

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

DEPARTMENT: Financial Services Department

AGENDA DATE: October 25, 2011

CONTACT PERSON NAME AND PHONE NUMBER: Carmen Arrieta-Candelaria 915-541-4293

DISTRICT(S) AFFECTED:

SUBJECT:

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

Discussion and action on a Resolution authorizing the City Manager to sign a tax-exempt lease-purchase agreement with Banc of America Public Capital Corp ("BAPCC") in a principal amount not to exceed \$13,588,000 to acquire, purchase, finance and lease certain equipment for energy-efficiency purposes for the City of El Paso. It is also requested that the City Manager of the City of El Paso be authorized to execute any and all necessary documents relating to this lease-purchase agreement, which are necessary to carry out the intent of this agreement.

BACKGROUND / DISCUSSION:

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

The Tax-Exempt Lease-Purchase Agreement between the City of El Paso and BAPCC is being proposed in the amount of **\$13,588,000**, however, approximately **\$8,580,000** will be used to refinance improvements from the prior lease-purchase agreement dated August 29, 2008 and **\$5,008,000** will be for the new street light improvements.

In May 2010, the City Council approved Johnson Controls, Inc. as the City's Energy Services Company (ESCO). Additionally, City Council approved the application of a loan in the amount of \$2,824,000 with the State Energy Conservation Office (SECO) to be used to finance improvements that the ESCO would identify in the course of its five year contract. The ESCO has identified approximately \$7.824 million in street light improvements that will substantially reduce electric consumption and overall O&M costs. In order to compliment the SECO financing, a tax exempt lease-purchase agreement has been negotiated with Banc of America Public Capital Corp (BAPCC) in the amount of \$5,000,000 plus various closing costs. [Note: A companion item is being placed on the City Council Agenda for October 25, 2011, to award the \$7.824 million project to JCI, as the City's ESCO.]

Background on prior lease: On July 15, 2008, City Council approved a tax-exempt lease-purchase agreement with BAPCC in the amount of \$9,767,054 to finance energy-efficiency improvement for the City of El Paso and the El Paso Convention Center. Remaining principal as of September 1, 2011 was \$8,515,726.33. Financing at the time was at 4.157%. This is the lease that will be refinanced as part of this lease to be approved.

The new monies will be financed at a rate of **2.56%**; the refinanced amount will be at a rate of 2.56% as well which will save the City approximately **\$842,026**. These savings will be taken at the end of the lease term and will reduce the lease payments in that last year, 2019.

PRIOR COUNCIL ACTION:

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

Yes. City Council previously approved funding a similar agreement with Johnson Controls, Inc, RFQ 2007-073, on July 15, 2008 totaling \$14,767,054. \$9,767,054 was financed through Banc of America.

AMOUNT AND SOURCE OF FUNDING:

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

Repayments for this loan will come from the electricity savings of the improvements which are then guaranteed by the City's ESCO. This loan will be administered through the General Fund.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

DEPARTMENT HEAD: Carmen Ariete Candalaria

RESOLUTION

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

WHEREAS, the City of El Paso, Texas (the "City"), a body corporate and politic existing under the laws of the State of Texas, is authorized by the laws of the State of Texas to purchase, acquire and lease personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the City desires to purchase, acquire and lease certain equipment constituting personal property necessary for the City to perform essential governmental functions (the "Equipment"); and

WHEREAS, in order to acquire such equipment, the City proposes to enter into that certain Equipment Lease/Purchase Agreement (the "Agreement") with Banc of America Public Capital Corp (or one of its affiliates) (the "Lessor"), attached hereto as **Exhibit A** and incorporated herein by reference as a part of this resolution for all purposes, and that certain Acquisition Fund and Account Control Agreement (the "Acquisition Fund Agreement") with the Lessor and Deutsche Bank National Trust Company, as custodian, attached hereto as **Exhibit B** and incorporated herein by reference as a part of this resolution for all purposes; and,

WHEREAS, the City Council of the City deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement and the Acquisition Fund Agreement for the purchase, acquisition and leasing of the equipment to be therein described on the terms and conditions therein provided; now, therefore,

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

SECTION 1. Approval of Documents. The form, terms and provisions of the Agreement and the Acquisition Fund Agreement are hereby approved in substantially the forms attached hereto as Exhibit A and Exhibit B, with such insertions, omissions and changes as shall be approved by the City Manager of the City or other members of the governing body of the City executing the same, the execution of such documents being conclusive evidence of such approval; and the City Manager of the City is hereby authorized and directed to execute, and the City Clerk of the City is hereby authorized and directed to attest and countersign, the Agreement, the Acquisition Fund Agreement and any related Exhibits attached thereto and to deliver the Agreement and the Acquisition Fund agreement (including such Exhibits) to the respective parties thereto, and the City Clerk of the City is hereby authorized to affix the seal of the City to such documents.

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

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

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

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

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

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

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

ADOPTED this 25th day of October, 2011.

CITY OF EL PASO, TEXAS, as lessee

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

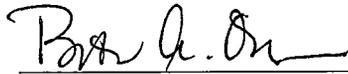
ATTEST:

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

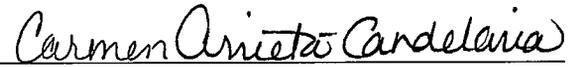
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APPROVED AS TO FORM:

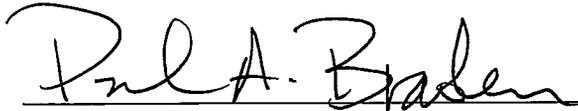
APPROVED AS TO CONTENT:



Bertha A. Ontiveros
Assistant City Attorney
City of El Paso



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



Paul A. Braden
Attorney for the City

**EQUIPMENT LEASE/PURCHASE AGREEMENT
(ACQUISITION FUND)**

This Equipment Lease/Purchase Agreement (the "*Agreement*") is dated as of October 25, 2011, and is entered into between Banc of America Public Capital Corp, a Kansas corporation ("*Lessor*"), and the City of El Paso, Texas, a body corporate and politic existing under the laws of the State of Texas ("*Lessee*").

WITNESSETH:

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

WHEREAS, Lessee is authorized under the constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

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

ARTICLE I

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

"*Acceptance Certificate*" means a certificate evidencing unconditional acceptance of the Equipment in the form of Exhibit E attached hereto.

"*Acquisition Amount*" means \$13,586,998.60. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose, to acquire and install the Equipment and to pay the Delivery Costs.

"*Acquisition Fund*" means the fund established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement.

"*Acquisition Fund Agreement*" means the Acquisition Fund and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Acquisition Fund Custodian, pursuant to which an Acquisition Fund and a Delivery Costs Fund are established and administered.

"*Acquisition Fund Custodian*" means the Acquisition Fund Custodian identified in the Acquisition Fund Agreement, and its successors and assigns.

"*Acquisition Period*" means the period ending five (5) business days prior to October 31, 2014.

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

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

"Commencement Date" means the date when Lessee's obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian.

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

"Delivery Costs" means the costs incurred in connection with the execution and delivery of this Agreement, including counsel fees, fees and expenses of the Acquisition Fund Custodian and similar costs, fees and expenses.

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

"Equipment Acceptance" means, with respect to each portion of the Equipment that may operate for its intended purpose as a separate and independent functional unit, that the Equipment constituting such portion has been acquired and installed by the Vendor, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted by Lessee for all purposes of this Agreement.

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

"Equipment Schedule" means the equipment schedule attached hereto as Exhibit A and made a part hereof.

"Event of Default" means an Event of Default described in Section 12.01.

