

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

DEPARTMENT: Financial Services

AGENDA DATE: 7/20/06

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

DISTRICT(S) AFFECTED: Citywide

SUBJECT:

Resolution to authorize the City Manager to sign a master equipment lease agreement with Banc of America Leasing & Capital, LLC in the principal amount not to exceed \$10,000,000 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 enter into a lease agreement with Banc of America Leasing & Capital, LLC to finance the purchase of up to 35 transit buses for the Department of Mass Transit. The Department proposes to purchase 35 transit buses and will fund approximately \$4.7 million of these buses out of federal funds, with the remaining portion estimated at \$10,000,000, to be funded through this lease financing arrangement. 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 4.0435%. 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 prior types of financing to include contractual obligations.

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 up to \$10 million to purchase transit buses for the Mass Transit Department.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

LEGAL: (if required) [Signature] **FINANCE:** (if required) _____

DEPARTMENT HEAD: [Signature: Carmen Arrieta-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: _____

RESOLUTION

WHEREAS, pursuant to the Federal Transit Administration (the “*FTA*”) Third Party Contracting Requirements Circular #C 4220.IE, a grantee of FTA grants may purchase equipment under the terms of a contract entered into by and between another governmental entity and a vendor; provided that such contract contains an assignability clause that provides for the assignment of all or a portion of the specified deliverable as originally advertised, competed, evaluated, and awarded;

WHEREAS, the Massachusetts Bay Transportation Authority’s (“*MBTA*”) and North American Bus Industries, Inc. (“*NABI*”) entered into formal Contract No. 639 (the “*Contract*”) relating to IFB No. CAP 9-01 whereby MBTA agreed to purchase from NABI 175 40-foot Low Floor Compressed Natural Gas Buses (“*CNG Buses*”);

WHEREAS, under Section C, Part C2.00 of the Contract, MBTA reserved the right to assign its option to purchase additional vehicles under Option I of up to 100% of the base bid to another transit agency, subject to the acceptance of the terms and conditions of the Contract by said agency;

WHEREAS, the City of El Paso (the “*City*”) is a grantee of FTA grants;

WHEREAS, MBTA desires to assign and the City desires to accept assignment of a portion of MBTA’s powers, rights, remedies, and privileges under Option I of the Contract to allow the City to purchase thirty-five (35) CNG Buses from NABI; and

WHEREAS, the City desires to purchase thirty-five (35) CNG Buses under the terms of the Contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager is hereby authorized to execute an assignment agreement by and between the City and MBTA whereby MBTA assigns and the City accepts assignment of MBTA’s powers, rights, remedies, and privileges under Option I of the Contract to allow the City to purchase thirty-five (35) CNG Buses from NABI;

That the City is hereby authorized to purchase thirty-five (35) 40-foot CNG Buses from NABI pursuant to the terms and conditions set forth in the Contract at a cost per bus of \$391,147.32 plus spare parts in the amount of \$189,488.34 for a total purchase price of \$13,879,644.54; and

That the City Manager is hereby authorized to approve, execute, and deliver any and all necessary documents to effectuate the purchase of the thirty-five (35) CNG Buses.

(Signature page to follow)

PASSED AND APPROVED THIS _____ day of _____ 2006.

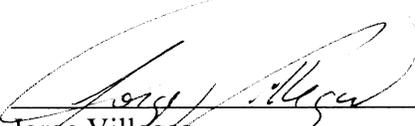
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

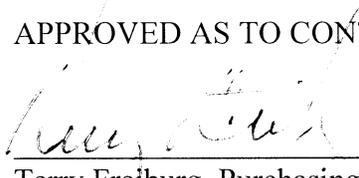
Richarda Momsen
Municipal Clerk

APPROVED AS TO FORM:



Jorge Villegas
Assistant City Attorney

APPROVED AS TO CONTENT:



Terry Freiburg, Purchasing Manager
Financial Services

EXHIBIT A

MASTER LEASE AGREEMENT AND APPLICABLE DOCUMENTS



Geoffrey R. Culm
Vice President
Government and Tax- Exempt

Banc of America Leasing & Capital
231 S. LaSalle Street, Suite 07-28
IL1-231-07-28
Chicago, IL 60604
Email:geoffrey.r.culm@bankofamerica.com
Tel: (312) 828-5319
Fax: (312) 974-9083

July 13, 2006

VIA ELECTRONIC MAIL

City of El Paso, TX
2 Civic Center Plaza
El Paso, TX 79901

First Southwest Company
325 North St. Paul Street
Dallas, TX 75201

First Southwest Company
221 North Kansas Street
El Paso, TX 79901

Attention: Ms. Carmen Arrieta-Candelaria
Chief Financial Officer – City of El Paso, TX

Mr. William F. Studer, Jr.
Deputy City Manager – City of El Paso, TX

Mr. Steven A. Adams
Senior Vice President – First Southwest Company

Mr. Hector A. Zavaleta
Vice President – First Southwest Company

Re: \$10,000,000 - \$14,000,000 (approximate) Master Lease Agreement for the Financing of Transit Buses for City of El Paso, Department of Mass Transit (“Sun Metro”)

Thank you for the opportunity to present to you a structure for a Tax-Exempt Master Lease for the City of El Paso, TX (the “City”). Banc of America Leasing & Capital appreciates the opportunity and we look forward to delivering our competitive equipment finance services and solutions to the City. Enclosed with this cover letter is a term sheet for your review.

