and shall expressly state thereon that (a) Lessor holds a lien on the Equipment (Lessor's name and address shall appear on such certificate as "Compass Mortgage Corporation, an Alabama corporation, 695 Sunland Park Drive, El Paso, Texas 79912"), (b) Lessee's possession of the Equipment is subject to this Agreement, and (c) any other information required by applicable law and that may be necessary or convenient, as determined by Lessor, to establish Lessor's rights, title and interest as the first secured lienholder of the Equipment. Lessee shall at all times protect and defend, at its own cost and expense, its title to the Equipment from and against all claims, liens and legal processes of creditors of Lessee, and keep all Equipment free and clear of all such claims, liens and processes. The Equipment is and shall remain personal property. Upon the occurrence of an Event of Default under this Agreement or upon the termination of this Agreement, other than pursuant to Sections 3.2(b), 3.2(d) or 6.8 hereof, and Lessor's termination thereof (i) full and unencumbered legal title to the Equipment shall pass and revert to Lessor and Lessee shall have no further interest therein; (ii) Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of Lessee's title and interest therein; and (iii) upon request by Lessor, Lessee shall deliver possession of the Equipment to Lessor. Upon termination pursuant to Sections 3.2(b), 3.2(d) or 6.8 hereof, full and unconditional title to the applicable Equipment shall pass to Lessee, and Lessor's security interest in the applicable Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security or other interest in such Equipment.

8.2 Security Agreement. Anything in Section 8.1 hereof to the contrary notwithstanding, Lessee hereby grants to Lessor, as security for all of the obligations of Lessee hereunder, a security interest in any and all of Lessee's right, title and interests in and to this Agreement the Equipment, all additions, attachments, accessions, substitutions and replacements thereto, and Rental Payments due or to become due hereunder, and any and all proceeds thereof, including without limitation, the proceeds of insurance thereon. The Lessee agrees to execute and deliver all documents, instruments and financing statements necessary or appropriate to perfect or maintain the security interest granted hereby. At the request of Lessor, Lessee will keep and maintain a conspicuous marking or tag on the Equipment that a security interest therein is held by Lessor. It is the intention of the parties hereto that the relationship between such parties created herein is that the Lessor be the equivalent of a secured party under Article 9 of the UCC as in effect from time to time and that the Lessor be the equivalent of a debtor under such Article 9. To that end, the parties hereto agree that this Agreement shall be governed by Article 9 as if such Article 9 were applicable hereto and that the Lessor and Lessee have the rights and obligations of a secured party and debtor, respectively, under such Article 9.

8.3 Personal Property. The Equipment is, and shall at all times be and remain, personal property notwithstanding that the Equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to, or embedded in, or permanently resting upon, real property or any building thereon or any fixtures, or attached in any manner to what is permanent by any means of cement, plaster, nails, bolts, screws or otherwise. Upon request of Lessor, Lessee shall obtain, as to any place where the Equipment is located, a waiver from the landlord and mortgagee thereof with respect to any rights they may have in and to the Equipment of the rights of levy or distraint thereon.

8.4 Liens. Lessee shall not directly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or claim on or with respect to the Equipment or any interest therein, except for the lien and security interest of Lessor therein. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time.

8.5 Inspection, Acceptance and Written Notice of Defects. Immediately, or as soon as practicable to provide time for testing, upon receipt and installation of the Equipment, Lessee shall inspect the Equipment. Unless Lessee gives Lessor written notice of each defect or other proper objection to the Equipment before the execution of the Acceptance Certificate, it shall be conclusively presumed, as between Lessor and Lessee, that the Lessee has fully inspected and acknowledged that the Equipment is in good condition and repair, has been properly installed and is performing satisfactorily, and that the Lessee is satisfied with and has accepted the Equipment in such good condition and repair. Lessor shall not make or provide payment to any Vendor (or reimbursement to Lessee pursuant to the requirements of Section 9.2(f) hereof) of the Total Contract Price, or any portion thereof, for the Equipment, or any portion thereof, until Lessor shall have received a duly executed Acceptance Certificate of lessee in accordance with Section 14.3 hereof.

8.6 Change in Name, Corporate Structure or Principal Place of Business. Lessee shall maintain its existence as a political subdivision of the State and Lessee shall provide to Lessor written notice of any change in its name, structure, or principal place of business thirty (30) days in advance of the date that such change is planned to take effect. This Section shall also apply to any of Lessee's assignees or subassignees permitted under Section 13.1 hereof.

8.7 Location. The Equipment shall be located in the place(s) designated in the related Schedule A pertaining thereto.

SECTION 9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF LESSEE

9.1 Lessee's Representations, Warranties and Covenants. Lessee warrants and represents to Lessor (all such representations and warranties being continuing), as follows:

(a) Lessee has or will budget and appropriate for the initial fiscal year during the Lease Term of this Agreement unobligated funds in an amount equal to the sum of the Rental Payments due during such initial fiscal year and any other amounts due under this Agreement;

(b) Lessee is a state or a duly organized and validly existing body corporate and politic and a political subdivision or agency thereof within the meaning of section 103 of the Internal Revenue Code of 1986, as amended, and the related regulations and rulings thereunder (the "Code");

(c) Lessee will exercise its best efforts to preserve and keep in full force and effect its existence as a body corporate and politic;

(d) Lessee is authorized under the Act and laws of the State to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder;

(e) Lessee has duly authorized the execution and delivery of this Agreement under the terms and provisions of the resolution of its City Council or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement against Lessee, and that this Agreement is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms, except to the extent limited by bankruptcy, reorganization or other laws of general application relating to effecting the enforcement of creditors' rights, and acknowledges that Lessee has granted to Lessor a security interest in the Equipment; and that Lessee has complied with any applicable public bidding/proposal requirements with respect to this Agreement and the Equipment;

(f) Lessee is not in breach of or in default under any constitutional provision, applicable law or administrative rule or regulation of the State, the United States, or of any department, division, agency or instrumentality of either thereof or any applicable court or administrative decree or order, or any loan agreement, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the Lessee is a party or to which the Lessee or any property or assets of the Lessee is otherwise subject or bound which in any material way, directly or indirectly, affects the Lessee's entering into this Agreement, or the validity thereof, the validity or adoption of the resolution authorizing Lessee to enter into this Agreement, the execution and delivery of this Agreement or other instruments contemplated thereby to which the Lessee is a party, and compliance with the provisions of each thereof will not conflict with or constitute a breach of or default under any constitutional provision, applicable law or administrative rule or regulation of the State, the United States, or of any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order, or any loan agreement, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the Lessee is a party or to which the Lessee or any of the property or assets of the Lessee is otherwise subject or bound;

(g) Lessee shall cause to be executed and delivered in connection with each Schedule A an opinion of its counsel and an applicable IRS Form 8038-G (or, if the Total Contract Price of the Equipment is less than \$100,000 an IRS Form 8038-GC) in form and substance satisfactory to Lessor and its counsel; provided, however, that Lessor shall have the sole responsibility to cause such IRS Form 8038-G (or, if applicable, IRS Form 8038-GC) to be filed with the Internal Revenue Service not later than the fifteenth (15th) day of the second month following the end of the calendar quarter during which this Agreement and any Schedule A hereunder was issued;

(h) The Equipment is, and during the period this Agreement is in force will remain, personal property and, when subjected to use by Lessee hereunder, will not be or become fixtures;

(i) During the Lease Term, except as otherwise permitted by this Agreement, the Equipment shall be used by Lessee only for the purpose of performing services related to its status as a political subdivision of the State, and consistent with the permissible scope of Lessee's authority and will not be used in an unrelated trade or business of Lessee or in the trade or business of any person or entity other than Lessee;

(j) Lessee assumes full responsibility for the safety and any consequences of lack of safety with respect to the operation and maintenance of the Equipment while Lessee has the right to possession or control of the Equipment;

(k) Lessee acknowledges that Lessor is acting as a financing source only with respect to the Equipment which has been selected, and the related specifications developed, by Lessee;

(l) Lessee shall promptly and duly execute and deliver to Lessor such further documents, instruments and assurances and take such further action as Lessor may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and any Schedule A hereunder and to establish and protect the

rights and remedies created or intended to be created in favor of Lessor hereunder. Lessor will prepare at Lessee's expense such documents or instruments for execution by Lessee;

(m) Lessee will use its best efforts to budget and appropriate for each fiscal year during the Lease Term of this Agreement unobligated funds in an amount equal to the sum of the Rental Payments due during such fiscal year and any other amounts due under this Agreement;

(n) Lessee's obligations under this Agreement are obligations payable from Lessee's budget and are obligations of the general fund;

(o) The payment of the Rental Payments or any portion thereof is not (under the terms of any lease or any underlying arrangement) directly or indirectly (i) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local government unit or payments in respect of such property; or (ii) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local government unit. No portion of the Contract Price for the Equipment 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; and

(p) The representations above shall be deemed to be made on and as of the beginning date of the Original Lease Term and each Renewal Lease Term, if any, of each Schedule A hereunder.

9.2 Tax Matters.

(a) It is the intention of the parties hereto that the interest portion of the Rental Payments received by Lessor under this Agreement and any Schedule A hereunder be and remain excludable from gross income for purposes of federal income taxation.

(b) The Lessee covenants that, with respect to the law of federal income taxation, it will not intentionally perform any act that shall have the effect of terminating such exclusion from gross income of the interest portion of the Rental Payments for federal income tax purposes.

(c) It is the intention of the parties hereto that during the term of this Agreement, Lessee be the sole beneficial and legal owner of the Equipment, and will report on such basis for financial accounting, federal income tax, and all other purposes. Lessor shall not take any action inconsistent with Lessee's ownership of the Equipment for federal income tax purposes except pursuant to the exercise of remedies under Section 12.2 hereof.

(d) The weighted average maturity (defined in accordance with the Code) of any Schedule A will not exceed one hundred twenty percent (120%) of the weighted average reasonably expected economic life in the hands of the Lessee of the Equipment financed by Lease Proceeds derived from such Schedule A.

(e) Lessee will not use the proceeds of any Schedule A under this Agreement to reimburse expenditures previously paid by Lessee, except in compliance with the requirements of Treas. Reg. 1.150-2.

(f) Lessee will assure that the proceeds of any Schedule A under this Agreement are not so used as to cause this Agreement and any Schedule A hereunder to satisfy the private loan financing test of section 141(c) of the Code.

(g) Lessee will not take or permit or suffer to be taken any action to be taken if the result of the same would be to cause this Agreement and any Schedule A hereunder to be "*federally guaranteed*" within the meaning of section 149(b) of the Code.

(h) Lessee will not take, or permit or suffer to be taken, any action with respect to the Lease Proceeds which, if such action had reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of this Agreement would have caused this Agreement and any Schedule A hereunder to be an "*arbitrage bond*" within the meaning of section 148 of the Code.

(i) If the Lease Proceeds of any Schedule A under this Agreement (i) have all been expended on the date hereof for the purpose set forth herein, or (ii) do not exceed \$1,000,000.00, Lessee shall not be required to provide an issuer's certification pursuant to Treasury Regulation 1.148-2(b)(2)(ii)(A) or (B), respectively.

(j) In the event that Lessee does not spend the moneys in the Equipment Acquisition Account within six (6) months of the date the deposit is made pursuant to Section 14.2 hereof, Lessee will, if required by section 148(f) of the Code to pay rebate: (i) establish a Rebate Account and deposit the Rebate Amount (as defined in Section 1.148-3(b) of the Federal Income Tax Regulations) not less frequently than once per year after the Lease Commencement Date; (ii) shall rebate to the United States, not less frequently than once every five (5) years after the Lease Commencement Date, an amount equal to at least 90% of the Rebate Amount and within 60 days after payment of all Rental Payments or the optional prepayment price calculated pursuant to Section 5.2 hereof (the "Optional Prepayment Price") 100% of the Rebate Amount, as required by the Code and any regulations promulgated thereunder. Lessee shall determine the Rebate Amount, if any, at least every year and upon payment of all Rental Payments or the Optional Prepayment Price and shall maintain such determination, together with any supporting documentation required to calculate the Rebate Amount, until six (6) years after the date of the final payment of the Rental Payments or the Optional Prepayment Price.

(k) The Lessor will provide calculations for the arbitrage yield and the weighted average maturity with respect to the Agreement and any Schedule A hereunder. However, notwithstanding the foregoing, the Lessee acknowledges that the Lessor is not an accountant, or an actuary, nor is the Lessor engaged in the practice of law. Accordingly, while the Lessor will provide the calculations described above that it believes to be correct, it does not warrant them to be so. The Lessor expresses no view regarding the legal sufficiency of any such computations or the correctness of any legal interpretation made by the Lessee or its Bond Counsel.