"Lease Term" means the Original Term and all Renewal Terms, with a final Renewal Term ending on June 1, 2022.

"Lessee" means the entity referred to as Lessee in the first paragraph of this Agreement.

"Lessor" means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to this Agreement pursuant to Section 11.01 hereof, including the right, title and interest of Lessor in and to the Equipment, the Rental Payments and other amounts due hereunder and the Acquisition

Fund and the Delivery Costs Fund, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

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

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

"Payment Schedule" means the schedule of Rental Payments attached hereto as Exhibit B and made a part hereof.

"Purchase Price" means the total amount that Lessee shall pay to Lessor to purchase the Equipment as provided in the Payment Schedule.

"Renewal Terms" means the renewal terms of this Agreement, each having a duration of one year and a term coextensive with Lessee's fiscal year.

"Rental Payments" means the basic rental payments payable by Lessee hereunder pursuant to Section 4.01, in each case consisting of a principal component and an interest component.

"State" means the State of Texas.

"Taxable Rate" means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

"Vendor" means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessor arranged Lessee's acquisition, installation, maintenance and/or servicing of the Equipment.

"Vendor Agreement" means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment.

ARTICLE II

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

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

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

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

(e) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment.

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

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 210 days of its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or the following fiscal year. The financial statements described in subsection (g) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

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

(i) The payment of the Rental Payments or any portion thereof is not directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Equipment Costs 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.

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

(k) Lessee is the fee owner of the real estate where the Equipment is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate.

(l) Except as disclosed on Schedule 2.01(l) attached hereto, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

ARTICLE III

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

Section 3.02. Continuation of Lease Term. Lessee intends, subject to Section 3.03, to continue the Lease Term and to pay the Rental Payments under this Agreement through the Original Term and all Renewal Terms. Lessee affirms that sufficient funds are available for its current fiscal year to pay any Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term can be obtained from legally available funds of Lessee.

Section 3.03. Nonappropriation. Lessee is obligated only to pay such Rental Payments as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's

then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees to cease use of the Equipment and peaceably remove and deliver at Lessee's expense the Equipment to Lessor at the location(s) to be specified by Lessor.

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

(i) An Acquisition Fund Agreement in the form set forth in Exhibit H hereto, satisfactory to Lessor and executed by Lessee and the Acquisition Fund Custodian;

(ii) An Incumbency and Authorization Certificate executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C-1, completed to the satisfaction of Lessor;

(iii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as Exhibit C-2, authorizing the execution and delivery of this Agreement and the Acquisition Fund Agreement and performance by Lessee of its obligations under this Agreement and the Acquisition Fund Agreement;

(iv) An opinion of counsel to Lessee in substantially the form attached hereto as Exhibit D and otherwise satisfactory to Lessor;

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

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

(vii) A copy of a fully completed and executed Form 8038-G;

(viii) A waiver or waivers of interest in the Equipment, satisfactory to Lessor, from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located;

(ix) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.05, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, provided, however, that no "Disbursement Request" pursuant to the Acquisition Fund Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.05 have been delivered to Lessor; and

(x) Such other items reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Acquisition Fund Agreement shall be subject to: (i) no Material Adverse Change having occurred and be continuing in the financial condition of Lessee since the date of this Agreement and (ii) no Event of Default having occurred and be continuing.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Acquisition Fund Custodian for deposit into the Acquisition Fund and the Delivery Costs Fund as provided in the Acquisition Fund Agreement.

ARTICLE IV

Section 4.01. Rental Payments. Subject to Section 3.03, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the dates and in such amounts as provided in the Payment Schedule. Interest on the Acquisition Amount shall begin to accrue as of the Commencement Date. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date. Lessee shall not permit the federal government to guarantee any Rental Payments.

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

Section 4.03. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

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

Section 4.05. Tax Covenants. (a) Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes.

(b) Lessee hereby covenants and agrees that it will (i) invest and reinvest moneys on deposit in the Acquisition Fund and Delivery Costs Fund from time to time in a manner that will not cause this Agreement to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code; and (ii) rebate or cause to be rebated an amount equal to excess earnings in the Acquisition Fund and the Delivery Costs Fund to the federal government if required by, and in accordance with, and make or cause to be made the determinations and maintain or cause to be maintained the records required by the Code.

Section 4.06. Event of Taxability. Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall accrue and shall be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

For purposes of this Section, "*Event of Taxability*" means a determination that the interest component is includible for federal income tax purposes in the gross income of the owner thereof due to Lessee's action or failure to take any action.

Section 4.07. Mandatory Prepayment. Any funds not applied to Equipment Costs and remaining in the Acquisition Fund on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate, shall be applied by Lessor on the next succeeding Rental Payment date to all or a portion of the Rental Payments due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in the inverse order of Rental Payment dates.

ARTICLE V

~~*Section 5.01. Delivery, Installation and Acceptance of Equipment.*~~ (a) Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor an Acceptance Certificate in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor original invoices (and proof of payment of such invoices) and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee.

Section 5.02. Quiet Enjoyment of Equipment. So long as Lessee is not in default hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

Section 5.03. Location; Inspection. Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

Section 5.04. Use and Maintenance of the Equipment. Lessee will not install, use, operate, or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; *provided that* Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest (including the reversionary interest) of Lessor in and to the Equipment or its interest or rights hereunder.

Lessee agrees that it will maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for herein.

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

ARTICLE VI

Section 6.01. Title to the Equipment. During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions of this Agreement. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment from and against all claims, liens and legal processes of its creditors, and keep all Equipment free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment in accordance with Section 3.03 or 12.02, as applicable. Upon payment of all amounts due and owing under this Agreement in accordance with Section 10.01 (including upon payment of all Rental Payments and other amounts payable

under this Agreement), Lessor shall release its security interest in and to the Equipment under the Agreement, as is and where is, without warranty of any kind other than as to the absence of liens created by or through Lessor, and shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the release of Lessor's security interest in the Equipment subject to this Agreement.

Section 6.02. Security Interest. As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Equipment, (b) moneys and investments held from time to time in the Acquisition Fund and the Delivery Costs Fund and (c) any and all proceeds of any of the foregoing. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Equipment, the Acquisition Fund, the Delivery Costs Fund and the proceeds thereof, including such financing statements with respect to personal property under Article 9 of the applicable Uniform Commercial Code and treating such Article as applicable to entities such as Lessee.

Under the laws of the State of Texas, each pledge, assignment, lien or other security interest made to secure any prior obligations which ranks on a parity with or prior to the security interest granted hereby, is and shall be prior to any judicial lien hereafter imposed on such collateral to enforce a judgment against the Lessee. Lessor will have filed all financing statements for the Lessee no later than the Acceptance Date, and transferred such possession or control over, such collateral (and for so long as any is outstanding will file, continue and amend all such financing statements and transfer such possession and control) as may be necessary to establish and maintain such priority in each jurisdiction in which the collateral may be located or that may otherwise be applicable pursuant to Uniform Commercial Code 9.301 - 9.306 of such jurisdiction.

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

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free of all levies, liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a

governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due; *provided that*, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term. During the Lease Term, Lessor will not claim ownership of the Equipment for the purposes of any tax credits, benefits or deductions with respect to the Equipment.

Section 7.02. Insurance. Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Purchase Price of the Equipment or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and 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 clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as Exhibit G. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification.

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

material misrepresentation provided by Lessee in connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 7.04. Advances. In the event Lessee shall fail to keep the Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less.

Section 7.05. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties. Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a payment and performance bond ("*Surety Bond*") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations hereunder.

ARTICLE VIII

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

thereof and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to purchase the Equipment in accordance with Section 10.01(b).