In the term sheet, you will note that I have provided the City with a tax-exempt fixed rate of **4.0435%** for the 7-year schedule. The rate quoted will be held for 30 days, however an extended rate lock period option is available and is further described in the attached term sheet. Please also note that under the term sheet the City will have the ability to prepay any lease schedule under the proposed transaction, with a 30 day notice period, on any payment date at a price equal to par plus any accrued interest without any additional premium or penalty.

City of El Paso, TX
Page 2

This proposal letter and the term sheet include only a brief description of the principal terms of the proposed transaction and are subject to the negotiation of definitive terms. Please understand that this proposal is not a commitment or offer to lease, and does not create any obligation for Lessor or Lessee. Neither Lessor nor Lessee will be responsible or liable for any damages, consequential or otherwise, that may be incurred or alleged by any person or entity, including either party, as a result of this proposal letter. Lessor will notify you in writing of its decision if Lessor agrees to proceed with the proposed transaction after completing its review and analysis.

To accept this proposal, please sign the enclosed copy of this letter and return it, by no later than July 31, 2006 to Banc of America Leasing & Capital LLC, 231 S. LaSalle Street, Suite 07-28, IL1-231-07-28, Chicago, IL 60604 Attention: Geoff Culm, or by fax: 312.974.9083.

Of course, please do not hesitate to contact me at 800-294-7272 Ext. 6 if you have any questions. We look forward to the opportunity of working with the City of El Paso on this financing.

Very truly yours,
BANC OF AMERICA LEASING & CAPITAL LLC



By: Geoffrey Culm
Title: Vice President

The undersigned, by its authorized representative below, accepts the above proposal, agrees to furnish Lessor, its successors and assigns, any information relating to the business or financial condition of Lessee or its affiliates, and authorizes Lessor, Bank of America and their affiliates to disclose to, discuss with and distribute such information (and any information they may already have) to any other affiliates or proposed assignees or successors of Lessor.

CITY OF EL PASO, TX

APPROVED AS TO FORM

By: _____

By: _____

Name Printed: _____

Name Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Extended Rate
Lock Option: _____

cc: Delwynn Sherrill, Karl Kuykendall

130006v4 - 7/19/06 [1/98 vers.]

Governmental Entity Lease

SUMMARY OF TERMS AND CONDITIONS

Date: July 13, 2006

Lessee: City of El Paso, TX

Lessor: Banc of America Leasing & Capital LLC or its designee ("Lessor")

Equipment

Description: New Master Lease for Various Equipment

(individually "Unit" and collectively "Equipment")

Maximum Purchase Price: The lower of \$ 10-14 million (approximately) or the fair market value of the Equipment for the current period, which may include soft costs such as freight, installation and taxes paid up-front by Lessor subject to credit department approval. Equipment will be mutually acceptable to Lessee and Lessor.

It is anticipated that the Equipment for this transaction will be comprised of natural gas powered transit buses.

Term: Lease Commencement Date: No later than November 15, 2006.

Availability to draw under the master lease: Subject to credit and documentation approval of the transaction by Lessor, the master lease may be available for a one-year period from the date of this proposal (see "Utilization Period Expiration Date").

Lease Term: 7-years comprised of semi-annual payments from funding. Alternative monthly, quarterly, or annual payment modes can be requested, but may result in slight changes to the pricing indices.

Rental

Payment Term: Rental Payments will be comprised of semi-annual payments during the term of the lease. Payments will be in arrears. Lease schedules can be constructed so that the semi-annual payment dates can be the same for all schedules. If this option is selected, depending upon the date of funding and the next scheduled semi-annual payment due date, some lease schedules may be slightly longer or slightly shorter than a standard schedule term.

Interim Rental

Term: The Interim Rental Term will be equal to the number of days from acceptance of the Equipment to the Lease Commencement Date. Interim rent will be charged at the daily equivalent rate of interest.

Lease

Structure: This lease is a lease intended as security transaction; all tax benefits will remain with Lessee; the lease will be a net financial lease, and all expenses, including (but not limited to) insurance, maintenance, and taxes, will be for the account of Lessee. The lease will be subject to appropriation from the revenues of the Lessee's Mass Transit enterprise fund.

