

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

**DEPARTMENT:** Financial Services

**AGENDA DATE:** May 1, 2007

**CONTACT PERSON/PHONE:** Carmen Arrieta-Candelaria (541-4293)

**DISTRICT(S) AFFECTED:** Citywide

**SUBJECT:**

Discussion and action on a Resolution to authorize the City Manager to sign an amendment to that certain Master Equipment Lease/Purchase Agreement, dated as of November 3, 2006, with Banc of America Public Capital Corporation, assignee of Banc of America Leasing & Capital, LLC, to increase the principal amount from \$10,000,000.00 to an amount not to exceed \$15,000,000.00 to finance the purchase of transit buses for the Department of Mass Transit.

**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?

The attached resolution allows the City Manager to amend the master lease agreement dated as of November 3, 2006, with Banc of America Public Capital Corp., assignee of Banc of America Leasing & Capital, LLC, to finance the purchase of additional transit buses for the Department of Mass Transit. The Mass Transit Board and the City Council approved the purchase twenty (20) 40-foot low floor compressed natural gas (CNG) option buses from North American Bus Industries, Inc. at their respective meetings held on April 24, 2007. The cost of each bus is \$397,172.32 (\$404,172.32 net of discount of \$7,000.00) plus spare parts in the amount of \$196,488.34, for a total purchase amount of \$8,139,934.74. The funding for these buses will come from a combination of federal and local funding, subject to FTA reprogramming. Federal funds in the amount of \$4,065,216.87 have been allocated for this purchase with a required local match of \$691,086.87. Federal funds in the amount of \$4,074,717.87, with a required local match of \$814,943.57, are subject to reprogramming and are anticipated to be allocated for this purchase.

The local match as well as any remaining funding needed for the buses will be funded through the lease purchase financing agreement approved by the City Council on July 25, 2006, and the amendment to this lease agreement, if approved by City Council. The amount financed shall be paid through revenues generated from the Mass Transit Department. The term of the capital lease is expected to be for seven (7) years comprised of semi-annual payments. Lease payments will be subject to appropriation from the revenues of the Mass Transits enterprise fund. The estimated interest rate is 3.95%, not to exceed 4.25%. At the end of the lease term, the City will purchase all of the buses for \$1. This type of financing is allowable under the Debt Management Policy approved by Council, Section 4.5.

**PRIOR COUNCIL ACTION**

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

Council has approved the original master lease on July 25, 2006.

**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?

This item will allow the City to fund an additional \$5 million of transit buses for the Mass Transit Department. The semi-annual payments will be paid for from Mass Transit revenues.

**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

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07 MAY - 1 AM 8:57

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

LEGAL: (if required) \_\_\_\_\_ FINANCE: (if required) \_\_\_\_\_

DEPARTMENT HEAD: Carmen Anita Candelaria

(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

APPROVED FOR AGENDA:

CITY MANAGER: \_\_\_\_\_

DATE: \_\_\_\_\_

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**RESOLUTION**

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**WHEREAS**, the City of El Paso (the "City") 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. to lease, as lessee, to purchase and receive, and to control and dispose of personal property, whether movable or fixed, considered by the City to be necessary, useful or appropriate to one or more governmental purposes of the City;

**WHEREAS**, the City of El Paso has executed a Master Equipment Lease/Purchase Agreement dated as of November 3, 2006 (the "Master Lease") with Banc of America Public Capital Corp, assignee of Banc of America Leasing & Capital, LLC, (the "Bank") for the financing of up to \$10 million in principal amount associated with the acquisition of 35 transit buses for the Department of Mass Transit;

**WHEREAS**, the Mass Transit Department Board of the City has made a determination that the acquisition of additional buses and equipment is necessary, useful and appropriate for the mass transit needs of the City and that it wishes to finance such additional buses through an amendment, supplement or other modification to the Master Lease (the "Amendment") and has requested that the City move forward with the Amendment and additional lease/purchase acquisition;

**WHEREAS**, the City has determined that it is in the best interest of the City to enter into the Amendment to enable the City to finance the lease/purchase up to \$5,000,000 additional principal amount associated with the acquisition of the additional City buses (the "Equipment") with the intent that the interest portion of the rental payments on such lease be excluded from gross income for federal income tax purposes and, as security for such rental payments, the City has agreed to grant a first lien security interest in the Equipment to Bank, and to make payments as set forth in the Amendment, subject to annual appropriation, sufficient to pay both the principal and interest portion of such lease rental payments.

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

1. The declarations, determinations and findings declared, made and found in the recitals to this resolution are hereby adopted, restated and made a part of the operative provisions hereof. All prior actions and determinations of the Mass Transit Department Board of the City with respect to lease of the Equipment are hereby accepted, ratified and approved.
2. The City Council agrees to enter into the Amendment in order to finance acquisition of the Equipment in a principal amount of up to \$5,000,000 at an interest rate not to exceed 4.25% per annum and, in order to secure the Amendment, to grant a first lien security interest in the Equipment, in accordance with the Amendment and the Master Lease.