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 new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event, or be required to exercise its option to purchase the damaged equipment in accordance with Section 10.01(b).

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

Section 8.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Purchase Price for the Equipment, and, upon such payment, the Lease Term shall terminate and Lessor's security interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing such 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 Article IV.

ARTICLE IX

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

the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

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

ARTICLE X

Section 10.01. Purchase Option. Lessee shall have the option to prepay or satisfy all its obligation hereunder, at the following times and upon the following terms:

(a) From and after the date specified (if any) in the Payment Schedule (the "*Purchase Option Commencement Date*"), on the Rental Payment dates specified in the Payment Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the Rental Payments then due and all other amounts then owing under this Agreement plus the then applicable Purchase Price, which may include a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment date or 60 days after the casualty event) upon payment in full to Lessor of the Rental Payment then due plus the then applicable Purchase Price (or, in the event such purchase occurs on a date other than a Rental Payment date, the sum of (i) the Purchase Price set forth on the Payment Schedule relating to the Rental Payment immediately prior to the date of such purchase plus (ii) accrued interest on the Outstanding Balance set forth on the Payment Schedule relating to the Rental Payment immediately prior to the date of such purchase, plus all other amounts then owing hereunder; or

(c) Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder to Lessor.

After payment of the applicable Purchase Price and all other amounts owing hereunder, Lessor's security interests in and to such Equipment will be terminated and Lessee will own the Equipment free and clear of Lessor's security interest in the Equipment.

ARTICLE XI

Section 11.01. Assignment by Lessor. (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Acquisition Fund Agreement, its security interest in the Equipment, the Acquisition Fund and the Delivery Costs Fund, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to applicable State law. Nothing in this Section 11.01 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; *provided* such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents 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 that neither this Agreement nor 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) 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; *provided further*, 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 this Agreement with or to more than one individual or entity.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank 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 and all rights in, to and under this Agreement related to such Equipment, and all of Lessor's security interest in and to the Acquisition Fund and the Delivery Costs Fund, or all rights in, to and under the Acquisition Fund Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment

substantially in the form of Exhibit F attached hereto within five (5) business days after its receipt of such request.

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

ARTICLE XII

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

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within 10 days after the date when due as specified herein or (ii) maintain insurance as required herein;

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

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

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregate amount in excess of \$1,000,000;

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

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

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

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

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

(c) Lessor may terminate the Acquisition Fund Agreement and apply any proceeds in the Acquisition Fund to the Rental Payments due hereunder; and

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

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

ARTICLE XIII

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

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

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

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

Section 13.05. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.06. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

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

Section 13.08. 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, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:
Banc of America Public Capital Corp
11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration
Fax No.: (443) 556-6977

LESSEE:
City of El Paso, Texas
2 Civic Center Plaza
El Paso, TX 79901
Attention: Chief Financial Officer
Fax No.: (915) 541-4229

By: _____
Name: _____
Title: _____

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

(Seal)

Attest:

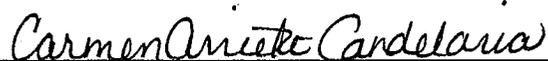
By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

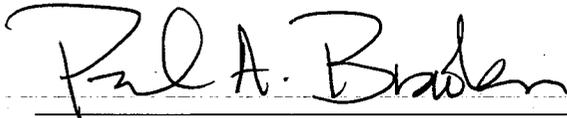
APPROVED AS TO CONTENT:



Bertha A. Ontiveros
Assistant City Attorney
City of El Paso, Texas



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



Paul A. Braden
Attorney for the City

List of Schedules

Schedule 2.01(l)

List of Exhibits

- Exhibit A -- Equipment Schedule
- Exhibit B -- Rental Payment Schedule
- Exhibit C-1 -- Incumbency and Authorization Certificate
- Exhibit C-2 -- Form of Authorizing Resolution
- Exhibit D -- Opinion of Counsel Form
- Exhibit E -- Acceptance Certificate
- Exhibit F -- Notice and Acknowledgment of Assignment
- Exhibit G -- Form of Self Insurance Certificate
- Exhibit H -- Form of Acquisition Fund and Account Control Agreement

SCHEDULE 2.01(L)

For Fiscal Year 2008, the City of El Paso did not appropriate funds to pay amounts specified in an Installment Payment Supplement dated 1/12/05 to an Installment Payment Master Agreement State and Local with IBM. The City provided notice in accordance with such agreement, uninstalled the computer software (which was the subject of such agreement) from all City computers and returned the original media material as directed by IBM.

EXHIBIT A

EQUIPMENT SCHEDULE

1. NEW LED STREET LIGHT UPGRADES

Location of Equipment:

4700 street light locations within the city limits boundary of El Paso

Equipment Description (Scope of Work):

Scope of work will include the replacement of existing High Pressure Sodium Vapor (HPS) and Mercury Vapor (MV) street light fixtures with new energy efficient Light Emitting Diode (LED) fixtures.

New LED Street Light Upgrades

The following new LED street light upgrades are included in this Agreement:

ID #	Qty	Voltage	Pre Description	Pre Fixture Watts	Post Description	Approx. Post Fixture Watts
LED-1	1200	240	100W HPS	124	LED	65
LED-2	100	240	150W HPS	193	LED	95
LED-3	1500	240	175W MV	195	LED	65
LED-4	150	240	250W MV	292	LED	127
LED-5	800	480	250W HPS	313	LED	116
LED-6	250	240	400W MV	460	LED	127
LED-7	700	480	400W HPS	485	LED	159
Totals	4700					

[Remainder of page left blank intentionally.]

2. **EXISTING EQUIPMENT:** Equipment related to the following projects previously completed.

Location of Equipment: The following facilities will be included in this Section 2:

Department	Facility Name	Street Address
Fire	Fire - Administration	8600 Montana Avenue
Fire	Central Station – Main #1	210 S. Florence Street
Fire	Fire Training Academy	6800 Delta Drive
Library	Armijo	620 E. 7 th Avenue
Library	Clardy Fox	5515 Robert Alve Avenue
Library	Irvin Schwartz	1865 Dean Martin Drive
Library	Mission Valley	610 N. Yarbrough
Library	Main Library	501 N. Oregon Street
Library	Memorial	3200 Copper Avenue
Library	Westside	125 Belvidere
Library	Ysleta	9321 Alameda Ave.
Museum	El Paso Museum of Art	1 Arts Festival Plaza
Museum	History	510 Santa Fe
Parks	Marcos B Armijo Rec Center and Pool	710 E. Seventh Street
Parks	Carolina Rec Center	536 N. Carolina Drive
Parks	Chihuahuita Rec Center	417 Charles
Parks	Acosta Sports Complex – Delta Rec Hall	4321 Delta
Parks	Hilos de Plata Pool	4321 Delta
	Hilos de Plata Senior Citizen Center	4321 Delta
Parks	Eastside Sr. Citizen Center	3200 Fierro
Parks	Eastwood Rec Center	3001 Parkwood
Parks	Grandview - Sacramento	3100 Jefferson
Parks	Hawkins Indoor Pool	1500 Hawkins
Parks	Memorial Park Senior Citizens Center	1800 Byron
Parks	Leona Ford Washington Missouri Rec Center	3400 Missouri
Parks	Viscount Rec / Handicap Center / Pool	9031 Viscount
Parks	Viscount Eastside Maintenance	9031 Viscount
Parks	Pavo Real Rec Hall	100 Presa Place
Parks	Sambrano / Seville Rec Center	6700 Sambrano
Parks	San Juan Recreation Center	5628 Webster
Parks	Shawver Indoor Pool	8100 Independence
Parks	South El Paso Sr. Citizen Center	600 S. Ochoa
Parks	Northeast Rec Center	5301 Salem
Parks	Veterans Indoor Pool	5301 Salem
Parks	Wellington Chew Sr. Citizen Center	4430 Maxwell
Parks	Leo Cancellare Indoor Pool	650 Wallenberg
Parks	Morris A. Galatzan Rec Center / Polly Harris	650 Wallenberg
Parks	Marty Robbins Indoor Pool	11065 Vista Del Sol
Parks	Memorial Indoor Pool	3252 Copper Avenue
Police	Central Station	200 S. Campbell St.
Police	HQ and Bldg Maintenance	911 Raynor
Police	Vehicle Maintenance	910 Raynor
Police	Mission Valley Station	9011 Escobar
Police	Municipal Annex – Northeast Police / Juvenile	9600 Dyer Street
Police	Pebble Hills Station	10780 Pebble Hills Boulevard
Police	Westside Station	4801 Osborne Drive
General Services	Municipal Service Center	1059 Lafayette Drive
General Services	City Hall	2 Civic Center Plaza
CVB	Convention Center	1 Civic Center Plaza
CVB	Chamber Building	1 Civic Center Plaza
CVB	Chavez Theater	1 Civic Center Plaza
CVB	Parking Garage	1 Civic Center Plaza
CVB	Plaza Theater	125 Pioneer Plaza