Governmental Entity Lease

<u>Tax-Exempt Rate:</u>	<u>Term (Years)</u>	<u>Current Indicative Fixed Rate</u>	=	<u>Current Treasury Index</u>	<u>x.65</u>	+	<u>Basis Point Spread</u>
	7:	4.0435%	=	5Yr T	x.65	+	74.80 bps

Index: The index and fixed interest rate calculation will be set in conjunction with the 5-Year U.S. Treasury Bond Obligation rate. The current 5-year H15 Constant Maturity Treasury Obligation rate was 5.07% respectively on July 11, 2006—the most recent rate currently posted on the Federal Reserve's H15 Treasury Obligation Rate website: (<http://www.federalreserve.gov/releases/H15/Update>). The above fixed interest rate will be held constant for 30 days.

Lessor will seek to maintain its economic yield in fixing the rate at funding. After the rate-lock expires the interest rate will float and be fixed according to the formula and spread listed above.

Optional Extended Rate Lock:

A rate lock period in excess of the 30 day rate lock described above may be available. The current basis point premium for a rate lock in excess of 30 days is as follows:

optional 60 day rate lock:	+ 1.0 bp
optional 90 day rate lock:	+ 1.5 bps
optional 120 day rate lock:	+ 2.0 bps
optional 150 day rate lock:	+ 2.5 bps
optional 180 day rate lock:	+ 3.0 bps

Please note that the Lessor may incur a direct expenses related to an Optional Extended Rate Lock if the lease transaction does not close. Therefore, to confirm an Optional Extended Rate Lock, Lessee must return a signed copy of the proposal cover letter specifying the requested rate lock period (by the date specified on the cover letter) in order for the Optional Extended Rate Lock to be valid.

End of

Term Options: At the end of the term, Lessee will purchase all, but not less than all of the Equipment for \$1.

Governmental Entity Lease:

The rental payment installments are calculated on the assumptions, and Lessee will represent, that Lessee is a state or political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code (the "Code") and that this transaction will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code. Lessee shall provide Lessor with such evidence as Lessor may request to substantiate and maintain such tax status. To the extent permitted by Texas law, Lessee will indemnify Lessor, on a lump-sum, after-tax basis, against any loss of Federal income tax exemption of the interest portion of the rentals and against any penalties and interest imposed by the Internal Revenue Service on Lessor in connection therewith.

The lease will provide that:

- 1) Lessee will provide, at its expense, casualty insurance (with such deductibles as Lessor may approve).
- 2) If a casualty renders the Equipment a total loss, Lessee will either replace the Equipment, in which case Lessor will convey the damaged Equipment to Lessee, or pay Lessor an amount equal to the unpaid balance of the lease (using its own funds and any available insurance proceeds), and rent will cease to accrue under the lease.

Governmental Entity Lease

- 3) If Lessee fails to make any rental payment when due, provide any required insurance or perform any of its other obligations under the lease, Lessor may terminate the lease, repossess the Equipment and recover from Lessee any deficiency between the fair market sale value of or actual net sale proceeds from the Equipment and the unpaid balance of the lease, plus costs and expenses.
- 4) Upon any Early Termination of the Lease, (a) Lessee may purchase the Equipment by paying Lessor the unpaid balance of the lease and (b) unless Lessee so purchases the Equipment, Lessee will, at its expense, promptly return the Equipment to Lessor.

Early

Termination: With at least 30 days notice, Lessee may prepay the entire balance of any 7 year lease schedules plus accrued interest on any rental payment date without a premium so long as there are no outstanding past due payments or any outstanding fees.

Assignment: Subject to the requirements of Texas law, Lessor shall be entitled to assign its right, title and interest in the lease to a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in such lease, provided such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represent that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment (ii) such purchaser understands neither the lease or certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) that it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933.

Escrow

Account: In the event that payments to the vendor for the Equipment are to be paid over a period of time, then subject to compliance with applicable regulations under the Internal Revenue Code, including, but not limited to arbitrage regulations, the proceeds of the lease may be deposited in an escrow acceptable to Lessor, and disbursements made therefrom to pay for Equipment upon the execution and delivery of an acceptance certificate (and related documents) by Lessee and approved by Lessor.

Lease

Documents: Lease documents in form and substance satisfactory to Lessor must be executed and delivered. Lessee will also provide board resolutions, incumbency certificates and other documentation required by Lessor.

Opinion of

Counsel: Lessee's counsel shall deliver an opinion to Lessor at closing in form and substance satisfactory to Lessor. The opinion of counsel will provide that:

- (a) the portion of rental payment designated as and constituting interest paid by Lessee and received by Lessor is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code");
- (b) such interest is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes; and
- (c) counsel has examined, approved and attached the text of the enabling resolution of Lessee's governing body-authorizing Lessee to enter into the lease.