3. The Amendment shall be for a term not to exceed seven (7) years, and the rental payments for the Equipment shall be subject to appropriation from the revenues of the City's Mass Transit enterprise fund.
4. The City Manager is authorized to execute, acknowledge and deliver, in the name and on behalf of the City, the Amendment, including all attachments, financing statements and schedules thereto on terms consistent with this Resolution, with such changes, modifications and additions in form as the City Manager may deem necessary and appropriate; her execution of such agreement being conclusive evidence of such determination.
5. The lease of the Equipment is hereby approved. The City Manager or her designee is authorized to make replacements or otherwise substitute other similar equipment for any of the items so described or incorporated if necessary due to inability of a vendor to deliver an item of equipment, so long as such substitution of any item of equipment does not frustrate the purpose for which the Equipment is being leased or result in an increase in the amount required to be paid by the City for the Equipment, as provided in Section 2 hereof.
6. There is hereby authorized the continuing execution and delivery by the City Manager, the Deputy City Manager or their respective designees, in the name of and on behalf of the City, the Schedule A and Attachments to the Master Lease or Amendment, with such changes as the signing officer shall determine advisable and on terms consistent with this Resolution, and the execution thereof shall be conclusive as to such determination
7. The City Manager, the Deputy City Manager or their respective designees are authorized to execute, acknowledge and deliver, in the name and on behalf of the City, any other agreement, proposal letter, instrument, certificate, representation and document, and to take any other action as may be advisable, convenient or necessary to enter into the Amendment and consummate the leasing of the Equipment in accordance with this Resolution and the Master Lease; the execution thereof by any such authorized officer shall be conclusive as to such determination.
8. This Resolution shall take effect immediately.

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APPROVED this \_\_\_ day of \_\_\_\_\_ 2007.

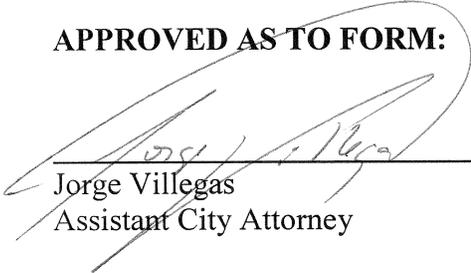
**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Jorge Villegas  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Carmen Arrieta-Candelaria  
Chief Financial Officer

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ACQUISITION FUND AGREEMENT

CITY CLERK DEPT.  
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This **ACQUISITION FUND AGREEMENT**, dated as of May \_\_\_\_, 2007, is entered into by and among **BANC OF AMERICA PUBLIC CAPITAL CORP**, a Kansas corporation (hereinafter referred to as "Lessor"), **CITY OF EL PASO, TEXAS**, a political subdivision of the State of Texas (hereinafter referred to as "Lessee") and **BANK OF AMERICA, N.A.**, a national banking association (hereinafter referred to as "Acquisition Fund Custodian").

Reference is made to that certain Master Equipment Lease/Purchase Agreement dated as of November 3, 2006 between Lessor (as assignee of Banc of America Leasing & Capital, LLC) and Lessee (hereinafter referred to as the "Lease"), covering the acquisition and lease of certain equipment described therein (the "Equipment"). It is a requirement of the Lease that the purchase price of the Equipment be deposited into an escrow under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

The parties agree as follows:

1. Creation of Acquisition Fund.

(a) There is hereby created a special trust fund to be known as the "*City of El Paso, Texas Acquisition Fund*" (the "Acquisition Fund") to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of the Lessor and the Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Permitted Investments in accordance with written instructions received from the Lessee. The Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Permitted Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian nor the Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund unless caused by its willful misconduct or negligence, and the Lessee agrees to and does hereby release the Acquisition Fund Custodian and the Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from the Lessor, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, the Lessee shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Acquisition Fund after disbursement of the Total Contract Price shall be applied as provided in Section 4 hereof.

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

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS OF THE STATE, LESSEE HEREBY AGREES TO INDEMNIFY, PROTECT, AND SAVE THE ACQUISITION FUND CUSTODIAN 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 1(d) HEREOF OR IN ANY OTHER PROVISION HEREOF, THE INDEMNIFICATION ARISING UNDER THIS SUBSECTION SHALL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THE FULL PAYMENT OF ALL OBLIGATIONS UNDER THE LEASE OR ANY SCHEDULE A THEREUNDER.

The Acquisition Fund Custodian shall be vested with a lien on and is hereby granted a security interest in all property deposited hereunder to the extent that Lessee has the authority to grant such a security interest, for indemnification, for reasonable attorneys' fees, court costs, for any suit, interpleader or otherwise, or any other expense, fees or charges of any character or nature, which may be incurred by the Acquisition Fund Custodian by reason of disputes arising between the Lessee and the Lessor as to the correct interpretation of the Lease and instructions given to the Acquisition Fund Custodian hereunder, or otherwise, with the right of Acquisition Fund Custodian, regardless of the instructions aforesaid, to hold the said property until and unless said additional expenses, fees and charges shall be fully paid.