(l) The representations above shall be deemed to be made on and as of the beginning date of the Original Lease Term and each Renewal Lease Term, if any, of each Schedule A hereunder.

SECTION 10. INDEMNIFICATION

TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS OF THE STATE, LESSEE HEREBY AGREES TO INDEMNIFY, PROTECT, AND SAVE LESSOR HARMLESS FROM ALL LIABILITY, OBLIGATIONS, LOSSES, CLAIMS, DAMAGES, ACTIONS, SUITS, PROCEEDINGS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF, CONNECTED WITH, OR RESULTING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT AND THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, THE MANUFACTURE, SELECTION, DELIVERY, POSSESSION, CONDITION, LEASE, USE, OPERATION OR RETURN OF THE EQUIPMENT. NOTWITHSTANDING ANYTHING STATED IN SECTION 3 HEREOF OR IN ANY OTHER PROVISION HEREOF, THE INDEMNIFICATION ARISING UNDER THIS SECTION SHALL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THE FULL PAYMENT OF ALL OBLIGATIONS UNDER THIS AGREEMENT OR ANY SCHEDULE A HEREAFTER.

SECTION 11. DISCLAIMER OF WARRANTIES

11.1 Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY OF MATERIALS OR WORKMANSHIP, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, USE OR OPERATION, SAFETY, PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, TITLE OR FITNESS FOR USE OF THE EQUIPMENT, OR ANY COMPONENT THEREOF OR ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT THERETO AND, AS TO LESSOR, LESSEE'S LEASE AND PURCHASE OF THE EQUIPMENT SHALL BE ON AN "AS IS" BASIS. All such risks, as between Lessor and Lessee, are to be borne by Lessee. Without limiting the foregoing Lessor shall have no responsibility or liability to Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by the Equipment, any inadequacy thereof, any deficiency or defect (latent or otherwise) therein, or any other circumstances in connection therewith; (ii) the use, operation or performance of the Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of the Equipment. If, and so long as, no default exists under this Agreement and the related Schedule A, Lessee shall be, and hereby is, authorized during the term of such Schedule A to assert and enforce, at Lessee's sole cost and expense, from time to time, in the name of and for the account of Lessor and/or Lessee, as their interests may appear, whatever claims and rights Lessee or

Lessor may have against the Vendor or any prior title holder or possessor of the Equipment. In no event shall Lessor be liable for any loss or damage in connection with or arising out of this Agreement, any Schedule A, the Equipment, or the existence, furnishing, functioning or Lessee's use of any item or products or services provided for in this Agreement.

11.2 Vendor's Warranties. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights including warranties of the Equipment which Lessor may have against the Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment and any other entities involved in the chain of production and distribution of the Equipment, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments under this Agreement. **LESSEE EXPRESSLY ACKNOWLEDGES THAT IN LESSOR'S CAPACITY AS LESSOR HEREUNDER, LESSOR MAKES, AND HAS MADE HEREUNDER, NO REPRESENTATION OR WARRANTY WHATSOEVER AS TO THE EXISTENCE OR AVAILABILITY OF SUCH WARRANTIES OF THE VENDOR OF THE EQUIPMENT.**

SECTION 12. DEFAULT AND REMEDIES

12.1 Definition of Default. Lessee shall be deemed to be in default hereunder upon the happening of any of the following events of default ("*Events of Default*"):

(a) Lessee shall fail to make any Rental Payment or any other sum when due or within ten (10) days thereafter or shall fail to perform or observe any term or condition or covenant of this Agreement or any Schedule A hereto; or

(b) Proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted by or against Lessee, or a receiver, custodian or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within twenty (20) days after the institution or occurrence thereof; or

(c) Any representation, warranty or covenant made by Lessee is found to be incorrect or misleading in any material respect on the date made; or

(d) An attachment, levy or execution is levied upon or against the Equipment; or

(e) Any insurance carrier cancels any insurance on the Equipment without Lessee first providing replacement coverage; or

(f) The Equipment or any part thereof is abused, illegally used, misused, lost, destroyed or damaged beyond repair; or

(g) Lessee sells, assigns, subleases, or otherwise transfers or encumbers all or any part of its interest in this Agreement or the Equipment without Lessor's prior written consent; or

(h) Lessee shall fail to satisfy any of Lessee's bond indebtedness or other material debt obligation when required under the instruments evidencing such obligations unless Lessee demonstrates in writing an adequate justification for its failure to satisfy the bond indebtedness or other material credit obligation.

12.2 Remedies on Default. Upon the occurrence of any Event of Default, Lessor may exercise any one or more of the following remedies as Lessor in its sole discretion shall elect:

(a) Proceed by appropriate court action to enforce performance by Lessee of the applicable covenants of this Agreement or to recover for the breach thereof including the payment of Rental Payments due or to become due hereunder or any deficiency thereof following disposition of the Equipment;

(b) With or without terminating this Agreement, enter and take possession of the Equipment wherever situated, without any court order or other process of law and without liability for entering the premises,

and sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of Lessee, and apply the proceeds of any such sale, lease, sublease, or other disposition, after deducting all costs and expenses, including court costs and attorney's fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition costs, toward the balance due under this Agreement;

(c) Terminate this Agreement as to all or any part of the Equipment and use, operate, lease or hold the Equipment as Lessor in its sole discretion may decide;

(d) Require Lessee to deliver or assemble the Equipment at a place reasonably convenient to Lessee and use or operate the Equipment for the purpose of preserving it;

(e) Proceed by appropriate court action to enforce performance by Lessee of the applicable covenants of this Agreement or to recover for the breach thereof, including the payment of all amounts due from Lessee, in which event Lessee shall pay or repay to Lessor all costs of such action or court action including without limitation, reasonable attorneys' fees and expenses; and/or

(f) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights with respect to the Equipment, in which event Lessee shall pay or repay to Lessor all costs of such action or court action, including, without limitation, reasonable attorneys' fees and disbursements.

12.3 Further Remedies; No Remedy Exclusive. A termination hereunder shall occur only upon notice by Lessor to Lessee and only with respect to such part of the Equipment as Lessor specifically elects to terminate in such notice. Except as to those parts of the Equipment with respect to which there is a termination, this Agreement shall remain in full force and effect and Lessee shall be and remain liable for the full performance of all its obligations hereunder. All remedies of the Lessor are cumulative and may be exercised concurrently or separately and shall survive the termination of this Agreement. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

12.4 Return of Equipment. If an Event of Default has occurred and is continuing, Lessee shall allow Lessor to recover the Equipment at a place reasonably convenient to Lessor at Lessee's sole cost and expense, including, without limitation, all costs of transportation. The cost of all transportation of Equipment of any nature prior to the expiration or prior termination of an Agreement will be at Lessee's sole expense. In the event that Lessee makes modifications to a site after any Equipment has been installed therein and such modifications impede the removal of the Equipment, the cost of removing the impediments and restoring the site shall be the sole expense of Lessee.

SECTION 13. ASSIGNMENT, SUBLEASING AND SELLING

13.1 No Sale, Assignment or Subleasing by Lessee. Lessee agrees not to sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Agreement or the Equipment (except for the lien and security interest of Lessor therein) or to remove the Equipment from its place of installation without Lessor's prior written consent which shall not be unreasonably withheld.

13.2 Assignment by Lessor. Lessor's right, title and interest in and to Rental Payments and any other amounts payable by Lessee under this Agreement and any Schedule A, its security interest in the Equipment subject to each such Schedule A, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees by Lessor, without the necessity of obtaining the consent of Lessee; provided, however, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made with notice to Lessee and in a manner that conforms to any applicable State law. Nothing in this Section shall be construed, however, to prevent Lessor from executing any such assignment, transfer, or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust, interests in which are offered and sold in a private placement or limited offering only to investors whom Lessor reasonably believes are qualified institutional buyers or accredited investors within the meaning of the applicable federal securities law; provided further, however, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under a lease with or to more than one individual or entity. No assignment, transfer or conveyance permitted by this Section shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; provided, however, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of

certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement and any Schedule A, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. Assignments in part may include, without limitation, assignment of all of Lessor's security interest in and to the Equipment listed in a particular Schedule A and all rights in, to and under the Schedule A related to such Equipment. The option granted in this Section may be separately exercised from time to time with respect to the Equipment listed in each Schedule A, but such option does not permit the assignment of less than all of Lessor's interests in the Equipment listed in a single Schedule A.

SECTION 14. APPLICATION OF LEASE PROCEEDS; ACCEPTANCE

14.1 Application of Lease Proceeds. At the Closing of each Schedule A hereunder, Lessor shall pay or provide the Lease Proceeds in the amount and to the Lessee for deposit into the Equipment Acquisition Account.

14.2 Equipment Acquisition Account. Lessor and Lessee agree that in order to ensure that moneys sufficient to pay the Total Contract Price of the Equipment under any Schedule A hereto will be available for the purpose of acquiring such Equipment when required, on or before the Lease Term Commencement Date, Lessor shall deposit or cause to be deposited into the Equipment Acquisition Account hereby established by Lessee, [or established pursuant to the Acquisition Fund Agreement executed in connection herewith] the sum set forth on such Schedule A. The moneys on hand from time to time in the Equipment Acquisition Account shall be held by the Lessor in trust for the benefit of Lessee and Lessor. Pending payment of the Total Contract Price or any portion thereof, such moneys held in the Equipment Acquisition Account may be invested by Lessor at the written direction of Lessee in Permitted Investments. Any balance remaining in the Equipment Acquisition Account after disbursement of the Total Contract Price shall be applied as a prepayment to the Rental Payments.

14.3 Completion of Acquisition of the Equipment. Lessee shall cause the Equipment to be acquired and installed free of any liens or claims of others except for this Agreement. Completion of the acquisition and installation of the Equipment identified by a particular Schedule A shall be evidenced by Lessee's filing with Lessor an Acceptance Certificate. Lessor shall and is hereby directed by Lessee to disburse Lease Proceeds from the Equipment Acquisition Account to pay the Vendor the purchase price, or any portion thereof, for the Equipment, or any portion thereof, only upon the receipt by Lessor of a fully executed Acceptance Certificate of Lessee. At such time, Lessee and Lessor shall execute and deliver such documents or assurances, including UCC filings or amendments thereto, as may be necessary to reflect accurately the items of Equipment financed by the Lease Proceeds derived from such Schedule A.

SECTION 15. TERMINATION ON ACCOUNT OF NON-APPROPRIATION OF FUNDS

15.1 Lessee's Termination. Notwithstanding any contrary provision in this Agreement, Lessee shall be deemed to have elected not to renew this Agreement and a Schedule A hereunder as to all (but not less than all) of the Equipment that is the subject of this Agreement pursuant to such Schedule A, and this Agreement and related Schedule A shall terminate as of the end of the fiscal year, if all the following events shall have occurred:

(a) Funds were not appropriated for the next succeeding fiscal year during the term of this Agreement in an amount equal to the sum of the Rental Payments due during such fiscal year; and

(b) Written notice thereof was given to Lessor at least ninety (90) days prior to the end of the Original Lease Term or the then current Renewal Lease Term, as the case may be;

15.2 Return of Equipment upon Termination. If this Agreement is terminated because of non-appropriation of funds in accordance with the provisions of this Section, Lessee shall return the Equipment to Lessor at Lessee's sole cost and expense, together with such documents and assurances as Lessor may reasonably request, and thereupon, any and all interest Lessee may have in the Equipment shall immediately revert to Lessor, without any further act of conveyance, free and clear of any right, title or interest of Lessee unless Lessor elects otherwise, and all payment obligations of Lessee as to such Schedule A shall cease.

15.3 Termination Fee. To the extent permitted by Texas law and subject to Lessee's prior appropriation thereof in connection with the appropriation of the Rental Payments for the current fiscal year, if this Agreement and any related Schedule A hereunder is terminated pursuant to Lessee's exercise of its option not to renew as provided in Section 3.4 and Section 15.1 hereof, Lessee shall pay Lessor as a termination fee an amount equal to the sum of one (1) year's Rental Payments.

15.4 Restrictions Triggered by Termination. To the extent permitted by applicable law, if Lessee terminates this Agreement because of non-appropriation of funds in accordance with the provisions of this Section, Lessee agrees not to purchase, lease or rent equipment performing functions similar to those performed by the Equipment and agrees not to permit functions similar to those performed through the use of the Equipment to be performed by its own employees or by an agency or entity affiliated with or hired by Lessee for a period of one year or until the expiration of the full Lease Term of this Agreement, whichever period is lesser. These restrictions shall not be applicable in the event the Equipment shall be liquidated by Lessor and Lessee shall pay to Lessor an amount equal to the then total remaining Rental Payments less any amount received by Lessor from the sale or the disposition of the Equipment after deducting reasonable expenses of the sale or disposition thereof.