Expenses: Lessor will be responsible for its own costs of legal review and documentation, and Lessee will be responsible for its own costs of legal review and execution of the lease. Lessee legal expenses and financial advisor expenses will be included in the size of lease schedules.

Governmental Entity Lease

Non-Bank

Qualified:

It is understood that the rental payment installments made by Lessee will not constitute a "qualified tax-exempt obligation" as defined in Section 265(b)(3) of the Code.

Credit Due

Diligence:

In order to complete its credit due diligence, Banc of America Leasing credit will need you to provide:

- Three years of your most recent audited financial statements (already received)
- Most recent fiscal year's budget or budget summary
- Insurance Certificate

Utilization Period

Expiration Date: The latest date for any funding for the current period will be July 12, 2007.

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

THIS MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT (the "*Agreement*"), dated as of _____, 2006, is by and between **BANC OF AMERICA LEASING & CAPITAL, LLC** ("*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, as security for the payment of all of Lessee's obligations under this Agreement Lessee shall assign to Lessor a first priority perfected security interest in the Equipment;

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 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 Lessee to Lessor pursuant to the terms of this Agreement.

1.3 **Acquisition Fund Agreement.** The Acquisition Fund and Account Control Agreement entered into among Lessor, Lessee and the Acquisition Fund Custodian named therein, in connection with this Agreement.

1.4. **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 Mayor, or any other person authorized by the City Council of Lessee.

1.5. **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.

1.6. **Contract Price.** The total cost of the Equipment listed in each Schedule A, including soft costs such as freight, installation, and taxes paid up front by Lessor and all capitalizable consulting and training fees approved by Lessor, legal fees, financing costs, and other costs necessary to vest full, clear legal title to the Equipment in Lessee, subject to the security interest granted to and retained by Lessor, and otherwise incurred in connection with the financing provided by the lease-purchase of the Equipment as provided in each Schedule A; provided that (i) any such soft costs on a cumulative basis shall not exceed a percentage of the Maximum Amount approved by Lessor; and (ii) in no event shall capitalizable delivery charges, installation charges, taxes and similar capitalizable "soft costs" relating to such Equipment be included without Lessor's prior consent.

1.7. **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 Lessee or any violation by 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 Lessor to Lessee.

1.8. **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.

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

1.10. **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.

1.11. **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.

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

1.13. **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.

1.14. **Material Adverse Change.** (a) A downgrade in Lessee's external debt rating of two or more subgrades by either Moody's Investors Service, Inc. or Standard & Poor's Ratings Group or any equivalent successor credit rating agency, or any downgrade by either such agency that would cause Lessee's credit rating to be below investment grade, or (b) any change in Lessee's creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Lessee and its subsidiaries taken as a whole, or (ii) Lessee's ability to perform its obligations under this Agreement or any Schedule A.

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

1.16. **Permitted Investments.** Any investment authorized pursuant to the Public Funds Investment Act, V.T.C.A. Government Code §2256.001 et seq. and the written investment policy of Lessee.

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

1.18. **Purchase Price.** The amount set forth in the Schedule A relating to the Equipment described therein.

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

1.20. **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.

1.21. **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 Lessor to 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.

1.22. **State.** The State of Texas.

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

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

1.25. UCC. The State's Uniform Commercial Code.

1.26. 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 between 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 deposit the Lease Proceeds to the Equipment Acquisition Account 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) duly executed by Lessee and an Acquisition Fund Agreement duly executed by Lessee and Acquisition Fund Custodian;

(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 or 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 due to Lessee's default hereunder or termination of this Agreement under the provisions of Section 3.3; or

(d) The payment by Lessee of all Rental Payments in accordance with this Agreement with respect to such Schedule A and any additional amounts 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 PROMPTLY AFTER ANY DECISION TO NON-APPROPRIATE IS MADE.

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 payable from Lessee's appropriation of funds from its Mass Transit enterprise fund 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.

4.3. 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.

4.4. 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.

4.5. Lease Term Interest Rate. The Rental Payments shall bear interest during the Lease Term at the rate 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 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.

4.6. 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.

4.7. 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 Lease Term Interest Rate plus 5.0% or the maximum rate allowed under Texas law for Rental Payments, whichever is less, until paid.

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, the Purchase Price, and all other amounts owed by Lessee hereunder.

5.2. Optional Prepayment. Lessee shall have the right to prepay the outstanding principal balance of each Schedule A hereunder, in full at any 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; and (ii) 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 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 plus any other amounts then due from Lessee hereunder, 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, plus any other amounts then due from Lessee hereunder.

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 unfit 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 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 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 Lease Term Interest Rate plus 5.0% or 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), whichever is less.