(g) If the Lessee and the Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. Subject to annual appropriation, the Acquisition Fund Custodian shall be reimbursed by the Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

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

(i) The Lessee shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Acquisition Fund. The Acquisition Fund Custodian agrees to give the Lessee advance written notice and obtain the consent of the Lessee (which consent shall not be unreasonably withheld) prior to incurring any extraordinary costs and expenses in the performance of its duties hereunder.

2. Acquisition of Property.

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

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(b) Authorized Acquisition Fund Disbursements. Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to the Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Requisition Procedure. Prior to disbursement from the Acquisition Fund there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of the Disbursement Request attached hereto as Exhibit A, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due. No disbursement from the Acquisition Fund shall be made unless and until the Lessor has approved such requisition. Each such requisition shall be signed by an authorized representative of the Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following:

- (1) Delivery to Lessor of a certificate of the Lessee to the effect that:
  - (i) an obligation in the stated amount has been incurred by the Lessee, and that the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease, and has not been paid; (ii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which the Lessee is, at the date of such certificate, entitled to retain; and (iv) the Equipment is insured in accordance with the Lease.
- (2) Delivery to Lessor of an Acceptance Certificate, in the form attached hereto as Exhibit B, executed by Lessee, together with any purchase agreement, assignment or bill of sale and invoice therefor;
- (3) There shall exist no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default); and
- (4) No material adverse change in Lessee's financial condition shall have occurred since the date of the Lease.

3. Deposit to Acquisition Fund. Upon satisfaction of the conditions precedent specified in the Lease, Lessor will cause the Lease Proceeds to be deposited in the Acquisition Fund. The Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Acquisition Fund.

4. Excessive Acquisition Fund. Following the final disbursement from the Acquisition Fund or termination of the Acquisition Fund as otherwise provided herein, the Acquisition Fund Custodian shall transfer any remainder from the Acquisition Fund to the Lessor for application to amounts owed under the Lease.

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

6. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This agreement may not be amended except in writing signed by all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to

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an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to the Lessor: Banc of America Public Capital Corp  
555 California Street, 4th Floor  
Mail Code: CA5-705-04-01  
San Francisco, CA 94104  
Attention: Contract Administration  
Fax: (415) 765-7373

If to the Lessee: City of El Paso, Texas  
2 Civic Center Plaza  
El Paso, TX 79901  
Attention: Carmen Arrieta-Candelaria, Chief Financial Officer  
Fax: (915) 541-4446

If to the Acquisition Fund Custodian: Bank of America, N.A.  
c/o Banc of America Public Capital Corp  
Contract Administration – 15811  
CA5-705-04-01  
555 California Street, 4th Floor  
San Francisco, California 94104  
Attn: Larry M. Anonuevo Jr.  
Fax: (415) 343-0533

7. Entire Agreement. THIS AGREEMENT EMBODIES THE FINAL, ENTIRE UNDERSTANDING AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO.

8. Governing Law and Venue. This Agreement shall be governed by Texas law. Venue for any legal proceedings relating to this Agreement shall lie in El Paso County, Texas.

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In Witness Whereof, the parties have executed this Acquisition Fund Agreement as of the date first above written.

**BANC OF AMERICA PUBLIC CAPITAL CORP**  
Lessor

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

**BANK OF AMERICA, N. A.**  
Acquisition Fund Custodian

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

**CITY OF EL PASO, TEXAS**  
Lessee

By: \_\_\_\_\_  
Name: Joyce Wilson  
Title: City Manager

**Approved as to Form:**

By: \_\_\_\_\_  
Name: Jorge Villegas  
Title: Assistant City Attorney

By: \_\_\_\_\_  
Name: Paul Braden  
Title: City of El Paso - Outside Legal Counsel

**Approved as to Content:**

By: \_\_\_\_\_  
Name: Carmen Arrieta-Candelaria  
Title: Chief Financial Officer

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**EXHIBIT A**

DISBURSEMENT REQUEST NO. \_\_\_\_\_

**Re: Master Equipment Lease/Purchase Agreement dated as of November 3, 2006  
by and between Banc of America Public Capital Corp, as Lessor and  
City of El Paso, Texas, as Lessee (the "Lease")**

In accordance with the terms of the Acquisition Fund Agreement, dated as of May \_\_, 2007 (the "Acquisition Fund Agreement") by and among Banc of America Public Capital Corp ("Lessor"), City of El Paso, Texas ("Lessee") and Bank of America, N.A. (the "Acquisition Fund Custodian"), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund Agreement (the "Acquisition Fund") for the following purposes.

Payee's Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

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

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

(iii) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain.

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

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

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(vi) No material adverse change in Lessee's financial condition shall have occurred since the date of the Lease.