SECTION 16. MISCELLANEOUS

16.1 Waiver. No covenant or condition of this Agreement can be waived except by the written consent of Lessor. Any failure of Lessor to require strict performance by Lessee or any waiver by Lessor of any terms, covenants or agreements herein shall not be construed as a waiver of any other breach of the same or of any other term, covenant or agreement herein.

16.2 Severability. In the event any portion of this Agreement shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Agreement shall continue in full force and effect.

16.3 Governing Law and Venue. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State. Venue for any legal proceeding relating to this Agreement shall lie in El Paso County, Texas.

16.4 Notice. All notices made or required to be given pursuant to this Agreement shall be in writing and shall be deemed duly served if and when mailed, certified or registered mail, postage prepaid, return receipt requested, to the other party at its address set forth in each related Schedule A hereunder or at such other address as such party shall hereafter designate in writing.

16.5 Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

16.6 Counterparts. This Agreement may be executed in several counterparts each of which shall be regarded as an original (with the same effect as if the signatures thereto and hereto were upon the same document) and all of which shall constitute one and the same document.

16.7 Entire Agreement. This Agreement, together with the schedules hereto, constitutes the entire agreement between the parties and this Agreement shall not be modified, amended, altered or changed except by written agreement signed by the parties.

16.8 Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

16.9 Time. Time is of the essence of this Agreement and each and all of its schedules and provisions.

16.10 Notice of Final Agreement. **THIS WRITTEN AGREEMENT AND ANY OTHER DOCUMENTS EXECUTED IN CONNECTION HERewith REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NOT UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LESSEE:

LESSOR:

CITY OF EL PASO, TEXAS

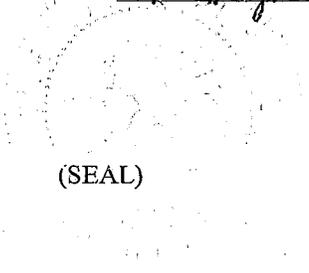
COMPASS MORTGAGE CORPORATION,
an Alabama corporation,

By: Joyce A. Wilson
Joyce A. Wilson
City Manager

By: _____
Name: _____
Title: _____

ATTEST:

By: Richard D. Dyer
Name: Richard D. Dyer
Title: Municipal Clerk



(SEAL)

APPROVED AS TO CONTENT:

By: Carmen Arrieta-Candelaria
Carmen Arrieta- Candelaria
Chief Financial Officer
City of El Paso, Texas

APPROVED AS TO FORM:

By: Bertue A. Ontiveros
Bertue A. Ontiveros
Assistant City Attorney

By: Paul A. Braden
Paul A. Braden
Attorney for the City

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LESSEE:

CITY OF EL PASO, TEXAS

LESSOR:

COMPASS MORTGAGE CORPORATION,
an Alabama corporation,

By: _____
Joyce A. Wilson
City Manager

By: James D. Manning
Name: James D. Manning
Title: VP

ATTEST:

By: _____
Name: _____
Title: _____

(SEAL)

APPROVED AS TO CONTENT:

By: _____
Carmen Arrieta- Candelaria
Chief Financial Officer
City of El Paso, Texas

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

By: _____
Paul A. Braden
Attorney for the City

EXHIBIT A TO MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

[The following Exhibit A and Attachments A through K are Forms of Schedule A No. [] and Attachments A through K that are to be completed and delivered in connection with each Schedule]

FORM OF

SCHEDULE A No. []
TO MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT
by and between
COMPASS MORTGAGE CORPORATION, AN ALABAMA CORPORATION,
as Lessor
and
CITY OF EL PASO, TEXAS
as Lessee

Dated as of _____, 20__

THIS SCHEDULE A No. [] ("Schedule A") to the MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT identified above (the "Master Lease") is entered into as of this _____, 20__, by and among COMPASS MORTGAGE CORPORATION, an Alabama corporation, as lessor ("Lessor") and CITY OF EL PASO, TEXAS, as lessee ("Lessee"). All of the provisions of the Master Lease are incorporated herein by reference and capitalized terms used herein and not defined shall have the meanings assigned them in the Master Lease.

- 1. The Master Lease and this Schedule A No. [] jointly constitute an Agreement (this "Agreement"). Lessor hereby leases and lets to Lessee, Lessee leases and hires from Lessor, subject to the provisions of the Agreement, the Equipment identified below:

Table with 3 columns: Item (Quantity), Description, Make, Model, Total Contract Price. Content: [see attached]

As of the date of this Schedule A No. [], Lessee has not taken possession of any of the Equipment shown above. It is expected that by six (6) months from the date of this Schedule No. [], Lessee will have taken possession of all items shown above and that a Lessee's Acceptance Certificate, or Acceptance Certificates, will be signed by Lessee and delivered to Lessor on or before six (6) months from the date of this Schedule No. [].

- 2. Lessee hereby certifies that the description of the Equipment set forth above is accurate and reasonably identifies it for UCC purposes. The Equipment identified in item 1 above shall be located at:

Street Address City County State Zip Code

- 3. The following terms are applicable to the lease/purchase of the Equipment set forth in this Schedule A No. []:

(a) Lease Term Commencement Date: The date of execution and delivery of this Schedule A No. [], including all attachments thereto, and the satisfaction of all conditions of the Master Lease.

(b) Original Lease Term: The period beginning with the Lease Term Commencement Date and ending with the last business day of Lessee's current fiscal budget period.

(c) Lease Term Interest Rate: _____%

Exhibit A to Master Equipment Lease Purchase Agreement
Schedule A

- (d) Lessee's Fiscal Year End: August 31
- (e) Lessee's Appropriation Period: September 1 to August 31
- (f) Maximum Amount: The amount equal to \$_____.
- (g) Number of Renewal Lease Terms: _____.

4. The Lease Proceeds which Lessor shall pay or provide to Lessee in connection with this Schedule A No. [] is \$_____ of which _____ is for payment of the costs of issuing this Schedule A No. []. Such Lease Proceeds shall be deposited into the Equipment Acquisition Account and disbursed for payments of the Total Contract Price of the Equipment, or portions thereof, upon receipt by Lessor of an Acceptance Certificate, or Acceptance Certificates, executed by Lessee.
5. Interest on the Lease Proceeds shall accrue from the date hereof and the payment dates and Rental Payment amounts (including the principal and interest components thereof) are as follows:

AMORTIZATION SCHEDULE

<u>Payment</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
<u>No.</u>	<u>Date</u>	<u>Component</u>	<u>Component</u>	<u>Rental</u>
				<u>Payment</u>
		\$	\$	\$

[Lessor and Lessee acknowledge and agree that as of the date hereof Lessee has prepaid, and Lessor has received and properly credited said prepayment against, the Rental Payment(s) identified above as due on _____.]

NOTE: Amortization Schedule may be attached as Exhibit A to final Schedule A No. [].

6. Until Lessee receives written notification to the contrary, all payments due under the Master Lease and this Schedule A No. [], including but not limited to Rental Payments, are to be paid to and all notices are to be sent to the following respective addresses:

The address for notices is: Compass Mortgage Corporation, an Alabama corporation
695 Sunland Park Drive
El Paso, Texas 79912
Attention: Mr. Steve Apodaca

City of El Paso, Texas
#2 Civic Center Plaza, 7th Floor
El Paso, Texas 79901
Attention: Chief Financial Officer

The address for payments is: Compass Mortgage Corporation, an Alabama corporation
695 Sunland Park Drive
El Paso, Texas 79912

7. Lessee further represents, covenants and warrants that it will not take, cause to be taken or fail to take any action which will cause the interest component of any Rental Payments to be or become subject to federal income taxation under the Code and that all of its representations, covenants and warranties of Lessee contained in the Master Lease were true and accurate as of the date made, remain true and accurate as of the date of this Schedule A No. [] and are hereby reaffirmed.
8. Lessee shall deliver or cause to be delivered an opinion of counsel concurrently with the execution and delivery of each Schedule A in the form of Attachment E to Exhibit A of the Master Lease and execute an IRS Form 8038-G (or, IRS Form 8038-GC if the Total Contract Price of the Equipment is less than \$100,000) prepared by Lessor and concurrently presented to Lessee with the execution and delivery of each Schedule A substantially in the form of Attachment H to Exhibit A of the Master Lease.
9. Lessee shall deliver or cause to be delivered concurrently with the execution and delivery of each Schedule A documents in the respective forms of Attachments B through F and H through K to Exhibit A of the Master Lease, along with invoices, MSO's and applications for titles for any vehicles to be acquired with proceeds of the applicable Schedule A. Lessee shall deliver its Acceptance Certificate, or Acceptance Certificates, in the form of Attachment A to Exhibit A of the Master Lease in accordance with the terms hereof.
10. Attached hereto as Attachment A and incorporated herein by reference is an original Lessee's Acceptance Certificate, executed by an Authorized Officer of Lessee, with respect to the Equipment identified in item 1 above. Provided, however, Lessee may deliver one or more Acceptance Certificates which shall authorize the Lessor to pay the Purchase Price for the Equipment shown on each such Acceptance Certificate.
11. Attached hereto as Attachment B and incorporated herein by reference is an original Essential Use Certificate, executed by an Authorized Officer of Lessee certifying the essential use of the Equipment identified in item 1 above.
12. Attached hereto as Attachment C and incorporated herein by reference is an original Certificate of Appropriation executed by an Authorized Officer of Lessee.
13. Attached hereto as Attachment D and incorporated herein by reference is an original General and No-Litigation Certificate, executed by Authorized Officers of Lessee.
14. Attached hereto as Attachment E and incorporated herein by reference is an original opinion of legal counsel to Lessee relating to the Agreement and this Schedule A No. []. Lessor may, in its sole discretion, waive this requirement.
15. Attached hereto as Attachment F is a certified copy of the resolution of Lessee's City Council authorizing the Master Lease and this Schedule A No. [].
16. Attached hereto as Attachment G are copies of an executed and filed financing statement(s) evidencing Lessor's security interest in the Equipment. Provided, however, Lessee may deliver one or more financing statement(s), or amended financing statement(s) evidencing Lessor's security interest in the Equipment as reflected on each Acceptance Certificate.
17. Attached hereto as Attachment H is an IRS Form 8038-G (or IRS Form 8038-GC if the Total Contract Price of the Equipment is less than \$100,000) of Lessee.
18. Attached hereto as Attachment I is an original Cross-Receipt executed by an Authorized Officer of Lessee and Lessor.
19. Attached hereto as Attachment J is an original No Arbitrage Certificate executed by an Authorized Officer of Lessee.

Exhibit A to Master Equipment Lease Purchase Agreement
Schedule A

IN WITNESS WHEREOF, the parties hereunto affix their signatures to this Schedule A No. [] as of the day and year first written above.

COMPASS MORTGAGE CORPORATION,
an Alabama corporation, as Lessor

By: _____
Name: _____
Title: _____

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

(SEAL)

ATTACHMENT A TO SCHEDULE A NO. []

FORM OF

LESSEE'S ACCEPTANCE CERTIFICATE

Part I:

CITY OF EL PASO, TEXAS ("Lessee"), as lessee under that certain MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT dated as of _____, 20__, and under Schedule A. No. [] thereto dated as of _____, 20__ (collectively, the "Agreement"), with COMPASS MORTGAGE CORPORATION, an Alabama corporation, as lessor ("Lessor") hereby acknowledges receipt in good condition of all of the Equipment described in Part II below (the "Equipment"), hereby accepts such Equipment and hereby certifies:

(a) That Lessor has fully and satisfactorily performed all covenants and conditions to be performed by it under the Agreement with regard to such Equipment; provided, however, that this certification does not constitute a waiver by Lessee of any rights against third parties, including the Vendor(s) under the Purchase Agreement(s) (as such terms are defined in the Agreement) with respect to such Equipment, which exist at the date hereof or which may subsequently come into being; and

(b) That such Equipment is fully insured in accordance with Section 6 of the Agreement.

Part II:

The Equipment which is governed by the Agreement identified in Part I above is as follows:

<u>Item (Quantity)</u>	<u>Description, Make, Model</u>	<u>Total Contract Price</u>
[see attached]		

DATED: _____, 20__.