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 270 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) when approved but not later than 30 days prior to its current fiscal year end a copy of the annual budget for the following fiscal year; and (c) such other financial information relating to the ability of Lessee to continue performing hereunder (as submitted or approved) as Lessor may from time to time reasonably request, 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. 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.

6.12. 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 Lease Term Interest Rate plus 5.0% or the maximum interest rate allowed under Chapter 1204, Texas Government Code, as amended, whichever is less.

6.13. 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 Lessee shall have exercised its option to purchase the Equipment by making payment of the Purchase Price and any other amounts then due from Lessee hereunder, 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 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. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement 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 Lessor the amount of the Purchase Price for the Equipment, plus any other amounts then due from Lessee hereunder, and, upon such payment, the applicable Lease Term shall terminate and 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 no Event of Default has occurred and is continuing 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 "Banc of America Leasing & Capital, LLC, 555 California Street, 4th Floor, Mail Code CA5-705-04-01, San Francisco, CA 94104"), (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 and any amounts of Lease Proceeds on deposit in the Equipment Acquisition Account, and all investments and proceeds thereof. 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 Lessor be the equivalent of a secured party under Article 9 of the UCC as in effect from time to time and that Lessee 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 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 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 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 ordinance or 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 Lessee is a party or to which Lessee or any property or assets of Lessee is otherwise subject or bound which in any material way, directly or indirectly, affects Lessee's entering into this Agreement, or the validity thereof, the validity or adoption of the ordinance or resolution authorizing Lessee to enter into this Agreement, the execution and delivery of this Agreement or other instruments contemplated thereby to which 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 Lessee is a party or to which Lessee or any of the property or assets of 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) Lessee has been fully authorized to execute and deliver this Agreement under the ordinance or resolution of its City Council, and by any other appropriate official approval, and further represents, warrants and covenants that all requirements have been met, and all procedures have taken place, in order to ensure the enforceability of this Agreement, has complied with all applicable public bidding/proposal requirements, if any, with respect to this Agreement, including the lease and the acquisition by Lessee of the Equipment hereunder;

(i) 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;

(j) 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;

(k) 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;

(l) 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;

(m) 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;

(n) 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;

(o) Lessee's obligations under this Agreement are obligations payable from Lessee's budget and are obligations of Lessee's Mass Transit enterprise fund;

(p) 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;

(q) 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;

(r) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations hereunder; and

(s) The Equipment is essential to the functions of Lessee or to the services Lessee provides its citizens.

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) 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 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 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 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 HEREUNDER.

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 Event of Default has occurred and is continuing 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 no Event of Default shall have occurred and be continuing 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 when due or any other sum within 10 days of becoming due; or

(b) Lessee shall fail to perform or observe any term or condition or covenant of this Agreement or any Schedule A hereto (other than those covenants referred to in subparagraphs (e), (f), (g), or (h) below), for a period of 15 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected; or

(c) 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

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

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

(f) 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

(g) Lessee permits a change in ownership or management control of Lessee without the prior written consent of Lessor that Lessor in good faith deems disadvantageous to Lessor; or

(h) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor under which there is outstanding, owing or committed an aggregate amount of at least 10% of Lessee's aggregate current long- and short-term indebtedness, if such default consists of (i) the failure to pay any indebtedness when due or (ii) the failure to perform any other obligation thereunder and gives the holder of the indebtedness the right to accelerate the indebtedness.

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) To declare the entire amount of Rental Payments hereunder immediately past due and payable as to any or all items of Equipment without any further notice or demand to Lessee;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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

(g) 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 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 specified in such Schedule to the Vendor of the applicable Equipment or, if agreed by Lessor and Lessee, to Lessee for deposit into an 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, subject to section 2.1 hereof, deposit or cause to be deposited into the Equipment Acquisition Account 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 in trust for the benefit of Lessee and Lessor and invested at the written direction of Lessee in Permitted Investments in accordance with the provisions of the Acquisition Fund Agreement. Any balance remaining in the Equipment Acquisition Account after disbursement of the Total Contract Price or after an Event of Default has occurred, or this Agreement is terminated for non-appropriation of funds in accordance with Section 15 hereof, 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 and the satisfaction of the other conditions in the Acquisition Fund Agreement. 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 sum of the Rental Payments due during such fiscal year for the acquisition of services and functions which in whole or in part are essentially the same services and functions for the performance of which the Equipment was leased;

(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;

(c) Lessee has paid all Rental Payments due during the fiscal year immediately preceding the fiscal year for which sufficient funds were not appropriated, and an amount equal to the daily equivalent of the Lease Payments for each day during the period from the day after the due date of the last Lease Payment during such fiscal year to the end of such fiscal year.

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.

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. **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.

16.7. **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.