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

**CITY OF EL PASO, TEXAS,**  
as Lessee under the Lease

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

Disbursement of funds from the Acquisition  
Fund in accordance with the foregoing  
Disbursement Request hereby is authorized

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

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

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EXHIBIT B

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 3, 2006, (the "Agreement"), with BANC OF AMERICA PUBLIC CAPITAL CORP, 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 any vendor(s) under any purchase agreement(s) 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 the Agreement.

**Part II:**

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

<u>Item (Quantity)</u>	<u>Description, Make, Model</u>	<u>Total Contract Price</u>
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DATED: \_\_\_\_\_, 20\_\_.

**CITY OF EL PASO, TEXAS,**  
as Lessee

By: \_\_\_\_\_  
Name: Joyce Wilson  
Title: City Manager

**Approved as to Form:**

By: \_\_\_\_\_  
Name: Jorge Villegas  
Title: Assistant City Attorney

By: \_\_\_\_\_  
Name: Paul Braden  
Title: City of El Paso - Outside Legal Counsel

**Approved as to Content:**

By: \_\_\_\_\_  
Name: Carmen Arrieta-Candelaria  
Title: Chief Financial Officer

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**SCHEDULE A No. 2  
TO MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT**

by and between  
**BANC OF AMERICA PUBLIC CAPITAL CORP,**  
as Lessor  
and  
**CITY OF EL PASO, TEXAS**  
as Lessee

Dated as of May \_\_\_, 2007

\*\*\*\*\*

For all purposes under or with respect to this Schedule A and any documents or instruments executed and delivered in connection herewith, each reference to "Lessor" contained herein and in the Master Lease Agreement dated as of November 3, 2006 (the "Master Lease") between Banc of America Leasing & Capital, LLC ("BALC") and the City of El Paso, Texas ("Lessee") shall be deemed to be a reference to BALC's assignee and affiliate, Banc of America Public Capital Corp ("Lessor"). In addition, Lessee acknowledges and agrees that (i) the security interest provided in the Master Lease in any Equipment subject to any Schedule A with Lessor or BALC shall secure the payment and performance of all of Lessee's obligations owing to Lessor or BALC under the Master Lease and each Schedule A, and (ii) the occurrence of an Event of Default under the Master Lease or any Schedule A with Lessor or BALC shall constitute an Event of Default under the Master Lease and each Schedule A.

\*\*\*\*\*

**THIS SCHEDULE A No. 2 ("Schedule A")** to the **MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT** identified above (the "Master Lease") is entered into as of this May \_\_\_, 2007, by and between **BANC OF AMERICA PUBLIC CAPITAL CORP**, 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:

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

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 eighteen (18) 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 eighteen (18) 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 Sun Metro, 700-A San Francisco, El Paso, Texas 79901.
3. The following terms are applicable to the lease/purchase of the Equipment set forth in this Schedule A No. 2:

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(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 which date is November 3, 2006.

(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: \_\_\_\_\_%

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

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

(f) Purchase Price: The amount equal to \$5,000,000

(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 \$5,000,000 of which \$\_\_\_\_\_ 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>
		\$	\$	\$

NOTE: Amortization Schedule may be attached as Exhibit A to final Schedule A No. 2.

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:

The address for notices is:

Banc of America Public Capital Corp  
 555 California Street, 4th Floor  
 San Francisco, CA 94104  
 Attention: Contract Administration  
 Mail Code: CA5-705-04-01

City of El Paso, Texas  
 2 Civic Center Plaza  
 El Paso, TX 79901  
 Attention: Carmen Arrieta-Candelaria, Chief Financial Officer

07 MAY -4 AM 8:58  
 CITY CLERK DEPT.

The address for payments is: Banc of America Public Capital Corp  
P.O. Box 31682  
Tampa, FL 33631-3682

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. Lessee shall deliver or cause to be delivered an opinion of counsel concurrently with the execution and delivery of this Schedule A in the form of Attachment E hereto and execute and cause to be timely filed an IRS Form 8038-G (or, IRS Form 8038-GC if the Total Contract Price of the Equipment is less than \$100,000) 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 D, and F, G, I and J hereto, 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 this Schedule 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 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 Certificate of Appropriation executed by an Authorized Officer of Lessee. Within 45 days of the date hereof, Lessee agrees to appropriate funds for the payment of all Rental Payments (as defined in the Master Lease) for the fiscal year ending August 31, 2007. Upon such appropriation, Lessee shall promptly sign and deliver to Lessor Attachment B.
12. Attached hereto as Attachment C and incorporated herein by reference is an original General Certificate, executed by Authorized Officers of Lessee.
13. Attached hereto as Attachment D and incorporated herein by reference is an original Signature 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. Lessor may, in its sole discretion, waive this requirement.
15. Attached hereto as Attachment F is a certified copy of the ordinance or resolution of Lessee's City Council authorizing the Master Lease and this Schedule A No. 2.
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.

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19. 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.