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

ATTACHMENT B TO SCHEDULE A NO. []

FORM OF

ESSENTIAL USE CERTIFICATE

We, the undersigned Authorized Officers of the City Council of the CITY OF EL PASO, TEXAS acting in our capacities as such, hereby certify with respect to the MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT, dated as of _____, 20__ by and between Lessee, as lessee, and COMPASS MORTGAGE CORPORATION, an Alabama corporation, as lessor ("Lessor") and Schedule A No. [], dated as of _____, 20__, issued thereunder ("Schedule A"), that the Equipment referenced in Schedule A shall be used for the following purpose:

[Describe Use of Equipment]

The undersigned hereby further certify and represent that the use of the Equipment is essential to the proper, efficient and economic operation of the Lessee.

Dated _____, 20__.

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

ATTACHMENT C TO SCHEDULE A NO. []

FORM OF

CERTIFICATE OF APPROPRIATION

We, the undersigned Authorized Officers of the City Council of the CITY OF EL PASO, TEXAS ("Lessee"), hereby certify that all Rental Payments (as defined in the Agreement) presently due under that certain MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT ("Agreement") dated as of _____, 20__, between the Lessee and COMPASS MORTGAGE CORPORATION, an Alabama corporation ("Lessor"), and Schedule A No. [], dated as of _____, 20__ thereunder ("Schedule A") for the fiscal year ending _____, 20__ are available, unexhausted, unencumbered appropriation of unobligated funds for Lessee, representing the sum of its Rental Payment obligations owing under the Agreement and Schedule A during such fiscal year.

IN WITNESS WHEREOF, we have set our hands this _____, 20__.

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

ATTACHMENT D TO SCHEDULE A NO. []

FORM OF

GENERAL AND NO LITIGATION CERTIFICATE

OF

LESSEE

GENERAL AND NO LITIGATION CERTIFICATE

We, the undersigned, Mayor, City Manager, Chief Financial Officer and City Clerk, respectively, of the City of El Paso, Texas (the "Lessee"), hereby certify the following information:

I. General

1.1 This certificate relates to a certain Master Equipment Lease/Purchase Agreement, dated as of November 29, 2011, (the "Master Lease") by and between Lessee, as lessee, and **COMPASS MORTGAGE CORPORATION**, an Alabama corporation, as lessor ("Lessor") and Schedule A No. [] issued thereunder (the Master Lease and Schedule A No. [] collectively referred to as the "Agreement"). Capitalized terms used herein and not otherwise identified shall have the meanings assigned thereto in the Agreement.

1.2 The Lessee is a duly incorporated Home Rule City operating under the Constitution and laws of the State of Texas and the duly adopted Home Rule Charter of the City, which Charter was last amended on May 4, 1995, January 20, 2001, February 7, 2004 and May 12, 2007.

1.3 As of the date hereof, the members of the City Council and certain other officers of the City are as follows:

John F. Cook, Mayor
Ann Morgan Lilly, Councilmember
Susie Byrd, Councilmember
Emma Acosta, Councilmember
Carl Robinson, Councilmember
Michiel Noe, Councilmember
Eddie Holguin, Jr., Councilmember
Steve Ortega, Councilmember
Cortney Niland, Councilmember

Joyce Wilson, City Manager
Carmen Arrieta-Candelaria, Chief Financial Officer
Richarda Duffy Momsen, City Clerk
Charles McNabb, City Attorney

1.4 The City Council of the Lessee duly adopted by a majority vote a resolution on November 29, 2011 (the "Resolution") authorizing and approving the entering into the Agreement, at a duly called public meeting, at which a quorum was present and acting throughout; the Resolution is in full force and effect and has not been altered, amended or repealed as of the date hereof; that said meeting was duly called and open to the public in accordance with the laws of the State of Texas.

1.5 The following described instruments (collectively, the "Instruments"), as executed and delivered or authorized by the Lessee, are in substantially the same form and text as copies of such Instruments which were presented to and approved or ratified by the City Council of the Lessee, and which the officers of the Lessee were authorized to execute and deliver for and on behalf of the Lessee:

Schedule A
Attachment D

- (a) Master Lease; and
- (b) Schedule A No. [] (including Attachments A through G and I through L thereto)

1.6 To the best knowledge of the undersigned, on the date hereof, the Lessee is not in default in the performance or observance of any of the covenants, conditions, agreements or provisions of the Instruments.

1.7 The representations and warranties of the Lessee contained in the Instruments are correct on and as of the date hereof as though made on and as of such date.

II. Signature Identification and No Litigation

2.1 The Agreement has been duly and officially executed by the Authorized Officers of the Lessee with their manual or facsimile signatures in the same manner appearing thereon, and the undersigned Authorized Officers of the Lessee hereby adopt and ratify their respective signatures in the manner appearing on Agreement whether in manual or facsimile form, as the case may be, as their true, genuine, and official signature.

2.2 That on the date of Schedule A No. [] and on the date hereof, the Authorized Officers of the Lessee were and are the duly qualified and acting officers indicated therein and authorized to execute the same.

2.3 The legally adopted proper and official corporate seal of the Lessee is impressed or imprinted on the Agreement.

2.4 No litigation of any nature is now pending before any federal or state court, or administrative body, or to our knowledge threatened, seeking to restrain or enjoin the issuance or delivery of the Agreement, the authority or action of the City Council of the Lessee relating to the issuance or delivery of the Agreement, the collection of the revenues of the Lessee, pledged to pay the Rental Payments under the Agreement, or that would otherwise adversely affect in a material manner the financial condition of the Lessee to pay the Rental Payments under the Agreement; and that neither the corporate existence or boundaries of the Lessee nor the right to hold office of any member of the City Council of the Lessee or any other elected or appointed official of the Lessee is being contested or otherwise questioned (except for certain citizen recall efforts against the Mayor and two council members which are unrelated to the agreement).

2.5 That no petition or other request has been filed with or presented to any official of the Lessee requesting any proceeding authorizing the issuance of the Agreement adopted by the City Council of the Lessee be submitted to a referendum or other election; no authority or proceeding for the issuance, sale, or delivery of the Agreement, passed and adopted by the City Council of the Lessee, has been amended, repealed, revoked, rescinded, or otherwise modified since the date of passage thereof, and all such proceedings and authority relating to the issuance and delivery of the Agreement remain in full force and effect as of the date of this certificate.

EXECUTED AND DELIVERED AS OF _____.

Manual Signatures

Official Titles

John F. Cook, Mayor
City of El Paso, Texas

Richarda Duffy Momsen, City Clerk
City of El Paso, Texas

Joyce Wilson, City Manager
City of El Paso, Texas

Carmen Arrieta-Candelaria, Chief Financial Officer
City of El Paso, Texas

Mark Sutter, Comptroller
City of El Paso, Texas

Leo Fierro, Treasury Services Coordinator
City of El Paso, Texas

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared John F. Cook, Mayor of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2011.

Notary Public, State of Texas

[NOTARY SEAL]

Schedule A
Attachment D

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared Richarda Duffy Momsen, City Clerk of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2011.

Notary Public, State of Texas

[NOTARY SEAL]

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared Joyce Wilson, City Manager of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2011.

Notary Public, State of Texas

[NOTARY SEAL]

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared Mark Sutter, Comptroller of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2011.

Notary Public, State of Texas

[NOTARY SEAL]

STATE OF TEXAS

§
§
§

COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared Carmen Arrieta-Candelaria, Chief Financial Officer of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2011.

Notary Public, State of Texas

[NOTARY SEAL]

STATE OF TEXAS

§
§
§

COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared Leo Fierro, Treasury Services Coordinator of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2011.

Notary Public, State of Texas

[NOTARY SEAL]

ATTACHMENT E TO SCHEDULE A NO. []

FORM OF

OPINION OF COUNSEL TO LESSEE

[LETTERHEAD OF COUNSEL TO LESSEE]

[Date of Closing]

Re: Master Equipment Lease/Purchase Agreement, dated as of _____, 2011, between Compass Mortgage Corporation, an Alabama corporation, as Lessor, and the City of El Paso, Texas, as Lessee

Ladies and Gentlemen:

As special counsel for the City of El Paso, Texas ("Lessee"), we have examined (a) an executed counterpart of a certain Master Equipment Lease/Purchase Agreement, dated as of _____, 2011, including all exhibits thereto, by and between Compass Mortgage Corporation, an Alabama corporation ("Lessor") and Lessee (the "Agreement"), which, among other things, provides for the lease of certain property (the "Equipment") and an executed Schedule A (the "Schedule") which, among other things, provides for the dates, amounts, and interest rate of the payments to be made under the Agreement, (b) a copy of the signed resolution of the City Council of the Lessee, adopted on _____, 2011 (the "Resolution") which, among other things, authorizes Lessee to execute the Agreement and the Schedule, (c) such other opinions, documents and matters of law as we have deemed necessary in connection with the following opinions. The Schedule and the Agreement, including all exhibits thereto, are herein referred to collectively as the "Lease", and the Lease, the Acquisition Fund Agreement (as defined in the Agreement), and the Resolution are referred to collectively as the "Transaction Documents." All capitalized terms herein shall have the same meanings as in the Agreement unless otherwise provided herein.

Based upon the foregoing and upon such other examination as we have deemed necessary or appropriate and subject to the qualifications, limitations and assumptions set forth below, we are of the opinion that:

1. Lessee is legally existing under the laws of the State of Texas and is a political subdivision of such State.
2. Lessee has the requisite power and authority under Texas law to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations thereunder.
3. The Lease has been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are valid and binding obligations of Lessee enforceable in accordance with their respective terms.
4. Pursuant to section 103 of the Internal Revenue Code of 1986, as amended to the date hereof (the "Code"), and existing regulations, published rulings, and court decisions thereunder, and assuming continuing compliance after the date hereof by the City with the provisions of the Agreement relating to sections 141 through 150 of the Code, the portion of rentals designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor's gross income for federal income tax purposes under Section 103 of the Code; and such interest will not be included in computing the alternative minimum taxable income of individuals or, except as hereinafter described, corporations. Such interest will be included in a corporation's adjusted current earnings for purposes of calculating the alternative minimum taxable income of such corporations, other than an S corporation, a qualified mutual fund, a real estate mortgage investment conduit, a real estate investment trust, or a financial asset securitization investment trust ("FASIT"). A corporation's alternative minimum taxable income is the basis on which the alternative minimum tax imposed by section 55 of the Code will be computed.

The opinions expressed herein are subject to the following qualifications, limitations and assumptions:

Schedule A
Attachment E

A. The foregoing opinions are limited solely to the currently existing laws of the State of Texas and applicable federal law. We express no opinion as to the applicability of the laws of any other particular jurisdiction to the transactions described in this opinion.

B. In rendering the opinions set forth in paragraphs (2) and (3), we have assumed the Equipment is personal property (and not fixtures or improvements to real property) under the applicable laws of the State of Texas.

C. In rendering the opinion set forth in paragraph four (4), we express no opinion as to whether the portion of rentals designated as interest to be paid by the Lessee will constitute interest for federal income tax purposes.

C. We have assumed the due authorization, execution and delivery of the Transaction Documents by all parties thereto other than the Lessee and that all such instruments constitute legal, valid and binding obligations of such parties, enforceable against such parties in accordance with their respective terms.

D. We have assumed the genuineness of all signatures, the authenticity of all documents, records, instruments and certificates examined, and the conformity to the original of all such documents, records, instruments and certificates submitted to us as copies, and the accuracy of all statements of fact contained therein, as to which we have made no independent investigation other than solely as is specified herein.

E. Our opinion that the Transaction Documents are enforceable in accordance with their respective terms is qualified to the extent that enforcement of the rights and remedies created thereby is subject to (i) general principles of equity, (ii) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights in general, (iii) laws concerning recourse by creditors to security in the absence of notice and hearing, and (iv) sovereign immunity.

F. Our opinions expressed herein are further qualified in that we express no opinion herein with respect to (A) any state "Blue Sky" laws or regulations, (B) compliance with fiduciary duty requirements, (C) the effect of the laws of usury or similar laws regarding interest rate limitations on the provisions of the Lease, or (D) the enforceability of provisions of the Transaction Documents (i) relating to mediation or arbitration; (ii) that purport to limit, restrict or waive legal or equitable remedies; (iii) relating to indemnity, contribution or release; (iv) relating to mitigation of damages; (v) that purport to render inapplicable any otherwise applicable law (other than those laws which by their terms may be rendered inapplicable); (vi) that purport to require that all amendments, waivers and terminations be in writing or to require disregard of any course of dealing between the parties; (vii) that purport to establish any obligation of the parties as absolute or unconditional regardless of the occurrence or non-occurrence or existence or non-existence of any event or other state of facts; (viii) that purport to obligate any party to take action it has no legal right to take, or to take or not take an action if taking or failing to take the same would constitute, or aid or abet, a violation of applicable law; (ix) relating to selection of forum or, venue; (x) relating to payment without set-off or that otherwise purport to make obligations unconditional and absolute; (xi) that purport to confer subject matter jurisdiction on any court; (xii) that constitute agreements to agree; (xiii) that purport to waive the right to trial by jury or inconvenient forum; (xiv) that purport to waive the application of mandatory choice-of-law rules; (xv) that purport to waive sovereign immunity; (xvi) that provide that determinations by a party are conclusive or that otherwise purport to establish evidentiary standards; (xvii) that purport to establish particular notice periods as reasonable; (xviii) that attempt to establish standards of conduct; (xix) relating to severability or separability or (xx) that purport to modify or vary any provision of, or to define a term for purposes of, any extrinsic document, including the Resolution.