Equipment Description (Scope of Work):

1. Lighting Improvements: Scope of work includes new lighting retrofits, including in some cases new lighting fixtures, and new occupancy sensors, as well as cleaning of lenses and diffusers on each retrofitted fixture. New light levels meets IES standards.

Lighting Retrofits

Facility Name	T8 lamp & ballast	Conversion kit with T8 lamp & ballast	Compact fluorescent lamp	LED exit sign	No retrofit.	Hard-wire retrofit with metal halide lamp	New fixture with T8HO lamp & electronic ballast	New fixture with T8 lamp and electronic ballast	Grand Total
Fire-Administration	515	102	4	8	55		56		740
Central Station - Main #1	251	163	76		18				508
Fire Training Academy	110	39	12		108				269
Armijo	70	23	1		56				150
Clardy Fox	67	143			164				374
Irvin Schwartz	137	72	3		49				261
Mission Valley	19	66	3		351				439
Main Library	936	301	2		282				1,521
Memorial	85	19	2		53				159
Westside	140	11	2		21				174
Ysleta	126	32			106				264
El Paso Museum of Art	646	58	107		851				1,662
History	332	40			467				839
Marcos B Armijo Rec Center and Pool	314	1	12	2	116		101		546
Carolina Rec Center	175	101			106		70		452
Chihuahuita Rec Center	27	10			13				50
Acosta Sports Complex - Delta Rec Hall	50	16	13	6	83		108		276
Hilos de Plata Senior Citizen Center	150	100			110		22		382
Eastside Sr Citizen Center	93	59	8		43				203
Eastwood Rec Center	76	38			203				317
Grandview - Sacramento	101	54	20	7	17				199
Hawkins Indoor Pool	38				12		26		76
Memorial Park Senior Citizens Center	124	24	6		9				163
Leona Ford Washington Missouri Rec Center	46	8	4	1	4		8		71
Viscount Rec/Handicap Center/Pool	142	18			69		28		257
Viscount Eastside Maintenance		6	1		4				11
Pavo Real Rec Hall	149	66	1		68		43		327
Sambrano / Seville Rec Center	41	26		4	14		12		97
San Juan Recreation Center	68		7		75		12		162
Shawver Indoor Pool	42		1		28		31		102
South El Paso Sr Ctz Center	136	5	30		21				192
Northeast Rec Center	78	110			17		38		243
Veterans Indoor Pool	47		1				16		64
Wellington Chew Sr Ctz Center	143	6	30	2	10				191
Leo Cancellare Indoor Pool	40		1	2	9		26		78
Morris A. Galatzan Rec Center	199	36	5	4	8		38		290
Polly Harris Senior Citizens Center	72	26	5	2	11				116
Marty Robbins Indoor Pool	44	2	1		25		26		98
Memorial Indoor Pool	16				128		36		180
Central Station	211	16			28				255
Police Headquarters	1,250	158	18	3	42				1,471
Automotive Maintenance Facility	73	15		3	31		35		157
Mission Valley Station	343	8			78				429
Municipal Annex - Northeast	549	125			204				878
Pebble Hills Station	311	50	4		92				457
Westside Station	262	146			90				498
Municipal Service Center	491	291	12		154		129	65	1,142
City Hall	1,408	1,669	35		616	113			3,841
Convention Halls ABCD	760	49	37		970		356	35	2,207
Chamber Building	53	200	20		24			92	389
Chavez Theater	112	38	1,005	29	1,494				2,678
Parking Garage	105	1,231			20				1,356
Plaza Theater	365	99	364		764				864
Totals	12,138	5,876	1,853	73	8,391	113	1,217	192	28,625

Occupancy Sensors

Dept.	Facility Name	Wall						Ceiling								
		PO	M	OS	R	S	L	PO	M	OS	R	S	H	L	GR	
Fire	Fire-Administration		1	37	6	6		1	3	62	5	6	21			
Fire	Central Station - Main #1	8	2	1	2	13		1	2	6	2	3			4	
Fire	Fire Training Academy	10	1	1	4	2			7	1	8		7			
Library	Armijo	1		2	2	2			1			1		7		
Library	Clardy Fox		2	1	3	5			1	8				16		
Library	Irvin Schwartz	1	2		3	1			2	3				9		
Library	Mission Valley	3	1	2	1	2	1		2	6	2			1		
Library	Main Library	3	7	32	17	17	3	1	3	27	2	1		64		
Library	Memorial	1	1	3	4	2			1	2				13		
Library	Westside	1	1	1	3	1			1					10		
Library	Ysleta	1	2	1	2	3			3		2			15		
Parks	Marcos B Armijo Rec Center and Pool	1		5	5	2			3	15	6	5	8			
Parks	Carolina Rec Center	4			8	7			3	1	9		8			
Parks	Acosts Sports Complex - Delta Rec	1			2			1	1	1	4	1	8			
Parks	Hilos de Plata Senior Citizen Center	3				1			7	2	4	1	6			
Parks	Eastwood Rec Center									5			4			
Parks	Hawkins Indoor Pool	2									2					
Parks	LFW Missouri Rec Center	3		1		3			1		2					
Parks	Viscount Rec/Handicap Center/Pool	3	1		4	1			4		4		2			
Parks	Viscount Eastside Maintenance			1	1											
Parks	Pavo Real Rec Hall	4	2	1	9	2			1	4	3		7			
Parks	Sambrano / Seville Rec Center	2	1			2			3		2					
Parks	San Juan Recreation Center	3		1	2	3			3		2		4			
Parks	Shawyer Indoor Pool	1				2					2					
Parks	Northeast Rec Center				2	5			7	2	6		4			
Parks	Leo Cancellare Indoor Pool	2				3					2					
Parks	Morris A. Galatzan Rec Center	1		1	8	9		1	7	3	3		6			
Parks	Marty Robbins Indoor Pool			1		2					2					
Parks	Memorial Indoor Pool	2			1	2				2	4		1			
Police	Central Station	14	1	3	5	7		1	1	8	2		7			
Police	Police Headquarters	91	1	2	16	26		5	9	118		9	47			
Police	Garage	1	1		3	1		1	1	7		6	2		12	
Police	Mission Valley Station	12	4	2	5	8		2	4	22	10	1	5			
Police	Municipal Annex - Northeast															
	Northeast Regional Command - Police	22	3	1	11	9		3	5	24	8	1	15			
	Municipal Court	6		1	2	2			2				4			
Police	Pebble Hills Station	16	2	3	5	5			3	23	5		5			
Police	Westside Station	17	1	1	8	9		1	4	18	4		15			
GS	Municipal Service Center	46	2	10	16	14		1	12	85		16	9			
GS	City Hall	25		5	2	1		3	4	17	2	3	69			
CVB	Convention and Visitor's Bureau															
	Convention Center	5		1	11	20			30		4	1				
	Chamber Building	24	2	3	5	8			4	14		5	10			
	Chavez Theater				6	4		1	1	3						
	Parking Garage	2		1	4	1			1	3		4	2			
CVB	Plaza Theater	10	5		8	11			2	4	27	2				
		352	46	125	196	224	4	23	149	496	140	66	276	135	16	