**BANC OF AMERICA PUBLIC CAPITAL CORP,**  
as Lessor

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

**CITY OF EL PASO, TEXAS,**  
as Lessee

By: \_\_\_\_\_  
Name: Joyce Wilson  
Title: City Manager

**Approved as to Form:**

By: \_\_\_\_\_  
Name: Jorge Villegas  
Title: Assistant City Attorney

By: \_\_\_\_\_  
Name: Paul Braden  
Title: City of El Paso - Outside Legal Counsel

**Approved as to Content:**

By: \_\_\_\_\_  
Name: Carmen Arrieta-Candelaria  
Title: Chief Financial Officer

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ATTACHMENT A TO SCHEDULE A NO. 2

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 3, 2006, and under Schedule A. No. 2 thereto dated as of May \_\_, 2007 (collectively, the "*Agreement*"), with BANC OF AMERICA PUBLIC CAPITAL CORP, 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: Joyce Wilson  
Title: City Manager

**Approved as to Form:**

By: \_\_\_\_\_  
Name: Jorge Villegas  
Title: Assistant City Attorney

By: \_\_\_\_\_  
Name: Paul Braden  
Title: City of El Paso - Outside Legal Counsel

**Approved as to Content:**

By: \_\_\_\_\_  
Name: Carmen Arrieta-Candelaria  
Title: Chief Financial Officer

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ATTACHMENT B TO SCHEDULE A NO. 2

CERTIFICATE OF APPROPRIATION

We, the undersigned Authorized Officers of the of **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 November 3, 2006, between Lessee and **BANC OF AMERICA PUBLIC CAPITAL CORP** ("*Lessor*"), and Schedule A No. 2, dated as of May \_\_, 2007 thereunder ("*Schedule A*") for the fiscal year ending August 31, 2007 are available, unexhausted, unencumbered appropriation of unobligated funds from Lessee's Mass Transit enterprise fund, representing the sum of its Rental Payment obligations owing under the Agreement and Schedule A during such fiscal year.

IN WITNESS WHEREOF, I have set my hand this May \_\_, 2007.

**CITY OF EL PASO, TEXAS,**  
as Lessee

By: \_\_\_\_\_  
Name: Joyce Wilson  
Title: City Manager

**Approved as to Form:**

By: \_\_\_\_\_  
Name: Jorge Villegas  
Title: Assistant City Attorney

By: \_\_\_\_\_  
Name: Paul Braden  
Title: City of El Paso - Outside Legal Counsel

**Approved as to Content:**

By: \_\_\_\_\_  
Name: Carmen Arrieta-Candelaria  
Title: Chief Financial Officer

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ATTACHMENT C TO SCHEDULE A NO. 2

GENERAL CERTIFICATE  
OF  
CITY OF EL PASO, TEXAS

We, the undersigned Authorized Officers of the **CITY OF EL PASO, TEXAS** ("*Lessee*") acting in our official capacities as such, hereby certify with respect to the **MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT**, dated as of November 3, 2006, (the "*Master Lease*") by and between Lessee, as lessee, and **BANC OF AMERICA PUBLIC CAPITAL CORP**, as lessor ("*Lessor*") and Schedule A No. 2 issued thereunder (the Master Lease and Schedule A No. 2 collectively referred to as the "*Agreement*"), as follows:

1. That Lessee is a body corporate and politic, and was validly created and exists under the laws and the Constitution of the State of Texas and is a political subdivision or governmental agency thereof.

2. That as of the date of approval of the Master Lease and Schedule A No. 2, the following named persons constitute the members of the City Council of Lessee:

<u>NAME</u>	<u>TITLE</u>
John F. Cook	Mayor
Ann Morgan Lilly	Representative
Susie Byrd	Representative
J. Alexandro Lozano	Representative
Melina Castro	Representative
Presi Ortega	Representative
Eddie Holguin Jr.	Representative
Steve Ortega	Representative
Beto O'Rourke	Representative

4. The City Council of Lessee duly adopted by a majority vote the Resolution Regarding Leasing Certain Equipment (the "*Resolution*") authorizing and approving the entering into the Master Lease and Schedule A No. 2 to the Master Lease, 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.

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

- (a) Master Lease; and
- (b) Schedule A No. 2 (including all Attachments thereto).

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

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

89-8 AM 4-14-08  
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IN WITNESS WHEREOF, we have duly executed this certificate this May \_\_\_\_, 2007.