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

16.9. **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.**

[Remainder of page intentionally left blank.]

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

BANC OF AMERICA LEASING & CAPITAL, LLC,
as Lessor

By: _____
Name: _____
Title: _____

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

(SEAL)

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

By and Between

BANC OF AMERICA LEASING & CAPITAL, LLC

as Lessor,

and

CITY OF EL PASO, TEXAS

as Lessee

Dated as of _____, 2006

CLOSING INDEX

1. Master Equipment Lease/Purchase Agreement
2. Schedule A No. 1
3. Acceptance Certificate
4. Certificate of Appropriation
5. General Certificate
6. Signature and No-Litigation Certificate
7. Opinion of Counsel to Lessee
8. Ordinance/Resolution of Lessee
9. Financing Statement
10. Information Report on Form 8038-G (or 8038-GC)
11. Cross-Receipt
12. No-Arbitrage Certificate
13. Acquisition Fund and Account Control Agreement

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

By and Between

BANC OF AMERICA LEASING & CAPITAL, LLC

as Lessor,

and

CITY OF EL PASO, TEXAS

as Lessee

Dated as of _____, 2006

**SCHEDULE A No. 1
TO MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT**
by and between
BANC OF AMERICA LEASING & CAPITAL, LLC,
as Lessor
and
CITY OF EL PASO, TEXAS
as Lessee

Dated as of _____, 2006

THIS SCHEDULE A No. 1 ("Schedule A") to the MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT identified above (the "Master Lease") is entered into as of this _____, 2006, by and between BANC OF AMERICA LEASING & CAPITAL, LLC, 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. 1 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>
------------------------	---------------------------------	-----------------------------

[see attached]

As of the date of this Schedule A No. 1, 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. 1, 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. 1.

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. 1:

(a) Lease Term Commencement Date: The date of execution and delivery of this Schedule A No. 1, 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: _____ %

- (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: 6

4. The Lease Proceeds which Lessor shall pay or provide to Lessee in connection with this Schedule A No. 1 is \$ _____ of which _____ is for payment of the costs of issuing this Schedule A No. 1. 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. 1.

6. Until Lessee receives written notification to the contrary, all payments due under the Master Lease and this Schedule A No. 1, 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 Leasing & Capital, LLC
 555 California Street, 4th Floor
 San Francisco, CA 94104
 Attention: Contract Administration
 Mail Code: CA5-705-04-01

City of El Paso, Texas

 Attention: _____

The address for payments is: Banc of America Leasing & Capital, LLC
 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. 1 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 to Exhibit A of the Master Lease 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 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 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.
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. 1.
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.

IN WITNESS WHEREOF, the parties hereunto affix their signatures to this Schedule A No. 1 as of the day and year first written above.

BANC OF AMERICA LEASING & CAPITAL, LLC,
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. 1

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 _____, 2006, and under Schedule A. No. 1 thereto dated as of _____, 2006 (collectively, the "*Agreement*"), with **BANC OF AMERICA LEASING & CAPITAL, LLC**, 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: _____, 2006.

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

(SEAL)

ATTACHMENT B TO SCHEDULE A NO. 1

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 _____, 2006, between Lessee and **BANC OF AMERICA LEASING & CAPITAL, LLC** ("*Lessor*"), and Schedule A No. 1, dated as of _____, 2006 thereunder ("*Schedule A*") for the fiscal year ending _____, 2006 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 _____, 2006.

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

(SEAL)

ATTACHMENT C TO SCHEDULE A NO. 1

**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 _____, 2006, (the "*Master Lease*") by and between Lessee, as lessee, and **BANC OF AMERICA LEASING & CAPITAL, LLC**, as lessor ("*Lessor*") and Schedule A No. 1 issued thereunder (the Master Lease and Schedule A No. 1 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. 1, the following named persons constitute the members of the City Council of Lessee:

<u>NAME</u>	<u>TITLE</u>
_____	Mayor

4. The City Council of Lessee duly adopted by a majority vote the Ordinance or Resolution Regarding Leasing Certain Equipment (the "*Resolution*") authorizing and approving the entering into the Master Lease and Schedule A No. 1 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. 1 (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.

IN WITNESS WHEREOF, we have duly executed this certificate this _____, 2006.

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

(SEAL)

ATTACHMENT D TO SCHEDULE A NO. 1

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 _____, 2006 (the "*Master Lease*") by and between Lessee, as lessee, and **BANC OF AMERICA LEASING & CAPITAL, LLC**, as lessor ("*Lessor*") and Schedule A No. 1, dated as of _____, 2006 issued thereunder (the Master Lease and Schedule A No. 1 collectively referred to as the "*Agreement*") as follows:

1. The Master Lease and Schedule A No. 1 have 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. 1 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. 1 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. 1 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. 1, the authority or action of the City Council of Lessee relating to the issuance or delivery of the Master Lease or Schedule A No. 1, 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. 1, 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. 1; 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. 1 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. 1, 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. 1 remain in full force and effect as of the date of this certificate.