PO = Private Office R = Restroom H = Hallway
M = Meeting Room S = Storage GR = Garage
OS = Open Space L = Library

2. Mechanical Improvements: Mechanical replacements and upgrades at:

Main Library

- Replace existing DX RTU serving the special books room

Designation	DX
Capacity, Tons	5
Efficiency EER	13

- Remove and clean RA and SA registers and grilles.
- Repair damaged rooftop penetration near the unit.
- Replace basement area supply registers serving the upper and lower level basement with new low velocity registers near occupied areas.
- Clean duct work to be free of dust and debris.

El Paso Museum of Art

- Replace the existing electric steam humidifiers with new similar humidifiers.

AHU	Steam (Lbs/Hr)	kW
4	52	18
9	57	20
12	102	36

- In Contemporary Gallery served by AHU-9, install new return air ductwork & grilles to improve air distribution & indoor environment. Remove existing 216" x 24" RA grille in NW corner. From existing RA opening, install approx. 85' of new horizontal RA ductwork along North wall to first RA drop. Transition down & install approx. 60' of new horizontal RA ductwork along North wall to second RA drop. Install two (2) new vertical RA ductwork drops to finished floor (approx. 20', each). Install two (2) new RA grilles at floor level. New horizontal RA ducts shall be exposed, painted to match existing supply ducts & installed as high as possible. New vertical RA ducts shall be installed adjacent to existing columns & enclosed in sheetrock & painted to match existing walls. Test, adjust & balance AHU-9 total airflow, existing supply diffusers and new RA grilles.

Marcos B Armijo Recreation Center

- Replace the existing cooling tower and chiller with a new efficient cooling tower and chiller and plate and frame heat exchanger.

Designation	Chiller
Capacity, tons	91
Efficiency, NPLV/EER	24

- Replace the existing boiler with a new efficient boiler.

Designation	Boiler
Output, kbtuh	2,000
Efficiency, %	85

- Replace the existing pumps.

Pump	HP	GPM
CHW	5	216
CW	5	270
HW	5	100

- Insulate the exposed rooftop CHW piping with aluminum jacketed rigid insulation and the interior mechanical room CHW piping with color coded rigid insulation and PVC Jacket. Insulate the interior mechanical room HW piping with color coded rigid insulation and PVC Jacket.
- For existing AHU-1,2,3,4, replace existing chilled water and hot water supply and return piping between coils and manual shut-off valves. Replace existing AHU coils with new separate CHW and HW coils.
- Demo two (2) each existing heating only AHU's that serve the gymnasium and two (2) each existing heating only fan coil units that serve the men's and women's dressing rooms. Demo four (4) each existing evaporative cooling units on the roof of the gym and the supply duct work in the interior of the gym and cap the penetration with insulated sheet metal caps. Extend the existing CHW piping and add two (2) each constant volume four-pipe AHU's to the gymnasium with minimum OA. Provide separate ductwork extensions from the new AHU's to the men's and women's dressing rooms.

Hawkins Indoor Pool

- Remove and seal the exhaust fans, relief vents, and sky lights.
- Remove the four (4) each roll-up doors and seal with CMU.
- Paint the interior wall and ceilings.
- Replace the existing evaporative coolers and furnaces and exhaust fans that serve the pool area with a new efficient heat pump dehumidification unit.

Designation	Dehumidification Heat Pump
Capacity, tons	34.5
Efficiency, COP	10

- Replace the existing evaporative cooler and furnace that serves the dressing rooms and office with a new efficient packaged rooftop unit.

Designation	Packaged RTU
Capacity, tons	7.5
Efficiency, EER	13

Police Headquarters & Bldg Maintenance

- Replace existing three (3) each water cooled centrifugal chillers with three (3) each new efficient water cooled chillers.

Designation	Chiller
Output, tons	150 ea
Efficiency, NPLV/EER	0.506

- Replace existing three (3) each cooling towers with three (3) new efficient cooling towers.

- Replace three (3) each existing primary chilled water pumps with four (4) new primary chilled water pumps. Replace three (3) existing condenser water pumps with four (4) each new condenser water pumps.

Designation	GPM	Head	HP
PCHW-1	320	140	25
PCHW-1	320	140	25
PCHW-1	320	140	25
PCHW-1	320	120	20
CWP-1	450	65	20
CWP-1	450	65	20
CWP-1	450	65	20
CWP-1	450	65	20

- Install one new plate and frame heat exchanger with a capacity of 150 tons cooling output.
- Install new associated chilled water and condenser water piping in central plant necessary for conversion to high efficiency variable primary cooling system.

Pebble Hills Station

- Replace the existing air cooled condensing unit and install a new efficient air cooled chiller.

Designation	Chiller
Output, tons	81.1
Efficiency, NPLV/EER	13

- Remove existing DX coil in Air Handler #1 and install new CHW coil with three-way control valve and CHW pump.

Cooling		Entering Air		Flow
Total (MBH)	Sensible (MBH)	DB (F)	WB (F)	GPM
817	788	80	67	162.8

City Hall

- Install new VFD on existing 485 ton Trane chiller.

Convention Center

- Install two (2) new boiler burners to retrofit existing turn down ratio from 3:1 to 8:1.
- Improve HW reset capabilities. Install new 8" HW bypass lines & new 3-way mixing valves for each boiler. Install new 12" HW decoupler line between main HW supply and return lines.
- Install new one (1) VFD unit on existing 550 ton York chiller.

Chamber Building

- Provide minimum OA ductwork upgrades

3. HVAC Control Systems Upgrades:

Dept.	Facility Name	Full DDC	Networkable Programmable Thermostats	Comments
Fire	Fire-Administration	X		Metasys
Fire	Fire Training Academy		X	
Library	Armijo	X		Metasys ¹
Library	Clardy Fox		X	
Library	Irvin Schwartz		X	
Library	Mission Valley	X		
Library	Main Library	X		Upgrade Existing Automated Logic
Library	Memorial		X	
Library	Westside		X	
Library	Ysleta		X	
Museum	El Paso Museum of Art	X		Upgrade Existing Metasys
Museum	History	X		Upgrade Existing Automated Logic
Parks	Marcos B Armijo Rec Center	X		Metasys
Parks	Carolina Rec Center		X	
Parks	Chihuahuita Rec Center		X	
Parks	Acosta Sports Complex - Delta Rec Hall		X	
Parks	Hilos de Plata Senior Citizen Center		X	
Parks	Eastside Sr Citizen Center		X	
Parks	Eastwood Rec Center		X	
Parks	Grandview - Sacramento		X	
Parks	Hawkins Indoor Pool	X		Metasys
Parks	Memorial Park Senior Citizens Center		X	
Parks	Leona Ford Washington Missouri Rec Ctr.		X	
Parks	Viscount Rec/Handicap Center		X	
Parks	Pavo Real Rec Hall		X	
Parks	Sambrano / Seville Rec Center		X	
Parks	San Juan Recreation Center		X	
Parks	South El Paso Sr Ctz Center		X	
Parks	Northeast Rec Center		X	
Parks	Wellington Chew Sr Ctz Center		X	
Parks	Morris A. Galatzan Rec Center/Polly Harris		X	
Police	Central Station	X		Metasys
Police	Police Headquarters	X		Metasys
Police	Automotive Maintenance Facility		X	
Police	Mission Valley Station	X		Metasys
Police	Municipal Annex - Northeast	X		Upgrade Existing Metasys
Police	Pebble Hills Station	X		Metasys
Police	Westside Station	X		Metasys