G. In rendering the foregoing opinions, we have made no independent investigation as to the existence of any facts reflected in the factual assumptions we have made as described hereinabove, nor have we made any investigation as to the accuracy or completeness of any representations, warranties, data

or other information, whether written or oral, that may have been made by, or on behalf of, the Lessee or any director or officer of the Lessee in certificates or otherwise, and we assume, in rendering such opinions, that none of such information, if any, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

This opinion is limited to the specific opinions expressly stated herein, and no other opinion is to be implied or may be inferred beyond the specific opinion expressly stated herein. Without limiting the foregoing, in rendering the opinion expressed herein, we express no opinion regarding the applicability or effect of, or compliance with, any federal and state securities laws and regulations or federal and state tax laws and regulations (except as specifically addressed above).

Our opinion is based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinion to reflect any facts or circumstances that may thereafter come to our attention or to reflect any changes in any law that may thereafter occur or become effective. Moreover, our opinion is not a guarantee of result and is not binding on the Internal Revenue Service; rather, such opinion represents our legal judgment based upon our review of existing law that we deem relevant to such opinion and in reliance upon the representations and covenants referenced above.

This opinion is intended solely for your benefit and the benefit of any permitted successor or assigns of the Lease. It is not to be quoted in whole or in part, disclosed, made available to, or relied upon by any other person, firm or entity without our express prior written consent.

Respectfully submitted,

ATTACHMENT F TO SCHEDULE A NO. []

FORM OF

CERTIFIED COPY OF RESOLUTION ADOPTED BY LESSEE'S City Council

CERTIFICATE FOR RESOLUTION

MINUTES AND CERTIFICATION PERTAINING TO RESOLUTION

On _____ 2011, the City Council of the City of El Paso, Texas, convened in regular meeting at the regular meeting place thereof on the second floor of the Municipal Building, 2 Civic Center Plaza, El Paso, Texas, the meeting being open to the public and notice of said meeting, giving the date, hour, place and subject thereof, having been posted as prescribed by the Open Meeting Act, Chapter 551, Texas Government Code, as amended, and the roll was called of the duly constituted officers and members of the City Council, to-wit:

John F. Cook, Mayor	Ann Morgan Lilly)	
Richarda Duffy Momsen, City Clerk	Susie Byrd)	
	Emma Acosta)	
	Carl Robinson)	Councilmembers
	Michiel Noe)	
	Eddie Holguin, Jr.)	
	Steve Ortega)	
	Cortney Niland)	

and all of said persons were present, except the following: _____, thus constituting a quorum. Whereupon, among other business, the following was transacted, to-wit: a written Resolution bearing the following caption was introduced:

A RESOLUTION OF THE CITY OF EL PASO, TEXAS, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ACQUISITION FUND AGREEMENT IN CONNECTION THEREWITH; RESOLVING OTHER MATTERS RELATED THERETO; AND PROVIDING AN EFFECTIVE DATE.

The Resolution, a full, true and correct copy of which is attached hereto, was read and reviewed by the City Council. Thereupon, it was duly moved and seconded that the Resolution be introduced and adopted. The motion carried by the following vote:

AYES: _____

NOES: _____

ABSTENTIONS: _____

The Presiding Officer then declared the Resolution passed and declared the Resolution effectively immediately.

MINUTES APPROVED AND CERTIFIED TO BE TRUE AND CORRECT that the attached and following copy of said Resolution is hereby certified to be a true and correct copy of an official copy thereof on file among the official records of the City, and the above listed persons are hereby certified to be the incumbent officers and members of the City Council as stated, all on this _____, 2011.

City Clerk
City of El Paso, Texas

(CITY SEAL)

**FORM OF
RESOLUTION OF THE CITY COUNCIL
OF LESSEE
APPROVING LEASING OF CERTAIN EQUIPMENT AND RELATED MATTERS**

[see attached]

ATTACHMENT G TO SCHEDULE A NO. []

ATTACH COPIES OF FILED FINANCING
STATEMENTS SHOWING PERFECTION OF
SECURITY INTEREST IN THE PROPERTY AND
ASSIGNMENT OF SECURITY INTEREST TO LESSOR

TO BE COMPLETED AND SUBMITTED CONCURRENTLY
WITH EACH ACCEPTANCE CERTIFICATE

[see attached]

ATTACHMENT H TO SCHEDULE A No. []

IRS Form 8038-G or IRS Form 8038-GC (if less than \$100,000)

(IRS FORM 8038-G OR IRS FORM 8038-GC FOLLOW)

[see attached]

ATTACHMENT I TO SCHEDULE A NO. []

FORM OF
CROSS-RECEIPT

With respect to the **MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT**, dated as of _____, 20__ (the "*Master Lease*") by and between **COMPASS MORTGAGE CORPORATION**, an Alabama corporation, as lessor ("*Lessor*") and the **CITY OF EL PASO, TEXAS**, as lessee ("*Lessee*") and Schedule A No. [], dated as of _____, 20__ to the Master Lease:

Lessor hereby acknowledges the lease to the Lessee of the Equipment listed on Schedule A No. [] to the Master Lease and receipt from Lessee of Schedule A No. [] to the Master Lease dated as of the date hereof.

Lessee hereby acknowledges the lease of the Equipment pursuant to the Master Lease and Schedule A No. [] to the Master Lease.

Dated: _____, 20__

COMPASS MORTGAGE CORPORATION,
an Alabama corporation, as Lessor

By: _____
Name: _____
Title: _____

CITY OF EL PASO, TEXAS,
as Lessor

By: _____
Name: _____
Title: _____

ATTACHMENT J TO SCHEDULE A NO. []

FORM OF

NO-ARBITRAGE CERTIFICATE

EXHIBIT B

(See attachment.)

SCHEDULE A No. 2

TO MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT
by and between
COMPASS MORTGAGE CORPORATION, AN ALABAMA CORPORATION,
as Lessor
and
CITY OF EL PASO, TEXAS
as Lessee

Dated as of April 2, 2013

THIS SCHEDULE A No. 2 (“*Schedule A No. 2*”) to the **MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT** identified above (the “*Master Lease*”) is entered into as of this April 2, 2013, by and among **COMPASS MORTGAGE CORPORATION**, an Alabama corporation, as lessor (“*Lessor*”) and **CITY OF EL PASO, TEXAS**, as lessee (“*Lessee*”). All of the provisions of the Master Lease are incorporated herein by reference and capitalized terms used herein and not defined shall have the meanings assigned them in the Master Lease.

- 1. The Master Lease and this Schedule A No. 2 jointly constitute an Agreement (this “*Agreement*”). Lessor hereby leases and lets to Lessee, Lessee leases and hires from Lessor, subject to the provisions of the Agreement, the Equipment identified below:

Item (Quantity) **Description, Make, Model** **Total Contract Price**

[see Attachment A]

As of the date of this Schedule A No. 2, Lessee has not taken possession of any of the Equipment shown above. It is expected that by six (6) months from the date of this Schedule A No. 2, Lessee will have taken possession of all items shown above and that a Lessee’s Acceptance Certificate, or Acceptance Certificates, will be signed by Lessee and delivered to Lessor on or before six (6) months from the date of this Schedule A No. 2.

- 2. Lessee hereby certifies that the description of the Equipment set forth above is accurate and reasonably identifies it for UCC purposes. The Equipment identified in item 1 above shall be located at:

The Equipment will be located at various locations throughout the City of El Paso, Texas
Street Address City County State Zip Code

- 3. The following terms are applicable to the lease/purchase of the Equipment set forth in this Schedule A No. 2:

(a) Lease Term Commencement Date: The date of execution and delivery of this Schedule A No. 2, including all attachments thereto, and the satisfaction of all conditions of the Master Lease.

(b) Original Lease Term: The period beginning with the Lease Term Commencement Date and ending with the last business day of Lessee’s current fiscal budget period.

(c) Lease Term Interest Rate: 1.52%.

(d) Lessee’s Fiscal Year End: August 31

(e) Lessee’s Appropriation Period: September 1 to August 31

(f) Maximum Amount: The amount equal to \$5,020,000.

(g) Number of Renewal Lease Terms: 7.

4. The Lease Proceeds which Lessor shall pay or provide to Lessee in connection with this Schedule A No. 2 is \$5,020,000 of which \$20,000 is for payment of the costs of issuing this Schedule A No. 2. Such Lease Proceeds shall be deposited into the Equipment Acquisition Account and disbursed for payments of the Total Contract Price of the Equipment, or portions thereof, upon receipt by Lessor of an Acceptance Certificate, or Acceptance Certificates, executed by Lessee.
5. Interest on the Lease Proceeds shall accrue from the date hereof and the payment dates and Rental Payment amounts (including the principal and interest components thereof) are as follows:

AMORTIZATION SCHEDULE*

<u>Payment No.</u>	<u>Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Rental Payment</u>
1	09/01/2013	\$ 164,884.71	\$ 31,581.38	\$ 196,466.08
2	12/01/2013	178,016.65	18,449.44	196,466.08
3	03/01/2014	178,693.11	17,772.97	196,466.08
4	06/01/2014	179,372.14	17,093.94	196,466.08
5	09/01/2014	180,053.76	16,412.33	196,466.08
6	12/01/2014	180,737.96	15,728.12	196,466.08
7	03/01/2015	181,424.76	15,041.32	196,466.08
8	06/01/2015	182,114.18	14,351.90	196,466.08
9	09/01/2015	182,806.21	13,659.87	196,466.08
10	12/01/2015	183,500.88	12,965.21	196,466.08
11	03/01/2016	184,198.18	12,267.90	196,466.08
12	06/01/2016	184,898.13	11,567.95	196,466.08
13	09/01/2016	185,600.75	10,865.34	196,466.08
14	12/01/2016	186,306.03	10,160.05	196,466.08
15	03/01/2017	187,013.99	9,452.09	196,466.08
16	06/01/2017	187,724.64	8,741.44	196,466.08
17	09/01/2017	188,438.00	8,028.08	196,466.08
18	12/01/2017	189,154.06	7,312.02	196,466.08
19	03/01/2018	189,872.85	6,593.24	196,466.08
20	06/01/2018	190,594.36	5,871.72	196,466.08
21	09/01/2018	191,318.62	5,147.46	196,466.08
22	12/01/2018	192,045.63	4,420.45	196,466.08
23	03/01/2019	192,775.41	3,690.68	196,466.08
24	06/01/2019	193,507.95	2,958.13	196,466.08
25	09/01/2019	194,243.28	2,222.80	196,466.08
26	12/01/2019	194,981.41	1,484.67	196,466.08
27	03/01/2020	195,722.34	743.74	196,466.08
TOTAL		\$ 5,020,000.00	\$ 284,584.25	\$ 5,304,584.25

*Columns and rows do not calculate exactly due to rounding of pennies for purposes of this schedule.