**CITY OF EL PASO, TEXAS,**  
as Lessee

By: \_\_\_\_\_  
Name: Joyce Wilson  
Title: City Manager

**Approved as to Form:**

By: \_\_\_\_\_  
Name: Jorge Villegas  
Title: Assistant City Attorney

By: \_\_\_\_\_  
Name: Paul Braden  
Title: City of El Paso - Outside Legal Counsel

**Approved as to Content:**

By: \_\_\_\_\_  
Name: Carmen Arrieta-Candelaria  
Title: Chief Financial Officer

07 MAY - 4 AM 8:58  
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ATTACHMENT D TO SCHEDULE A NO. 2

SIGNATURE AND NO-LITIGATION CERTIFICATE

We, the undersigned Authorized Officers of the **CITY OF EL PASO, TEXAS** ("*Lessee*"), acting in our official capacities as such, hereby certify with respect to the **MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT**, dated as of November 3, 2006 (the "*Master Lease*") by and between Lessee, as lessee, and **BANC OF AMERICA PUBLIC CAPITAL CORP**, as lessor ("*Lessor*") and Schedule A No. 2, dated as of May \_\_, 2007 issued thereunder (the Master Lease and Schedule A No. 2 collectively referred to as the "*Agreement*") as follows:

1. The Agreement has been duly and officially executed by the undersigned with their manual or facsimile signatures in the same manner appearing thereon, and the undersigned hereby adopt and ratify their respective signatures in the manner appearing on each side of the Master Lease and Schedule A No. 2 whether in manual or facsimile form, as the case may be, as their true, genuine, and official signature.
2. That on the date of Schedule A No. 2 and on the date hereof, we were and are the duly qualified and acting officers indicated therein and authorized to execute the same.
3. The legally adopted proper and official corporate seal of Lessee is impressed or imprinted on the Master Lease and Schedule A No. 2 and impressed on this certificate.
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 Master Lease or Schedule A No. 2, the authority or action of the City Council of Lessee relating to the issuance or delivery of the Master Lease or Schedule A No. 2, the collection of the revenues of Lessee or the imposition of rates and charges with respect to Lessee, pledged to pay the Rental Payments on Schedule A No. 2, or that would otherwise adversely affect in a material manner the financial condition of Lessee to pay the Rental Payments on the Schedule A No. 2; and that neither the corporate existence or boundaries of Lessee nor the right to hold office of any member of the City Council of Lessee or any other elected or appointed official of Lessee is being contested or otherwise questioned.
5. That no petition or other request has been filed with or presented to any official of Lessee requesting any proceeding authorizing the issuance of the Master Lease or the Schedule A No. 2 adopted by the City Council of Lessee be submitted to a referendum or other election; no authority or proceeding for the issuance, sale, or delivery of the Master Lease or the Schedule A No. 2, passed and adopted by the City Council of 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 Master Lease or Schedule A No. 2 remain in full force and effect as of the date of this certificate.

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EXECUTED AND DELIVERED as of May \_\_\_\_, 2007.

SIGNATURE

OFFICIAL TITLE

City Manager

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

Deputy City Manager – Financial and  
Administrative Services

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

BEFORE ME, on this day personally appeared the foregoing individuals, known to me to be the persons whose names are subscribed to the foregoing instrument.

GIVEN UNDER MY HAND AND SEAL of office, this May \_\_\_\_, 2007.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

**Approved as to Form:**

By: \_\_\_\_\_  
Name: Jorge Villegas  
Title: Assistant City Attorney

By: \_\_\_\_\_  
Name: Paul Braden  
Title: City of El Paso - Outside Legal Counsel

**Approved as to Content:**

By: \_\_\_\_\_  
Name: Carmen Arrieta-Candelaria  
Title: Chief Financial Officer

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ATTACHMENT E TO SCHEDULE A NO. 2

OPINION OF COUNSEL TO LESSEE

[LETTERHEAD OF COUNSEL TO LESSEE]

May \_\_, 2007

CITY CLERK DEPT.  
07 MAY -4 AM 8:58

Banc of America Public Capital Corp  
555 California Street, 4th Floor  
San Francisco, California 94104

Andrews Kurth LLP  
600 Travis Street, Suite 4200  
Houston, Texas 77002

Re: **MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT** dated as of November 3, 2006 and that certain Schedule A No. 2 dated as of May \_\_, 2007 (collectively, the "*Agreement*"), by and between **CITY OF EL PASO, TEXAS**, as lessee ("*Lessee*"), and **BANC OF AMERICA PUBLIC CAPITAL CORP**, as lessor ("*Lessor*")

Gentlemen:

As counsel for Lessee, we have examined duly executed originals of the Agreement and Acquisition Fund Agreement (the "Acquisition Fund Agreement") and the ratified proceedings of the City Council of Lessee authorizing execution and delivery of the Agreement and Acquisition Fund Agreement, and certain other security instruments and documents with respect to the Equipment to be financed with Lease Proceeds of the Agreement. Based upon the examination and upon such other examination as we have deemed necessary or appropriate, we are of the opinion that:

1. Lessee is a public body corporate and politic, legally existing under the laws of, and is a political subdivision or agency of, the State of Texas.
2. Lessee is authorized and has the power under Texas to enter into the Agreement and Acquisition Fund Agreement and to carry out its obligations thereunder.
3. The execution, delivery and performance by Lessee of the Agreement and Acquisition Fund Agreement have been duly authorized by all necessary action on the part of Lessee and, assuming the due and proper authorization, execution and delivery thereof by Lessor, constitute legal, valid and binding obligations 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.
4. The entering into and performance of the Agreement and Acquisition Fund Agreement will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, any instrument of which we have knowledge by which Lessee is affected.
5. No action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, is pending or, to the best of our knowledge, threatened, against or affecting Lessee or its properties wherein any unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of the Agreement and Acquisition Fund Agreement or materially and adversely affect the financial condition,

business, or properties of Lessee. We have inquired of the appropriate officers of Lessee whether they know of any such matters, and they have informed us that they know of none.