Gen. Srv.	Municipal Service Center		X	
Gen. Srv.	City Hall	X		Integrate to Existing Trane to Metasys
CVB	Convention Center	X		Upgrade Existing Automated Logic
CVB	Chamber Building	X		Metasys
CVB	Chavez Theater	X		Metasys
CVB	Plaza Theater	X		Upgrade Existing Metasys

General

- Provide protection of existing finishes and or structures. Match patchwork of new finishes and structures like for like.
- Prior to work beginning, all wall, floor or roof penetrations will be identified to City personnel for verification and inspection of location.
- Remove and re-install existing lay-in ceilings as required to install new work.

General – DDC Controls

- For new Consultant Metasys DDC controls, provide access through City Ethernet via Extended Architecture Metasys software. If Consultant releases new software update before the one-year warranty of this improvement measure expires, Consultant will provide new software version to the City at no additional cost. After the one-year warranty expires, City will be responsible for any costs associated with software upgrades.
- Dynamic graphics.
- Provide user-friendly HVAC equipment scheduling screens.
- All controls mounted and wired as specified in the following:
 1. All new wiring shall be in EMT or rigid conduit as required by applicable electrical codes.
 2. All new Class 2 signal wiring will be installed as plenum-rated cable above accessible lay-in ceilings.
 3. Control, control power and interlock wiring will be performed according to applicable electrical codes to provide a turnkey installation.

Chiller Plants

- Optimum start/stop of chillers and associated pumps
- Chilled water temperature reset
- Chilled water inlet & outlet temperatures
- Chiller and pump status
- Chiller alarms
- Pump VFD control & speed, where applicable

Cooling Towers

- Optimum start/stop of cooling tower fans
- Condenser water temperature reset
- Condenser water inlet & outlet temperatures
- Cooling tower fan status

Heating Plants

- Optimum start/stop of boilers and associated pumps
- Heating water temperature reset
- Heating water inlet & outlet temperatures
- Boiler and pump status
- Boiler alarms

Air Handling Units

- Optimum start/stop of air handling units
- Scheduling and unoccupied setup & setback
- Supply air temperature reset (MZU, VAV units only)
- Space, mixed air & supply air temperatures
- Fan status
- Air handling unit VFD control & speed, where applicable
- CO2 control of minimum motorized outside air damper, where applicable
- Economizer cycle, where applicable
- Freezestat protection
- Multizone damper control, where applicable

Fan Coil Units

- Optimum start/stop of air handling units
- Scheduling and unoccupied setup & setback
- Space, mixed air & supply air temperatures
- Fan status
- CO2 control of minimum motorized outside air damper, where applicable
- Freezestat protection

Package HVAC Units (RTU's, Split Systems)

- Optimum start/stop of package units
- Scheduling and unoccupied setup & setback
- Space temperatures
- Supply air temperatures
- Fan status
- Minimum outside air damper control, where applicable
- Economizer cycle, where applicable

VAV Boxes

- Unoccupied setup & setback
- Space & supply air temperatures
- Box CFM
- Reheat control, where applicable

Unit Heaters

- Start/stop of heaters
- Space temperatures

Occupancy Stats

- For the applicable areas and units at the following facilities, lighting occupancy sensors will be utilized for extended control inputs during occupied hours.
- Multiple occupancy sensors with relays will be installed. When all relays associated with an occupancy stat de-energize, HVAC unit setpoint will be setup/setback 5 deg. When any relay associated with an occupancy stat energizes, HVAC unit setpoint will return to normal occupied setpoint.

Location	Qty	Area Served	Equipment	Action
Central Police	6	1st floor	4-pipe FCU	Fan off
Westside PD	18	2nd floor	VAV reheat box	close damper/close valve
Pebble Hills PD	15	1st floor	VAV reheat box	close damper/close valve
Municipal Annex – Northeast	16	Area A	VAV reheat box	close damper/close valve
Art Museum	2	2nd floor	4-pipe AHU	set back to 80F
Police HQ	5	First Flr	4-pipe FCU	Fan Off, CHW Valve closed
Police HQ	2	2nd Flr	4-pipe FCU	Fan Off, CHW Valve closed
Police HQ	2	Basement	4-pipe FCU	Fan Off, CHW Valve closed
Fire Administration Building	1	Classroom	RTU	set back to 80F
Mission Valley PD	6	1st floor	RTU	set back to 80F

Fire Administration

- Provide access through City Ethernet via Consultant NAE Architecture.
- Provide full DDC controls for eight (8) rooftop DX units.
- Provide full DDC controls for twenty (20) evaporative cooler units.
- Provide full DDC controls for two (2) furnace units.
- Provide full DDC controls for three (3) unit heaters.

Main Library

- Provide access through City Ethernet. Optimize and upgrade existing Automated Logic DDC controls.
- Provide HW reset controls.
- Provide demand ventilation controls.

El Paso Museum of Art

- Optimize and upgrade existing Consultant Metasys DDC controls.

Unit	CHW Valve	HW Valve	Damper Actuator	Temp Sensor	RH Sensor	Economizer	RH Control
AHU-1			X		X	X	
AHU-2					X	X	
AHU-3		X ²				X	
AHU-4							X
AHU-5						X	
AHU-6						X	
AHU-7			X	X		X	
AHU-8				X		X	
AHU-9			X ³	X	X	X	X
AHU-10						X	
AHU-11		X ¹	X			X	
AHU-12	X ¹		X ³	X		X	X
Chiller 1	X						
Chiller 2	X						
Chiller 3	X						

Note 1 – valve and actuator
 Note 2 – actuator only
 Note 3 – relief and return air

- Replace one (1) existing hot water valve actuator (AHU-3)
- Replace one (1) each existing hot water valve & actuator (AHU-11)
- Replace one (1) each existing chilled water valve & actuator (AHU-12)
- Replace three (3) each existing damper actuators (AHU-4,7,11)
- Replace four (4) each existing DA-T sensors (AHU-7,8,9,12)
- Install four (4) each new relief air motorized dampers & two (2) new return air actuators for economizer mode (AHU-9,12)
- Install three (3) each new 4" 2-way chilled water isolation valves for each chiller
- Install four (4) each new building differential pressure sensors for economizer mode (two on each floor)
- Provide demand ventilation controls.
- Install two (2) each new humidity room sensors for monitoring only (AHU-1,2)
- Install one (1) each new temp room sensor & one (1) each new humidity room sensor for Contemporary Gallery (AHU-9). Install at East end of room. Average new & existing temp & humidity sensors to properly control room.
- Verify existing AHU interlock controls of thirteen (13) each exhaust fans
- Provide economizer sequences for all AHU's except AHU-4 (total of 11)
- Provide demand ventilation sequences for all AHU's (total of 12)
- Provide new sequences for chilled water system and two (2) each hot water systems
- Provide new humidity control sequences for AHU-4,9,12

History Museum

- Provide access through City Ethernet. Optimize and upgrade existing Automated Logic DDC controls.
- Provide HW reset controls.
- Provide demand ventilation controls.