6. Until Lessee receives written notification to the contrary, all payments due under the Master Lease and this Schedule A No. 2, including but not limited to Rental Payments, are to be paid to and all notices are to be sent to the following respective addresses or per the following wire instructions, as applicable:

The address for notices is: BBVA Compass
 690 Sunland Park Drive
 El Paso, Texas 79912
 Attention: Ms. Karina Perez

City of El Paso City Hall
 300 N. Campbell
 El Paso, Texas 79901
 Attention: Chief Financial Officer

Payments sent by wire: Compass Bank
201 North Highway 183
Leander, Texas 78641
(512) 421-6901
ABA: 113-010-547
Account: GL90124099

BBI: Do not post Contact LD&FCpublicfinance
Attn: Susan Boswell or Nancy Allen
Reference: City of El Paso, Texas

Payments sent by mail: Compass Bank
Nancy Allen or Susan Boswell
P.O. Box 1190
Leander, Texas 78646

7. Lessee further represents, covenants and warrants that it will not take, cause to be taken or fail to take any action which will cause the interest component of any Rental Payments to be or become subject to federal income taxation under the Code and that all of its representations, covenants and warranties of Lessee contained in the Master Lease were true and accurate as of the date made, remain true and accurate as of the date of this Schedule A No. 2 and are hereby reaffirmed.
8. Notwithstanding Section 1.18 of the Master Lease, Lessor and Lessee agree that there shall be no prepayment of amounts set forth in this Schedule A No. 2 under the Agreement.
9. Lessee shall deliver or cause to be delivered an opinion of counsel concurrently with the execution and delivery of this Schedule A No. 2 in the form of Attachment E to Exhibit A of the Master Lease and execute an IRS Form 8038-G (or, IRS Form 8038-GC if the Total Contract Price of the Equipment is less than \$100,000) prepared by Lessor and concurrently presented to Lessee with the execution and delivery of this Schedule A No. 2 substantially in the form of Attachment H to Exhibit A of the Master Lease.
10. Lessee shall deliver or cause to be delivered concurrently with the execution and delivery of this Schedule A No. 2 documents in the respective forms of Attachments B, and D through F and H through J to Exhibit A of the Master Lease, along with invoices, MSO's and applications for titles for any vehicles to be acquired with proceeds of this Schedule A No. 2. Lessee shall deliver its Acceptance Certificate, or Acceptance Certificates, in the form of Attachment A hereto in accordance with the terms hereof.
11. Attached hereto as Attachment A and incorporated herein by reference is an original Lessee's Acceptance Certificate, executed by an Authorized Officer of Lessee, with respect to the Equipment identified in item 1 above. Provided, however, Lessee may deliver one or more Acceptance Certificates which shall authorize the Lessor to pay the Purchase Price for the Equipment shown on each such Acceptance Certificate.
12. Attached hereto as Attachment B and incorporated herein by reference is an original Essential Use Certificate, executed by an Authorized Officer of Lessee certifying the essential use of the Equipment identified in item 1 above.
13. Lessee hereby represents that no Certificate of Appropriation is required to be attached hereto as Attachment C as no Rental Payments are to become due in this current fiscal year ending August 31, 2013.
14. Attached hereto as Attachment D and incorporated herein by reference is an original General and No-Litigation Certificate, executed by Authorized Officers of Lessee.
15. Attached hereto as Attachment E and incorporated herein by reference is an original opinion of legal counsel to Lessee relating to the Agreement and this Schedule A No. 2. Lessor may, in its sole discretion, waive this requirement.
16. Attached hereto as Attachment F is a certified copy of the resolution of Lessee's City Council authorizing the Master Lease and this Schedule A No. 2.

17. Attached hereto as Attachment G are copies of an executed and filed financing statement(s) evidencing Lessor's security interest in the Equipment. Provided, however, Lessee may deliver one or more financing statement(s), or amended financing statement(s) evidencing Lessor's security interest in the Equipment as reflected on each Acceptance Certificate.
18. Attached hereto as Attachment H is an IRS Form 8038-G (or IRS Form 8038-GC if the Total Contract Price of the Equipment is less than \$100,000) of Lessee.
19. Attached hereto as Attachment I is an original Cross-Receipt executed by an Authorized Officer of Lessee and Lessor.
20. Attached hereto as Attachment J is an original No Arbitrage Certificate executed by an Authorized Officer of Lessee

IN WITNESS WHEREOF, the parties hereunto affix their signatures to this Schedule A No. 2 as of the day and year first written above.

COMPASS MORTGAGE CORPORATION,
an Alabama corporation, as Lessor

By: _____
Name: _____
Title: _____

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: Joyce A. Wilson
Title: City Manager

ATTEST:

By: _____
Name: Carmen Arrieta-Candelaria
Title: Chief Financial Officer

ATTACHMENT A TO SCHEDULE A NO. 2

Form of

LESSEE'S ACCEPTANCE CERTIFICATE

Part I:

CITY OF EL PASO, TEXAS ("*Lessee*"), as lessee under that certain **MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT** dated as of November 29, 2011, and under Schedule A. No. 2 thereto dated as of April 2, 2013 (collectively, the "*Agreement*"), with **COMPASS MORTGAGE CORPORATION**, an Alabama corporation, as lessor ("*Lessor*") hereby acknowledges receipt in good condition of all of the Equipment described in Part II below (the "*Equipment*"), hereby accepts such Equipment and hereby certifies:

(a) That Lessor has fully and satisfactorily performed all covenants and conditions to be performed by it under the Agreement with regard to such Equipment; provided, however, that this certification does not constitute a waiver by Lessee of any rights against third parties, including the Vendor(s) under the Purchase Agreement(s) (as such terms are defined in the Agreement) with respect to such Equipment, which exist at the date hereof or which may subsequently come into being; and

(b) That such Equipment is fully insured in accordance with Section 6 of the Agreement.

Part II:

The Equipment which is governed by the Agreement identified in Part I above is as follows:

<u>Item (Quantity)</u>	<u>Description, Make, Model</u>	<u>Total Contract Price</u>
[see attached]		

DATED: _____, 20__.

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

ATTACHMENT B TO SCHEDULE A NO. 2

Form of

ESSENTIAL USE CERTIFICATE

We, the undersigned Authorized Officers of the City Council of the **CITY OF EL PASO, TEXAS** acting in our capacities as such, hereby certify with respect to the **MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT**, dated as of November 29, 2011 by and between Lessee, as lessee, and **COMPASS MORTGAGE CORPORATION**, an Alabama corporation, as lessor ("*Lessor*") and Schedule A No. 2, dated as of April 2, 2013, issued thereunder ("*Schedule A No. 2*"), that the Equipment referenced in Schedule A No. 2 shall be used for the following purpose:

[Describe Use of Equipment]

The undersigned hereby further certify and represent that the use of the Equipment is essential to the proper, efficient and economic operation of the Lessee.

Dated _____, 20__.

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

ATTACHMENT C TO SCHEDULE A NO. 2

CERTIFICATE OF APPROPRIATION

NOT APPLICABLE FOR FISCAL YEAR ENDING AUGUST 31, 2013

ATTACHMENT D TO SCHEDULE A NO. 2

GENERAL AND NO LITIGATION CERTIFICATE

GENERAL AND NO LITIGATION CERTIFICATE

We, the undersigned, Mayor, City Manager, Chief Financial Officer and City Clerk, respectively, of the City of El Paso, Texas (the "*Lessee*"), hereby certify the following information:

I. General

1.1. This certificate relates to a certain Master Equipment Lease/Purchase Agreement, dated as of November 29, 2011, (the "*Master Lease*") by and between Lessee, as lessee, and **COMPASS BANK**, as lessor ("*Lessor*") and Schedule A No. 2 dated as of April 2, 2013 issued thereunder (the Master Lease and Schedule A No. 2 collectively referred to as the "*Agreement*"). Capitalized terms used herein and not otherwise identified shall have the meanings assigned thereto in the Agreement.

1.2. The Lessee is a duly incorporated Home Rule City operating under the Constitution and laws of the State of Texas and the duly adopted Home Rule Charter of the City, which Charter was last amended on May 4, 1995, January 20, 2001, February 7, 2004 and May 12, 2007.

1.3. As of the date hereof, the members of the City Council and certain other officers of the City are as follows:

John F. Cook, Mayor
Ann Morgan Lilly, Councilmember and Mayor Pro Tem
Susie Byrd, Councilmember
Emma Acosta, Councilmember
Carl Robinson, Councilmember
Michiel Noe, Councilmember
Eddie Holguin, Jr., Councilmember
Steve Ortega, Councilmember
Cortney Niland, Councilmember

Joyce Wilson, City Manager
Carmen Arrieta-Candelaria, Chief Financial Officer
Richarda Duffy Momsen, City Clerk
Sylvia Borunda Firth, City Attorney

1.4. The City Council of the Lessee duly adopted by a majority vote a resolution on November 29, 2011 (the "*Master Lease Resolution*") authorizing and approving the entering into the Master Lease, at a duly called public meeting, at which a quorum was present and acting throughout; the Master Lease Resolution is in full force and effect and has not been altered, amended or repealed as of the date hereof; that said meeting was duly called and open to the public in accordance with the laws of the State of Texas.

1.5. The City Council of the Lessee duly adopted by a majority vote a resolution on March 26, 2013 (the "*Schedule No. 2 Resolution*") authorizing and approving the entering into the Agreement, at a duly called public meeting, at which a quorum was present and acting

throughout; the Schedule No. 2 Resolution is in full force and effect and has not been altered, amended or repealed as of the date hereof; that said meeting was duly called and open to the public in accordance with the laws of the State of Texas.

1.6. The following described instruments (collectively, the "*Instruments*"), as executed and delivered or authorized by the Lessee, are in substantially the same form and text as copies of such Instruments which were presented to and approved or ratified by the City Council of the Lessee, and which the officers of the Lessee were authorized to execute and deliver for and on behalf of the Lessee:

- (a) Master Lease;
- (b) Schedule A No. 2 (including Attachments A through G and I through J thereto); and
- (c) Acquisition Fund Agreement.

1.7. To the best knowledge of the undersigned, on the date hereof, the Lessee is not in default in the performance or observance of any of the covenants, conditions, agreements or provisions of the Instruments.

1.8. The representations and warranties of the Lessee contained in the Instruments are correct on and as of the date hereof as though made on and as of such date.

II. Signature Identification and No Litigation

2.1. The Agreement has been duly and officially executed by the Authorized Officers of the Lessee with their manual or facsimile signatures in the same manner appearing thereon, and the undersigned Authorized Officers of the Lessee hereby adopt and ratify their respective signatures in the manner appearing on Agreement whether in manual or facsimile form, as the case may be, as their true, genuine, and official signature.

2.2. That on the date of Schedule A No. 2 and on the date hereof, the Authorized Officers of the Lessee were and are the duly qualified and acting officers indicated therein and authorized to execute the same.

2.3. The legally adopted proper and official corporate seal of the Lessee is impressed or imprinted on the Agreement.

2.4. No litigation of any nature is now pending before any federal or state court, or administrative body, or to our knowledge threatened, seeking to restrain or enjoin the issuance or delivery of the Agreement, the authority or action of the City Council of the Lessee relating to the issuance or delivery of the Agreement, the collection of the revenues of the Lessee, pledged to pay the Rental Payments under the Agreement, or that would otherwise adversely affect in a material manner the financial condition of the Lessee to pay the Rental Payments under the Agreement; and that neither the corporate existence or boundaries of the Lessee nor the right to hold office of any member of the City Council of the Lessee or any other elected or appointed official of the Lessee is being contested or otherwise questioned.

2.5. That no petition or other request has been filed with or presented to any official of the Lessee requesting any proceeding authorizing the issuance of the Agreement adopted by the City Council of the Lessee be submitted to a referendum or other election; no authority or proceeding for the issuance, sale, or delivery of the Agreement, passed and adopted by the City Council of the Lessee, has been amended, repealed, revoked, rescinded, or otherwise modified since the date of passage thereof, and all such proceedings and authority relating to the issuance and delivery of the Agreement remain in full force and effect as of the date of this certificate.

EXECUTED AND DELIVERED AS OF _____.

Manual Signatures

Official Titles

John F. Cook, Mayor
City of El Paso, Texas

Richarda Duffy Momsen, City Clerk
City of El Paso, Texas

Joyce Wilson, City Manager
City of El Paso, Texas

Carmen Arrieta-Candelaria, Chief Financial Officer
City of El Paso, Texas

Mark Sutter, Comptroller
City of El Paso, Texas

Leo Fierro, Treasury Services Coordinator
City of El Paso, Texas

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared John F. Cook, Mayor of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2013.

Notary Public, State of Texas

[NOTARY SEAL]

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared Richarda Duffy Momsen, City Clerk of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2013.

Notary Public, State of Texas

[NOTARY SEAL]

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared Joyce Wilson, City Manager of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2013.

Notary Public, State of Texas

[NOTARY SEAL]

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared Mark Sutter, Comptroller of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2013.

Notary Public, State of Texas

[NOTARY SEAL]

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared Carmen Arrieta-Candelaria, Chief Financial Officer of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2013.

Notary Public, State of Texas

[NOTARY SEAL]

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared Leo Fierro, Treasury Services Coordinator of the City of El Paso, Texas, known to me to be the officer whose true and genuine signature was subscribed to the foregoing instrument in my presence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____, 2013.