EXECUTED AND DELIVERED as of _____, 2006.

(SEAL)

SIGNATURE

OFFICIAL TITLE

_____	_____
_____	_____
_____	_____

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 ____ day of _____, 2006.

(NOTARY SEAL)

Notary Public, State of Texas

ATTACHMENT E TO SCHEDULE A NO. 1

OPINION OF COUNSEL TO LESSEE

[LETTERHEAD OF COUNSEL TO LESSEE]

[Date of Closing]

Banc of America Leasing & Capital, LLC
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 _____, 2006 and that certain Schedule A No. 1 dated as of _____, 2006 (collectively, the "*Agreement*"), by and between **CITY OF EL PASO, TEXAS**, as lessee ("*Lessee*"), and **BANC OF AMERICA LEASING & CAPITAL, LLC**, as lessor ("*Lessor*")

Gentlemen:

As counsel for Lessee, we have examined duly executed originals of the Agreement and Acquisition Fund and Account Control 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:

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.

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.

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.

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.

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,

ATTACHMENT F TO SCHEDULE A NO. 1

CERTIFIED COPY OF ORDINANCE OR RESOLUTION ADOPTED
BY LESSEE'S CITY COUNCIL

CERTIFICATE OF SECRETARY

THE STATE OF TEXAS)
COUNTY OF EL PASO) ss.
CITY OF EL PASO, TEXAS)

We, the undersigned officers of Lessee, hereby certify as follows:

1. The City Council of Lessee convened in regular meeting on _____, 2006, at the designated meeting place, and the roll was called of the duly constituted officers and members of said City Council, to wit:

Mayor

and all of said persons were present, except the following absentees: _____, thus constituting a quorum. Whereupon, among other business, the following was transacted at said Meeting: a written

ORDINANCE/RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS APPROVING LEASING OF CERTAIN EQUIPMENT AND RELATED MATTERS

was duly introduced for the consideration of said City Council and read in full. It was then duly moved and seconded that said Resolution be adopted; and, after due discussion, said motion carrying with it the adoption of said Resolution, prevailed and carried by the following vote:

AYES: All members of the City Council shown present above voted "Aye" except as shown below.

NOES:

ABSTAIN:

2. That a true, full and correct copy of the aforesaid Resolution adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; that said Resolution has been duly recorded in said City Council minutes of said Meeting; that the above and foregoing paragraph is a true, full and correct excerpt from said City Council minutes of said Meeting pertaining to the adoption of said Resolution; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said City Council as indicated therein; that each of the officers and members of said City Council was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the aforesaid

Meeting, and that said Resolution would be introduced and considered for adoption at said Meeting, and each of said officers and members consented, in advance, to the holding of said Meeting for such purpose, and that said Meeting was open to the public and public notice of the time, place and purpose of said Meeting was given, all as required by Chapter 551, Texas Government Code.

3. That the President of the City Council of Lessee has approved and hereby approves the aforesaid Resolution; that the President and the Secretary of said Lessee have duly signed said Resolution; and that the President and the Secretary of said Lessee hereby declare that their signing of this Certificate shall constitute the signing of the attached and following copy of said Resolution for all purposes.

SIGNED AND SEALED the ____ day of _____, 2006.

City Secretary

(SEAL)

**ORDINANCE OR RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS
APPROVING LEASING OF CERTAIN EQUIPMENT AND RELATED MATTERS**

WHEREAS, CITY OF EL PASO, TEXAS ("*Lessee*") proposes to enter into the MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT with BANC OF AMERICA LEASING & CAPITAL, LLC, as lessor ("*Lessor*") and Lessee, as lessee (the "*Master Lease*") and proposes to enter into Schedule A No. 1 thereunder to enable Lessee to finance the lease/purchase acquisition of up to \$_____ principal amount of Equipment (as defined in Schedule A No. 1 with the intent that the interest portion of the Rental Payments (as defined in the Master Lease) therefor, in an amount not to exceed ____% per annum, be excluded from gross income for federal income tax purposes and, as security for such Rental Payments, Lessee has agreed to grant a first lien security interest in the Equipment to Lessor, and to make payments, as set forth in Schedule A No. 1, sufficient to pay both the principal and interest portion of the Rental Payments under the Master Lease and Schedule A No. 1.

WHEREAS, the Master Lease and Schedule A No. 1 have been presented to this meeting.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF LESSEE AS FOLLOWS:

Section 1. The Board of Trustee agrees to enter into the Master Lease and Schedule A No. 1 pursuant to the Master Lease in order to finance acquisition of the Equipment in a principal amount of up to \$_____ at an interest rate not to exceed ____% per annum and, in order to secure the Master Lease and Schedule A No. 1, to grant a first lien security interest in the Equipment, in accordance with said Master Lease and Schedule A No. 1.