Marcos B Armijo Recreation Center & Library

- Provide new Consultant Metasys DDC controls
- Provide full DDC controls for new central plant including the new chiller, plate and frame heat exchanger, cooling tower, pumps, and boiler.
- Replace the existing CHW coils with like-sized CHW coils, install new HW coils, and replace the existing pneumatic CHW and HW valves with new DDC control valves at air handlers one through four to provide full DDC controls for the four air handling units.
- Provide new DDC controls for Armijo Rec Center office, Armijo Rec Center kitchen, Armijo Pool dressing room and office, Armijo Pool dressing room and lobby, and the four units at Armijo Library.
- Provide demand ventilation controls.

Hawkins Indoor Pool

- Provide new Consultant Metasys DDC controls
- City shall provide Ethernet service to this facility.
- Provide interface to Dectron heat pump dehumidification unit and monitoring of the following:

ID	Status	Alarm	Temp	RH
Boiler	X	X		
Hot Water Supply			X	
Hot Water Return			X	
Pool Area			X	X
Outside Air			X	

- Provide new DDC controls for the new rooftop unit serving the dressing rooms and office.

Central Police Station

- Provide new Consultant Metasys DDC controls
- Provide full DDC controls for the existing central plant including one (1) air-cooled chiller, one (1) boiler, one (1) chilled water pump and one (1) heating water pump.
- Replace the existing three-way pneumatic chilled and heating water valves with three-way DDC control valves serving the FCUs.

Valve Service	Quantity
Chilled Water	29
Heating Hot Water	29

- Provide full DDC controls for the twenty-nine (29) existing 4-pipe fan coil units and one (1) existing DX HVAC unit.

Police HQ & Bldg Maintenance

- Provide new Consultant Metasys DDC controls
- Provide full DDC controls for the central cooling plant including three (3) each chillers, four (4) each primary chilled water pumps, four (4) each condenser water pumps, three (3) each cooling towers, one (1) each waterside economizer, and twelve (12) each control valves.
- Install seven (7) each new condenser water control valves. Install five (5) each new chilled water controls valves.

Valve Service	Quantity
Chilled Water	5
Condenser Water	7

- Provide full DDC controls for the existing central heating plant including two (2) each boilers and two (2) each heating hot water pumps.
- Replace the existing three-way pneumatic chilled water valves with two-way DDC chilled water valves serving the FCUs. Replace four (4) each existing three-way pneumatic chilled water valves with three-way DDC chilled water valves serving AHU-1,2,3, and MAU-1. Replace the three-way pneumatic hot water valves with new three-way DDC hot water valves.

Valve Service	Quantity
Chilled Water	92
Heating Hot Water	92

- Provide full DDC controls for the eight-eight (88) each existing 4-pipe fan coil units and two (2) each new 2-pipe cooling only fan coil units.
- Provide full DDC controls for the four building air handlers including AHU-1, AHU-2, AHU-3, and MAU-1.
- Install new VFD unit for MAU-1 with demand ventilation controls.
- Provide control sequencing for optimal central plant efficiencies including HW reset, CHW Reset, CW Reset, optimal water side economizer operation, optimal cooling tower fan operation, chiller staging.

Designation	CHW Valve	HW Valve	VFD	Temp Sensor	Econo-mizer	Schedule	Status
Chillers (3)				X			X
Boilers (2)				X			X
Cooling Towers (3)				X			X
Heat Exchanger				X	X		X
CHW Pumps (4)			X				X
CW Pumps (4)							X
HW Pumps (2)							X
FCUs (90)	X	X		X		X	X
AHU 1,2,3	X	X		X		X	X
MAU-1	X	X	X	X		X	X
Comp. Rm. Unit				X		X	X

Mission Valley Station

- Provide new Consultant Metasys DDC controls
- Provide scheduling and occupancy sensor interface/override to thirteen (13) each RTUs serving the police department. Provide occupancy control to six of the thirteen units.
- Provide new DDC controls for the thirteen (13) each RTUs .

Municipal Annex - Northeast

- Optimize and upgrade existing Consultant Metasys DDC controls.
- Add CHW supply and return temperature monitoring.
- Provide demand ventilation controls.
- Add scheduling and occupancy sensor interface/override to the following:

Unit	Schedule	Occ/Ovr
AHU-1		X
AHU-2		X
AHU-3		X
AHU-4	X	X ¹
AHU-5	X	
AHU-6	X	
AHU-7	X	
AHU-8	X	
AHU-9	X	
AHU-10	X	

Note 1: Override only

Pebble Hills Station

- Provide new Consultant Metasys DDC controls
- Provide full DDC controls for central plant including the new chiller and chilled water pump, existing hot water pumps, and existing boiler.
- Provide full DDC controls for the air handling unit and new VFD units.
- Install two (2) new VFD units for air handling unit, one for the supply fan & one for the return fan.
- Replace the existing eighteen (18) each three-way pneumatic HW valves with new DDC three-way HW valve.
- Replace the existing eighteen (18) each pneumatic VAV boxes with full DDC VAV boxes. Provide full DDC controls, including occupancy sensors and overrides, for the eighteen new variable air volume boxes.
- Provide demand ventilation controls.

Westside Station

- Provide new Consultant Metasys DDC controls
- Provide full DDC controls for central plant including the chiller and chilled water pump, existing hot water pump, and existing boiler.
- Provide full DDC controls for the two air handling units and VFD's.
- Provide full DDC controls, including occupancy sensors and overrides, for the existing eighteen variable air volume boxes that serve the second floor.
- Provide full DDC controls for the existing sixteen variable air volume boxes that serve the first floor.
- Provide demand ventilation controls.
- Provide new DDC controls for the new computer room unit.
- Install one (1) each new Ductless Split System to serve the first floor computer room.

Designation	DX
Output, tons	1.5 ea
Efficiency, NPLV/EER	13

City Hall

- Integrate Consultant Metasys to the existing Trane control system. Program new AHU schedules for unit setback during unoccupied periods.
- Provide demand ventilation controls.

Convention Center

- Provide access through City Ethernet. Optimize and upgrade existing Automated Logic DDC controls.
- Recommission the existing VFD serving the secondary chilled water pump (CWS-1).
- Provide reporting functions and kW monitoring of the new VFD serving Chiller #2.
- Provide new VFD and control sequencing for speed control of pumps CWS-2 and CWS-2A serving chilled water to Chavez Theater and Chamber Building.
- Provide control sequencing for boiler optimal start and HW reset for Boiler #1 and Boiler #2 serving the Convention Center, Chavez Theater, and Chamber Building. Install two (2) new heating water mixing valves.

Valve Service	Quantity
Heating Hot Water	2

- Provide control sequencing for optimal utilization of existing waterside economizer. Control sequencing to provide free cooling and supplemental cooling based on OSA conditions. Install two (2) new condenser water control valves and associated piping in the "free cooling heat exchanger loop". Install three (3) new chilled water control valves and associated piping in the "free cooling heat exchanger loop".

Valve Service	Quantity
Condenser Water	2
Chilled Water	3

- Provide demand ventilation controls.

Chamber Building

- Provide new Consultant Metasys DDC controls
- Provide differential pressure sensors for variable volume pumping implementation.
- Provide new DDC controls for twenty-four (24) fan coil units.
- Replace the existing three-way pneumatic chilled water valves with two-way DDC chilled water valves. Replace the three-way pneumatic hot water valves with three-way DDC hot water valves.