Notary Public, State of Texas

[NOTARY SEAL]

ATTACHMENT E TO SCHEDULE A NO. 2

OPINION OF COUNSEL TO LESSEE

_____, 2013

Compass Mortgage Corporation
695 Sunland Park Drive
El Paso, TX 79912
Attn: Ms. Karina Perez

Re: Equipment Lease/Purchase, pursuant to a Master Equipment Lease/Purchase Agreement, dated as of November 29, 2011, and a Schedule A No. 2, dated as of April 2, 2013, between Compass Mortgage Corporation, as Lessor, and the City of El Paso, Texas, as Lessee

Ladies and Gentlemen:

As special counsel for the City of El Paso, Texas (“Lessee”), we have examined (a) an executed counterpart of a certain Master Equipment Lease/Purchase Agreement, dated as of November 29, 2011, including all exhibits thereto, by and between Compass Bank (“Lessor”) and Lessee (the “Agreement”), which, among other things, provides for the lease of certain property (the “Equipment”) and Schedule A No. 2, dated as of April 2, 2013 (the “Schedule”), executed thereunder, which, among other things, provides for the dates, amounts, and interest rate of the payments to be made under the Agreement, (b) a copy of the signed resolution of the City Council of the Lessee, adopted on March 26, 2013 (the “Resolution”) which, among other things, authorizes Lessee to execute the Schedule, (c) such other opinions, documents and matters of law as we have deemed necessary in connection with the following opinions. The Schedule and the Agreement, including all exhibits thereto, are herein referred to collectively as the “Lease”, and the Lease, the Acquisition Fund Agreement (as defined in the Agreement), and the Resolution are referred to collectively as the “Transaction Documents.” All capitalized terms herein shall have the same meanings as in the Agreement unless otherwise provided herein.

Based upon the foregoing and upon such other examination as we have deemed necessary or appropriate and subject to the qualifications, limitations and assumptions set forth below, we are of the opinion that:

1. Lessee is legally existing under the laws of the State of Texas and is a political subdivision of such State.
2. Lessee has the requisite power and authority under Texas law to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations thereunder.

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

4. Pursuant to section 103 of the Internal Revenue Code of 1986, as amended to the date hereof (the "Code"), and existing regulations, published rulings, and court decisions thereunder, and assuming continuing compliance after the date hereof by the City with the provisions of the Agreement relating to sections 141 through 150 of the Code, the portion of rentals designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor's gross income for federal income tax purposes under Section 103 of the Code; and such interest will not be included in computing the alternative minimum taxable income of individuals or, except as hereinafter described, corporations. Such interest will be included in a corporation's adjusted current earnings for purposes of calculating the alternative minimum taxable income of such corporations, other than an S corporation, a qualified mutual fund, a real estate mortgage investment conduit, a real estate investment trust, or a financial asset securitization investment trust ("FASIT"). A corporation's alternative minimum taxable income is the basis on which the alternative minimum tax imposed by section 55 of the Code will be computed.

The opinions expressed herein are subject to the following qualifications, limitations and assumptions:

A. The foregoing opinions are limited solely to the currently existing laws of the State of Texas and applicable federal law. We express no opinion as to the applicability of the laws of any other particular jurisdiction to the transactions described in this opinion.

B. In rendering the opinions set forth in paragraphs (2) and (3), we have assumed the Equipment is personal property (and not fixtures or improvements to real property) under the applicable laws of the State of Texas.

C. In rendering the opinion set forth in paragraph four (4), we express no opinion as to whether the portion of rentals designated as interest to be paid by the Lessee will constitute interest for federal income tax purposes.

C. We have assumed the due authorization, execution and delivery of the Transaction Documents by all parties thereto other than the Lessee and that all such instruments constitute legal, valid and binding obligations of such parties, enforceable against such parties in accordance with their respective terms.

D. We have assumed the genuineness of all signatures, the authenticity of all documents, records, instruments and certificates examined, and the conformity to the original of all such documents, records, instruments and certificates submitted to us as

copies, and the accuracy of all statements of fact contained therein, as to which we have made no independent investigation other than solely as is specified herein.

E. Our opinion that the Transaction Documents are enforceable in accordance with their respective terms is qualified to the extent that enforcement of the rights and remedies created thereby is subject to (i) general principles of equity, (ii) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights in general, (iii) laws concerning recourse by creditors to security in the absence of notice and hearing, and (iv) sovereign immunity.

F. Our opinions expressed herein are further qualified in that we express no opinion herein with respect to (A) any state "Blue Sky" laws or regulations, (B) compliance with fiduciary duty requirements, (C) the effect of the laws of usury or similar laws regarding interest rate limitations on the provisions of the Lease, or (D) the enforceability of provisions of the Transaction Documents (i) relating to mediation or arbitration; (ii) that purport to limit, restrict or waive legal or equitable remedies; (iii) relating to indemnity, contribution or release; (iv) relating to mitigation of damages; (v) that purport to render inapplicable any otherwise applicable law (other than those laws which by their terms may be rendered inapplicable); (vi) that purport to require that all amendments, waivers and terminations be in writing or to require disregard of any course of dealing between the parties; (vii) that purport to establish any obligation of the parties as absolute or unconditional regardless of the occurrence or non-occurrence or existence or non-existence of any event or other state of facts; (viii) that purport to obligate any party to take action it has no legal right to take, or to take or not take an action if taking or failing to take the same would constitute, or aid or abet, a violation of applicable law; (ix) relating to selection of forum or, venue; (x) relating to payment without set-off or that otherwise purport to make obligations unconditional and absolute; (xi) that purport to confer subject matter jurisdiction on any court; (xii) that constitute agreements to agree; (xiii) that purport to waive the right to trial by jury or inconvenient forum; (xiv) that purport to waive the application of mandatory choice-of-law rules; (xv) that purport to waive sovereign immunity; (xvi) that provide that determinations by a party are conclusive or that otherwise purport to establish evidentiary standards; (xvii) that purport to establish particular notice periods as reasonable; (xviii) that attempt to establish standards of conduct; (xix) relating to severability or separability or (xx) that purport to modify or vary any provision of, or to define a term for purposes of, any extrinsic document, including the Resolution.

G. In rendering the foregoing opinions, we have made no independent investigation as to the existence of any facts reflected in the factual assumptions we have made as described hereinabove, nor have we made any investigation as to the accuracy or completeness of any representations, warranties, data or other information, whether written or oral, that may have been made by, or on behalf of, the Lessee or any director or officer of the Lessee in certificates or otherwise, and we assume, in rendering such opinions, that none of such information, if any, contains any untrue statement of a

material fact or omits to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

This opinion is limited to the specific opinions expressly stated herein, and no other opinion is to be implied or may be inferred beyond the specific opinion expressly stated herein. Without limiting the foregoing, in rendering the opinion expressed herein, we express no opinion regarding the applicability or effect of, or compliance with, any federal and state securities laws and regulations or federal and state tax laws and regulations (except as specifically addressed above).

Our opinion is based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinion to reflect any facts or circumstances that may thereafter come to our attention or to reflect any changes in any law that may thereafter occur or become effective. Moreover, our opinion is not a guarantee of result and is not binding on the Internal Revenue Service; rather, such opinion represents our legal judgment based upon our review of existing law that we deem relevant to such opinion and in reliance upon the representations and covenants referenced above.

This opinion is intended solely for your benefit and the benefit of any permitted successor or assigns of the Lease. It is not to be quoted in whole or in part, disclosed, made available to, or relied upon by any other person, firm or entity without our express prior written consent.

Respectfully submitted,

ATTACHMENT F TO SCHEDULE A NO. 2
CERTIFIED COPY OF RESOLUTION ADOPTED
BY LESSEE'S CITY COUNCIL

[see attached]

ATTACHMENT G TO SCHEDULE A NO. 2

**ATTACH COPIES OF FILED FINANCING
STATEMENTS SHOWING PERFECTION OF
SECURITY INTEREST IN THE PROPERTY AND
ASSIGNMENT OF SECURITY INTEREST TO LESSOR**

**TO BE COMPLETED AND SUBMITTED CONCURRENTLY
WITH EACH ACCEPTANCE CERTIFICATE**

[see attached]

ATTACHMENT H TO SCHEDULE A No. 2

IRS FORM 8038-G

[see attached]

ATTACHMENT I TO SCHEDULE A NO. 2

CROSS-RECEIPT

With respect to the **MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT**, dated as of November 29, 2011 (the "*Master Lease*") by and between **COMPASS MORTGAGE CORPORATION**, an Alabama corporation, as lessor ("*Lessor*") and the **CITY OF EL PASO, TEXAS**, as lessee ("*Lessee*") and Schedule A No. 2, dated as of _____, 2013 to the Master Lease:

Lessor hereby acknowledges the lease to the Lessee of the Equipment listed on Schedule A No. 2 to the Master Lease and receipt from Lessee of Schedule A No. 2 to the Master Lease dated as of the date hereof.

Lessee hereby acknowledges the lease of the Equipment pursuant to the Master Lease and Schedule A No. 2 to the Master Lease.

Dated: _____, 2013

COMPASS MORTGAGE CORPORATION,
an Alabama corporation, as Lessor

By: _____
Name: _____
Title: _____

CITY OF EL PASO, TEXAS,
as Lessor

By: _____
Name: _____
Title: _____

ATTACHMENT J TO SCHEDULE A NO. 2

NO-ARBITRAGE CERTIFICATE

CERTIFICATE AS TO TAX EXEMPTION

The undersigned, being the duly chosen and qualified Chief Financial Officer of the City of El Paso, Texas (the "*Issuer*"), hereby certifies with respect to the Master Equipment Lease/Purchase Agreement, dated November 29, 2011 (the "*Master Lease*") with Compass Mortgage Corporation, an Alabama corporation (the "*Bank*"), and Schedule A No. 2 issued thereunder ("*Schedule A No. 2*", and together with the Master Lease, the "*Obligation*"), in the principal amount of \$5,020,000, as follows.

A. General.

1. I, along with other officers of the Issuer, am charged with the responsibility for entering into the Obligation. Terms used and not defined herein have the same meaning given to them in the Obligation.

2. This certificate is made pursuant to Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended to the date hereof (the "*Code*"), and Treasury Regulations promulgated thereunder (the "*Regulations*").

3. This certificate is based on the facts and estimates described herein in existence on this date, which is the date of delivery of the Obligation to the Bank, and, on the basis of such facts and estimates, the Issuer expects that the future events described herein will occur.

B. Purpose and Size.

1. The Obligation is being entered into pursuant to a resolution adopted by the Issuer on March 26, 2013 (hereinafter referred to as the "*Resolution*") for the purpose of providing the funds to acquire and/or finance the equipment described in Schedule A No. 2 to the Master Lease (the "*Equipment*"). The Issuer intends that the transactions contemplated by the Obligation will constitute, for federal income tax purposes, a borrowing by the Issuer from the Bank. Under the Obligation, the Issuer is obligated to repay the borrowing by making payments to the Bank of Rental Payments (as defined in the Obligation), consisting of a principal component and an interest component, on the dates and in the amounts set forth in the Obligation. The interest component of the Obligation will begin to accrue on the date hereof.

2. No portion of the amounts borrowed by the Issuer under the Obligation will be used as a substitute for other funds that otherwise were to be used as a source of financing for the Equipment.

3. The Obligation is not a "private activity bond" as that term is defined in section 141(a) of the Code.

4. The amounts received from the Obligation, when added to the amounts expected to be received from the investment thereof, do not exceed the amounts required to pay the costs of the Equipment and of entering into the Obligation.

5. The Equipment will be owned, operated, and maintained by the Issuer. The Issuer has not contracted with any person or entity to operate, maintain or manage the Equipment, or any part thereof, for and on behalf of the Issuer. The Issuer does not expect to enter into any contract for the operation, maintenance or management of the Equipment or any part thereof.

6. There is not, and as of the date hereof the Issuer does not anticipate entering into, any lease, contract or other understanding or arrangement, such as a take-or-pay contract or output contract, with any person other than a state or local governmental unit pursuant to which the Issuer expects that proceeds of the Obligation, or the equipment financed therewith, will be used in the trade or business of such person (including all activities of such persons who are not individuals).

7. No receipts from the sale of the Obligation or the amounts received from the investment thereof will be used to pay the principal of or interest on any currently outstanding issue of bonds or other obligations of the Issuer other than the Obligation.

C. Temporary Period for Equipment.

1. Within six months from the date hereof, the Issuer will have incurred binding obligations or commitments to third parties for the Equipment in the amount of at least 5% of the net proceeds of the Obligation.

2. After entering into said contracts, acquisition and installation of the Equipment and the allocation of net proceeds of the Obligation to expenditures will proceed with due diligence.

3. The Issuer expects that all of the net proceeds of the Obligation will be spent within three years from the date hereof, and that any investment proceeds of the Obligation will be spent within one year from the date of receipt.