Our opinion that the Agreement is enforceable in accordance with its terms is qualified to the extent that enforcement of the rights and remedies created hereby is subject to (i) general principles of equity, (ii) applicable bankruptcy, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights in general, and (iii) laws concerning recourse by creditors to security in the absence of notice and hearing.

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

Respectfully submitted,

07 MAY -4 AM 8:58  
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**ATTACHMENT F TO SCHEDULE A NO. 2**  
**CERTIFIED COPY OF ORDINANCE OR RESOLUTION ADOPTED**  
**BY LESSEE'S CITY COUNCIL**

[see attached]

CITY CLERK DEPT.  
07 MAY -4 AM 8:58

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]

CITY CLERK DEPT.  
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**ATTACHMENT H TO SCHEDULE A No. 2**

**IRS Form 8038-G**

[see attached]

CITY CLERK DEPT.  
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ATTACHMENT I TO SCHEDULE A NO. 2

CROSS-RECEIPT

With respect to the MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT, dated as of November 3, 2006 (the "Master Lease") by and between BANC OF AMERICA PUBLIC CAPITAL CORP, as lessor ("Lessor") and CITY OF EL PASO, TEXAS, as lessee ("Lessee") and Schedule A No. 2, dated as of May \_\_\_, 2007 to the Master Lease:

Lessor hereby acknowledges the lease to 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: May \_\_\_, 2007

BANC OF AMERICA PUBLIC CAPITAL CORP,  
as Lessor

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

CITY OF EL PASO, TEXAS,  
as Lessee

By: \_\_\_\_\_  
Name: Joyce Wilson  
Title: City Manager

Approved as to Form:

By: \_\_\_\_\_  
Name: Jorge Villegas  
Title: Assistant City Attorney

By: \_\_\_\_\_  
Name: Paul Braden  
Title: City of El Paso - Outside Legal Counsel

Approved as to Content:

By: \_\_\_\_\_  
Name: Carmen Arrieta-Candelaria  
Title: Chief Financial Officer

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ATTACHMENT J TO SCHEDULE A NO. 2

NO-ARBITRAGE CERTIFICATE

I, the undersigned Authorized Officer of **CITY OF EL PASO, TEXAS** (the "*Lessee*"), make this certification for the benefit of all persons interested in the exclusion from gross income for federal income tax purposes of the interest component of the Rental Payments under that certain **MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT**, dated as of November 3, 2006, by and between Lessee and Lessor, and under Schedule A No. 2 thereto, dated as of May \_\_, 2007 (collectively the "*Agreement*"), between Lessee, as lessee and **BANC OF AMERICA PUBLIC CAPITAL CORP**, as lessor ("*Lessor*").

1. **Responsible Officer.** I am the duly chosen, qualified and acting officer of Lessee for the office shown below my signature. As such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of Lessee. I am the officer of Lessee charged, along with other officers of Lessee, with the responsibility for issuing the Agreement.

2. **Purpose.** This certificate is being executed and delivered pursuant to Sections 1.148-0 through 1.148-11, 1.149(d)(1), 1.149(g)-1, 1.150-1 and 1.150-2 of the Treasury Regulations (the "*Regulations*").

3. **Definitions.** The capitalized terms used in this certificate (unless otherwise defined) that are defined in the Agreement shall for all purposes hereof have the meanings therein specified. All such terms defined in the Internal Revenue Code of 1986, as amended (the "*Code*") or Regulations shall for all purposes hereof have the meanings as given to those terms in the Code and Regulations unless the context clearly requires otherwise.

4. **Reasonable Expectations.** The facts and estimates that are set forth in this certificate are accurate; and the expectations set forth herein are reasonable in light of such facts and estimates. The undersigned is aware of no fact, estimate or circumstance that would create any doubt regarding the accuracy or reasonableness of such facts, estimates or expectations.

5. **Description of Governmental Purpose and Size.** Lessee is entering into the Agreement for the purposes of funding the acquisition of the Equipment and the costs related to the issuance of the Agreement.

(a) The Equipment will be owned, operated, and maintained by Lessee and Lessor has not contracted in any manner with any company, firm or other person or entity to operate or maintain the Equipment or any part thereof for and on behalf of Lessee.

(b) There is not, and as of the date hereof, Lessee 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 Lessee expects that the proceeds of the Agreement, or the Equipment financed therewith or any part thereof, will be used in the trade or business of such person (including all activities of such persons who are not individuals).