Section 2. That any one or more of the Authorized Officers of Lessee listed in Section 3 below be, and each of them hereby is, authorized to execute, acknowledge and deliver in the name and on behalf of Lessee to Lessor the Master Lease and Schedule A No. 1 to the Master Lease including all attachments, financing statements and schedules thereto, such Master Lease and Schedule A No. 1 to be in substantially the form presented to this meeting with such changes as the signing officer shall determine to be advisable. Further, said Authorized Officers are authorized to execute, acknowledge and deliver in the name and on behalf of Lessee any other agreement, instrument, certificate, representation and document, and to take any other action as may be advisable, convenient or necessary to enter into such Master Lease and Schedule A No. 1; the execution thereof by any such Authorized Officer shall be conclusive as to such determination.

Section 3. That for the purpose of this resolution, the following persons, or the persons holding the following positions, are "*Authorized Officers*" duly authorized to enter into the transaction contemplated by this resolution in the name and on behalf of Lessee:

<u>Title</u>	<u>Name</u>
_____	_____
_____	_____
_____	_____
_____	_____

Section 4. That there is hereby authorized the continuing execution and delivery by the Authorized Officers or any one of them in the name of and on behalf of Lessee the Schedule A No. 1 and Attachments in substantially the form presented to this meeting with such changes as the signing officer shall determine advisable, and the execution thereof shall be conclusive as to such determination.

Section 5. The Lease of the Equipment which is described in or incorporated by reference in the Schedule A No. 1 to the Agreement is hereby approved by the City Council. The Authorized Officers shall be 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 the Vendor to deliver an item of equipment, so long as such substitution

of any item of equipment does not frustrate the purpose of Lessee for which the Equipment is being leased or result in an increase in the amount required to be paid by Lessee for the Equipment, as provided in Section 1 hereof.

Section 6. That this Resolution shall take effect immediately.

ATTACHMENT G TO SCHEDULE A NO. 1

**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. 1

IRS Form 8038-G

[see attached]

ATTACHMENT I TO SCHEDULE A NO. 1

CROSS-RECEIPT

With respect to the MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT, dated as of _____, 2006 (the "Master Lease") by and between BANC OF AMERICA LEASING & CAPITAL, LLC, as lessor ("Lessor") and CITY OF EL PASO, TEXAS, as lessee ("Lessee") and Schedule A No. 1, dated as of _____, 2006 to the Master Lease:

Lessor hereby acknowledges the lease to Lessee of the Equipment listed on Schedule A No. 1 to the Master Lease and receipt from Lessee of Schedule A No. 1 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. 1 to the Master Lease.

Dated: _____, 2006

BANC OF AMERICA LEASING & CAPITAL, LLC,
as Lessor

By: _____
Name: _____
Title: _____

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ATTACHMENT J TO SCHEDULE A NO. 1

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 _____, 2006, by and between Lessee and Lessor, and under Schedule A No. 1 thereto, dated as of _____, 2006 (collectively the "Agreement"), between Lessee, as lessee and BANC OF AMERICA LEASING & CAPITAL, LLC, 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 \$ _____ 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:

(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 six (6) 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. **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.

WITNESS MY HAND, this _____, 2006.

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

ACQUISITION FUND AGREEMENT

This ACQUISITION FUND AGREEMENT, dated as of _____, 2006, is entered into by and among **BANC OF AMERICA LEASING & CAPITAL, LLC**, a Delaware limited liability company (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 _____, 2006 between Lessor and Lessee (hereinafter referred to as the "Lease"), covering the acquisition and lease of certain equipment described therein (the "Equipment"). It is a requirement of the Lease that the 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, (ii) written notice given by the Lessor of the occurrence of an Event of Default or termination of the Lease due to non-appropriation or (iii) six (6) months from the date hereof.

(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.

(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

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 Leasing & Capital, LLC
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
_____, Texas _____
Attn: _____
Fax: _____

If to the Acquisition Fund Custodian: Bank of America, N.A.
_____, Texas _____
Attn: _____
Fax: _____

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.

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

BANC OF AMERICA LEASING & CAPITAL, LLC
Lessor

CITY OF EL PASO, TEXAS
Lessee

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N. A.
Acquisition Fund Custodian

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

DISBURSEMENT REQUEST NO. _____

**Re: Master Equipment Lease/Purchase Agreement dated as of _____, 2006
by and between Banc of America Leasing & Capital, LLC, 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 _____, 2006 (the "Acquisition Fund Agreement") by and among Banc of America Leasing & Capital, LLC ("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.