4. Approximately \$ -0- of the proceeds of the Obligation will be used to reimburse the Issuer for Equipment expenditures made by it from its own funds prior to the date hereof. With respect to such reimbursement, if any, the Issuer adopted an official intent for the original expenditures (except possibly for “preliminary expenditures” as defined in section 1.150-2(f)(2) of the Regulations) not later than 60 days after payment of the original expenditures, and a copy of the Issuer's official intent is attached to this Certificate As To Tax Exemption. Except for expenditures meeting the preliminary expenditures exception set forth in section 1.150-2(f)(2) of the Regulations, the Obligation is being issued and the reimbursement allocation is hereby being made not later than 18 months after the later of (i) the date the original expenditures were paid, or (ii) the date the Equipment is placed in service or abandoned, but in no event more than 3 years after the original expenditures were paid. The original expenditures were capital expenditures, and in connection with this allocation, the Issuer has not employed any abusive arbitrage device under section 1.148-10 of the Regulations to avoid the arbitrage restrictions or to avoid restrictions under section 142 through 147 of the Code.

D. Source and Disbursement of Funds.

1. The Obligation is being issued and delivered to the Bank on the date hereof upon payment of the agreed purchase price.

2. The Obligation provides that the Bank shall deposit \$5,020,000 into escrow to be credited to the equipment acquisition fund (the “*Equipment Acquisition Fund*”) created by the Acquisition Fund Agreement to be utilized to pay for the Equipment as provided therein. It is presently expected that all such funds initially credited to the Acquisition Fund shall be disbursed to pay for the Equipment within one year of the date hereof, but any such amounts ultimately determined not to be needed for such purposes and the interest earnings on the amounts held in escrow shall be utilized to pay part of the principal or interest due under the Lease, as provided in the Lease and the Acquisition Fund Agreement.

3. Costs of issuance relating to the Obligation are \$20,000 and will be paid from Obligation proceeds and the remaining proceeds of the Obligation will be allocated by the Issuer to costs of the Equipment. The Issuer estimates that no income and profit will be received from the investment of proceeds of the Obligation pending the disbursement of such amount for the governmental purposes for which the Obligation is being delivered.

4. No receipts from the proceeds of the Obligation or the amounts received from the investment thereof will be used to pay the principal of or interest on any presently outstanding issue of bonds or other similar obligations of the Issuer.

E. Obligation Not Hedge Bonds

1. The Issuer expects to expend within three years from the date hereof an amount of proceeds of the Obligation equal to not less than 85% of the net sales proceeds of the Obligation.

2. No proceeds of the Obligation will be invested in investments which have a substantially guaranteed yield for four years or more.

F. Yield and Nonpurpose Investments.

1. No other obligations of the Issuer which are reasonably expected to be paid from the same source of funds as the Obligation were sold within 15 days from the date the Obligation was delivered.

2. The Obligation bears interest at the rate of 1.52% per annum.

3. The Issuer acknowledges that the Yield on the Obligation is 1.52% and that the weighted average maturity of the Obligation is less than 120% of the average reasonably expected economic life of the Equipment.

4. Except as otherwise provided in section 148(f) of the Code, the Issuer will account for proceeds of the Obligation separately from other funds of the Issuer and will compute and pay to the United States Treasury the rebate amount due with respect to the Obligation to the place, in the manner and amount and accompanied by such forms or other information as is or may be required by Section 148(f) of the Code and the regulations and rulings thereunder.

G. Interest and Sinking Fund.

1. The Issuer has agreed to annually appropriate funds to pay principal and interest on the Obligation as they become due, and such funds have been pledged to the payment of the Obligation.

2. The Issuer has not established and does not expect to establish any sinking fund, debt service fund, redemption fund, reserve fund, replacement fund, or similar fund to be used to pay, directly or indirectly, principal or interest on the Obligation. The Issuer has not pledged or otherwise restricted and does not expect to pledge or restrict any other funds or property (other than the Equipment) which as a result of the pledge or restriction could be reasonably assured to be available to pay, directly or indirectly, principal or interest on the Obligation, even if the Issuer encounters financial difficulty.

H. No Abusive Arbitrage Device.

1. In connection with the issuance of the Obligation, the Issuer has not employed any action which has the effect of overburdening the market for tax-exempt obligations by issuing more bonds, issuing bonds earlier, or allowing bonds to remain outstanding longer than is reasonably necessary to accomplish the governmental purposes of the Obligation.

2. In connection with entering into the Obligation, the Issuer has not employed any action which has the effect of enabling the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage.

I. Written Procedures.

1. The representations and covenants contained in this Certificate as to Tax Exemption and the Obligation are hereby adopted by the Issuer to be written procedures to ensure compliance, including post-issuance compliance and record retention practices, with the rules applicable to tax-exempt obligations issued under Section 103 of the Code. The Issuer will maintain records that show compliance with the covenants and representations contained in this Certificate and the Obligation and with the requirements contained in the Code and Regulations related to tax-exempt obligations, while the applicable tax-exempt obligations remain outstanding and for a period of three years after redemption of the tax-exempt obligations.

2. The Issuer designates its Chief Financial Officer to have primary responsibility for monitoring post-issuance tax compliance with the covenants and representations contained in this Certificate and the Obligation and with the requirements contained in the Code and regulations relating to tax-exempt obligations, including requirements relating to the maintenance and retention of records. The Chief Financial Officer of the Issuer may assign and delegate responsibilities as he or she deems necessary or appropriate. These officers will receive the following training with regard to their compliance monitoring responsibilities: consultations with professional advisors, review of written alerts and materials and attendance at professional meetings and seminars.

3. The Issuer will conduct compliance checks for its tax-exempt obligations at least annually. If the Issuer discovers a potential violation of a federal tax requirement, it will promptly take appropriate action, as needed, to maintain the tax-exemption of the applicable debt obligations, including consultation with professional advisors and taking remedial action as described in the Treasury Regulations, and/or other corrective action, such as through the Tax Exempt Bonds Voluntary Closing Agreement Program.

EXECUTED AND DELIVERED, April 2, 2013.

CITY OF EL PASO, TEXAS

Chief Financial Officer

EXHIBIT C

(See attachment.)

ACQUISITION FUND AGREEMENT

THIS ACQUISITION FUND AGREEMENT (“Escrow Agreement”) is made and entered into as of April 2, 2013 (the “Closing Date”) by and among **CITY OF EL PASO, TEXAS** (“Depositor”), and **AMEGY BANK NATIONAL ASSOCIATION** (the “Escrow Agent”).

The Depositor and Escrow Agent agree as follows:

The undersigned does hereby deliver to Escrow Agent, the papers, money or property hereinafter described, to be held and disbursed by said Escrow Agent in accordance with the duties, instructions and upon the terms and conditions hereinafter set forth.

1. The Escrow Agent acts hereunder as a depository only and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it hereunder, including, in particular, any written requisitions and payment schedules, or with respect to the form or execution of the same, or the Depositor, authority or rights of any person executing or depositing the same.

2. The Escrow Agent shall not be required to take or be bound by notice of any default by any person, or to take any action with respect to such default involving any expense or liability, unless notice in writing is given to an officer of the Escrow Agent of such default by the undersigned or any of them.

3. The Escrow Agent shall not incur any liability in acting upon any notice, request, waiver, consent, receipt or other paper or document believed by the Escrow Agent to be genuine and to be signed by the proper party or parties.

4. The Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of the foregoing and following instructions or the Escrow Agent's duties thereunder and shall not be held to any liability for acting in accordance with advice so received.

5. The Depositor agrees to pay the Escrow Agent Fees according to the amounts set forth in **Exhibit C**. The Escrow Agent shall have a first lien on the property and papers held by it hereunder, for its compensation and for any costs, liability, expense or counsel fees it may incur.

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

(a) The rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the money, papers and property involved herein or affected hereby; and/or

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

7. The duties of the Escrow Agent under the terms of this Escrow Agreement are as follows:

(a) During the period of the escrow the Escrow Agent shall hereby establish and receive into the escrow fund (the “Escrow Fund”) \$5,020,000 deposited at Closing or such time thereafter as

determined by the Depositor and any additional amounts thereafter that may be deposited from time to time.

(b) The Escrow Agent shall make disbursements following the receipt of a written requisition approved by an Authorized Representative of the Depositor substantially in the form attached hereto as **Exhibit A**. Authorized Representative is defined as those persons named in **Exhibit B** hereto.

(c) The funds deposited in the Escrow Fund shall be invested by the Escrow Agent as provided in the written instructions of the Depositor delivered to the Escrow Agent and only in accordance with the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended, and in accordance with the investment policy of the Depositor, a copy of which has been provided to the Escrow Agent. The Escrow Agent shall not be responsible or liable for any diminution of principal, interest, or penalty on any investments of the Escrow property made pursuant to the terms of this Escrow Agreement. The Escrow Agent is authorized to liquidate in accordance with its customary procedures any portion of the Escrow Property to provide for payments required to be made under this Escrow Agreement.

(d) The Escrow Agent shall report monthly concerning the receipts, disbursements and status of the Escrow Fund. The reports shall be mailed to the Depositor at the address provided for herein or at such other address as directed in writing by the Depositor.

(e) The Escrow Fund will be terminated after payment of the fees and expenses of the Escrow Agent, and any unexpended balance in the Escrow Fund will be distributed in the manner provided in clause (f) of this Paragraph 7, upon receipt by the Escrow Agent of a certificate signed by Authorized Representatives of the Depositor, as defined in clause (b) of this Paragraph 7 stating that all obligations and costs in connection with the escrow which are payable out of this Escrow Fund have been paid and discharged and that the Escrow Agent is authorized and directed to distribute any unexpended balance in the Escrow Fund in the manner provided in clause (f) of this Paragraph 7.

(f) Upon the termination of the Escrow Fund as provided in clause (e) of this Paragraph 7, any unexpended balance in the Escrow Fund shall be transferred by the Escrow Agent at the direction of the Depositor.

8. Depositor does hereby agree to indemnify and save Escrow Agent harmless from and against any and all claims, demands, actions, proceedings, judgments, losses, damages, counsel fees, court costs, payments, expenses, and all liabilities whatsoever, which Escrow Agent at any time shall or may sustain or incur by reason of complying with the duties of this Escrow Agreement or any requests made by Depositor save for its own gross negligence or willful misconduct.

9. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10. This Escrow Agreement may be executed in several counterparts each of which shall be regarded as an original (with the same effect as if the signatures thereto and hereto were upon the same document) and all of which shall constitute one and the same document.

[Execution page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the day and year first above written.

**City of El Paso, Texas,
as Depositor**

Authorized Representative
By: _____
Title: _____

**Amegy Bank National Association,
as Escrow Agent**

By: _____
Title: _____

EXHIBIT A

WRITTEN AUTHORIZATION AND REQUEST FOR REIMBURSEMENT
FROM ESCROW FUND

To: Amegy Bank National Association, as Escrow Agent

Written Request No.: _____

I, the undersigned Authorized Representative of the **City of El Paso, Texas**, (the "Depositor"), do hereby certify to and request of the Escrow Agent as follows:

1. Pursuant to the provisions of the Escrow Agreement by and between the Depositor and the Escrow Agent, the undersigned hereby authorizes and requests payment from the Escrow Fund in the following amount to the following payee:

2. The payment proposed to be made has been incurred and is a proper charge against the Escrow Fund.
3. This Written Authorization and Request, shall be conclusive evidence of the facts and statements set forth herein.

By: _____
Authorized Representative

DATED: _____

EXHIBIT B

AUTHORIZED REPRESENTATIVES OF CITY OF EL PASO, TEXAS

Name:	Title:	Signature
<u>Joyce Wilson</u>	<u>City Manager</u>	_____
<u>Carmen Arrieta-Candelaria</u>	<u>Chief Financial Officer</u>	_____
<u>Mark Sutter</u>	<u>Comptroller</u>	_____
<u>Leo Fierro</u>	<u>Treasury Services Coordinator</u>	_____

EXHIBIT C
FEE SCHEDULE

Acceptance Fee: WAIVED
To review and negotiate documents and setup account(s).

Administration Fee: \$1,500.00
To administer the account per terms of the agreement including maintenance, transactions, etc. (Due upon execution of the agreement and on each anniversary date thereafter without pro-ration)

Trades or Sells of Securities \$35.00 each
(unless invested in sweep fund)

Out of Pocket Expenses: At Cost

Disbursements \$25.00 per item
(In excess of 12 per annum)

Tax Reporting:
There is no charge for tax reporting to one entity only. However, if reporting is to be apportioned to various distributives, there will be an additional charge of \$50.00 per 1099 INT produced.

Extraordinary Services:
This fee does not cover any extraordinary expenses, including, but not limited to, legal fees which may be incurred by the Escrow Agent in performing its duties hereunder nor any extraordinary services which will be assessed at the time such services may be required.