(c) The amounts received from the Agreement, 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, including payment of the Total Contract Price, and the costs of issuing the Agreement.

(d) No other obligations of Lessee payable from the same source of funds were sold or delivered within fifteen (15) days from the date hereof.

6. **Amount and Use of Proceeds of the Agreement.** The proceeds of the Agreement are \$5,000,000 of which of \$\_\_\_\_\_ is for payment of the costs of issuance. There is no accrued interest on the Agreement. Lessee will pay from its own funds any other cost of issuance. No proceeds will be used to pay, refund, retire or replace any governmental obligations previously issued. The proceeds will be used as follows:

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(a) The amount of \$\_\_\_\_\_ will be deposited into the Equipment Acquisition Account and is expected to be disbursed to pay or reimburse the costs of acquisition of the Equipment. The aggregate amount of the costs of acquisition of the Equipment is anticipated to be not less than such amount. Any costs of the Equipment not financed out of the proceeds of the Agreement, or investment proceeds thereof, will be financed out of Lessee's available funds.

No portion of the amount deposited into the Equipment Acquisition Account will be disbursed to reimburse Lessee for any expenditures made by Lessee, unless (i) prior to the date that is 60 days before the date hereof or the date that is 60 days prior to the date Lessee adopted or expressed its official intent to reimburse such expenditures meeting the requirements of Section 1.150-2(e)(1) of the Regulations; (ii) the expenditure is a capital expenditure, a cost of issuance of the Agreement, an extraordinary working capital item or grant; and (iii) the reimbursement is made not later than 18 months after the later of (A) the date of the expenditure or (B) the date the Equipment was placed into service or abandoned but not more than three (3) years after the date of expenditure.

(b) The amount of \$\_\_\_\_\_ will be used to pay the costs of issuance of the Agreement.

7. **Use of Investment Proceeds.** The best estimate of Lessee is that investment proceeds resulting from the investment of any of the proceeds of the Agreement pending expenditure of such proceeds for costs of acquiring the Equipment will be retained in the Equipment Acquisition Account and used to pay or reimburse the Total Contract Price of the Equipment in addition to those described in Paragraph 6 above.

8. **No Replacement Proceeds.** Lessee 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 Agreement. Lessee has not pledged or otherwise restricted and does not expect to pledge or restrict any other funds or property 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 Agreement, even if Lessee encounters financial difficulty.

9. **Rebate.** Lessee does not expect to be required to make any rebate payments to the United States pursuant to section 148(f) of the Code because Lessee expects that the gross proceeds of the Agreement (within the meaning of section 148(f)(4)(B) of the Code) will be expended for the governmental purpose for which the Agreement is entered into no later than a date which is eighteen (18) months from the date hereof. Lessee has covenanted, however, in the Agreement that in the event that Lessee should be required to make rebate payments to the United States pursuant to section 148(f) of the Code, Lessee will make such payments as and when provided in the Agreement.

10. **No Artifice or Device.** In connection with the issuance of the Agreement, Lessee has not (a) employed any abusive arbitrage device, or (b) over-burdened the market for tax-exempt obligations.

11. **Agreement Not Hedge Bonds.** Lessee expects to expend within three (3) years from the date hereof, in addition to the costs of issuance of the Agreement, an amount of proceeds of the Agreement equal to not less than 85% of the net proceeds of the Agreement. No proceeds of the Agreement have been or will be invested in nonpurpose investments which have substantially guaranteed yield for four (4) years or more.

12. **No-Arbitrage Certificate May be Relied Upon.** Lessee has not been notified of the listing or proposed listing of it by the Internal Revenue Service as an issuer whose arbitrage certificates may not be relied upon.

13. **Time Test, Due Diligence Test and Expenditure Test.** Lessee has or will, within six months of issuance of the Agreement, enter into a contract for the acquisition of the Equipment pursuant to which Lessee is or will become obligated to pay at least 5% of the costs of the Equipment financed by the Agreement. Lessee expects to complete the acquisition with due diligence and expend all of the proceeds of the Agreement by November 3, 2007.

14. **No Arbitrage.** On the basis of the foregoing facts, estimates and circumstances, it is expected that the gross proceeds of the Agreement will not be used in a manner that would cause any obligation to be an "arbitrage bond" within the meaning of section 148 of the Code and the Regulations.

07 MAY - 6 AM 8:58  
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WITNESS MY HAND, this May \_\_\_\_, 2007.

CITY OF EL PASO, TEXAS,  
as Lessee

By: \_\_\_\_\_  
Name: Joyce Wilson  
Title: City Manager

**Approved as to Form:**

By: \_\_\_\_\_  
Name: Jorge Villegas  
Title: Assistant City Attorney

By: \_\_\_\_\_  
Name: Paul Braden  
Title: City of El Paso - Outside Legal Counsel

**Approved as to Content:**

By: \_\_\_\_\_  
Name: Carmen Arrieta-Candelaria  
Title: Chief Financial Officer

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