Valve Service	Quantity
Chilled Water	24
Heating Hot Water	24

- Provide demand ventilation controls.

Chavez Theater

- Provide new Consultant Metasys DDC controls
- Provide differential pressure sensors for variable volume pumping implementation.
- Provide new DDC controls for eight (8) fan coil units serving the HR/Accounting areas.
- HR/Accounting Area: replace the existing three-way pneumatic chilled water valves with two-way DDC chilled water valves. Replace the three-way pneumatic hot water valves with new three-way DDC hot water valves.

Valve Service	Quantity
Chilled Water	8
Heating Hot Water	8

- Provide new DDC controls for the thirteen (13) Multizone units serving the Chavez Theater.
- Provide control sequencing for Multizone reset and scheduling tasks.
- Refurbish eleven (11) Multizone AHUs serving the Chavez Theater. Refurbishment to include: coil cleaning, drip pan replacement, mixing damper and actuator replacement, OSA damper replacement, unit cleaning, leak sealing, and fan belt replacement.
- Chavez Theater: replace the existing three-way pneumatic chilled water valves with two-way DDC chilled water valves. Replace the three-way pneumatic hot water valves with new three-way DDC hot water valves.

Valve Service	Quantity
Chilled Water	11
Heating Hot Water	11

- Provide demand ventilation controls.

Plaza Theater

- Optimize and upgrade existing Consultant Melasys DDC controls.
- Provide demand ventilation controls.
- Provide new DDC controls for two new ductless split systems serving the dimmer rooms. Provide a High temperature alarm to be set at 82F for both the dimmer rooms.
- Provide new DDC controls for two new DX coils serving the transformer rooms. Provide a High temperature alarm to be set at 82F for both the transformer room.
- Provide new DDC controls for one new ductless split systems serving the stage manager office.
- Provide new DDC controls for one new DX Coil and electric duct heater serving the five occupied offices.
- Install three (3) new Ductless Split Systems to serve the two dimmer rooms and stage manager office.

Designation	DX Unit
Output, tons	1.5 ea
Efficiency, NPLV/EER	13

- Install two (2) new DX coils and associated ductwork to serve the transformer room.

Designation	DX Coil
Output, tons	5.0 ea
Efficiency, NPLV/EER	13

- Install one (1) new DX coil and electric duct heater to serve the occupied offices.

Designation	DX Coil/Duct Heater
Output, tons	2.0
Heater, kW	10
Efficiency, NPLV/EER	13

General – Programmable Thermostats

- Install new networkable programmable thermostat for each package HVAC unit. The thermostats will be capable of future network connectivity.

Package HVAC Units (RTU's, Split Systems)

- Optimum start/stop of package units
- Space temperatures

Unit Heaters, Infrared Heaters, Rooftop Furnaces

- Start/stop of heaters
- Space temperatures

Evaporative Coolers

- Start/stop of units
- Space temperatures

[Remainder of page intentionally left blank.]

Facility Name	Programmable Thermostat Installation							
	DX		Evap		Rooftop Furnace		Unit Heater	
	Standard Height	Gym Ceiling Height	Standard Height	Gym Ceiling Height	Standard Height	Gym Ceiling Height	Standard Height	Gym Ceiling Height
Fire Training Academy	6							
Armijo	4							
Clardy Fox	7							
Irvin Schwartz	3							
Lower Valley	7							
Memorial	3							
Westside	4							
Ysleta	5							
Carolina Rec Center	6			6			6	6
Chihuahuita Rec Center				4			1	
Acosta Sports Complex - Delta Rec Hall						9	6	6
Hijos de Plata Senior Citizen Center		8						
Eastside Sr Citizen Center	1		5				5	
Eastwood Rec Center		12						
Grandview - Sacramento			9					
Memorial Park Senior Citizens Center	10							
Leona Ford Washington Missouri Rec Center			4	2				
Viscount Rec/Handicap Center/Pool	2	2				9		7
Pavo Real Rec Hall	1		11				5	
Sambrano / Seville Rec Center	2	2						
San Juan Recreation Center				7				
South El Paso Sr Ctz Center	5		3					
Northeast Rec Center			6					
Wellington Chew Sr Ctz Center		3						
Morris A. Galatzan Rec Center/Polly Harris	5		3	3				10
Automotive Maintenance Facility			3	5				3
Mission Valley Station	13							
Municipal Service Center					20	8	15	18
	84	27	44	27	20	26	38	50

4. Indoor Pool Solar Heating Improvements: Installation and equipping of solar pool water heating to supplement the existing gas-fired boilers at indoor pools within the City.

Location	# of Panels	Size of Panels	Panel Sq Ft	Estimated Booster Pump hp
Armijo - wade	94	4' x 12.5'	4,700	5
Armijo- competition	82	4' x 12.5'	4,100	5
Hijos de Plata	50	4' x 12.5'	2,500	3
Leo Cancellare	58	4' x 12.5'	2,900	3
Marly Robbins	128	4' x 12.5'	6,400	5
Memorial	68	4' x 12.5'	3,400	3
Shawver	84	4' x 12.5'	4,200	5
Veterans	82	4' x 12.5'	4,100	5
Viscount	50	4' x 12.5'	2,500	3

[Remainder of page intentionally left blank.]

5. Traffic, Pedestrian & Flasher Signal Upgrades: Conversion of existing incandescent traffic, pedestrian and flasher signals to LED technology, including the replacement of entire signal housings at some locations.

General Scope

- All Work to be performed in strict accordance with the applicable sections of the National Electric Code (NEC), laws, ordinances, rules, regulations, etc. of the Authority Having Jurisdiction over this Work.
- Unless specifically noted otherwise in the Schedule, all Work is to be done during hours such that disruption of each signal and intersection is kept to the utmost minimum. All Work shall be coordinated with the City.

LED Lamps and Signal Housings

- All new LED lamps and signal housings shall meet or exceed Institute of Traffic Engineers (ITE) specifications and requirements.
- All new LED lamps and signal housings located on Texas Department of Transportation (TXDOT) roadways shall meet or exceed TXDOT specifications and requirements.
- All new 12" traffic signal housings will be regulated by the Texas Manual on Uniform Traffic Control Devices (TMUTCD) and will be constructed of die cast aluminum alloy.
- All new pedestrian signal housings will be 16 x 18 international format as regulated by the TMUTCD and will be constructed of die cast aluminum alloy.

Signal Type	Signal Qty	New Housing
12" 3-lamp traffic - red, yellow, green	2646	
12" 3-lamp traffic - red, yellow, green arrow	99	
12" 3-lamp traffic - red, yellow arrow, green arrow	119	
12" 4-lamp traffic - red, yellow arrow, green, green arrow	54	
12" 4-lamp - red, yellow arrow, (2) green arrows	34	
12" 5-lamp - red, yellow, yellow arrow, green, green arrow	352	
8" 3-lamp - red, yellow, green	309	X
8" 3-lamp - red, yellow, green arrow	8	X
3M - 3-lamp traffic - red, yellow, green	95	
3M - 3-lamp traffic - red, yellow, green arrow	34	
3M - 4-lamp traffic - red, yellow, (2) green arrows	8	
3M - 4-lamp traffic - red, yellow, green, green arrow	3	
3M - 5-lamp traffic - red, yellow, yellow arrow, green, green arrow	17	
Traffic Signal Total	3778	
Non 16" x 18" PED	1429	X
16" x 18" PED	988	
Pedestrian Signal Total	2417	
1-lamp warning flasher	11	
2-lamp warning flasher	94	
2-lamp school flasher	242	
3-lamp school flasher	50	
Flasher Signal Total	397	

EXHIBIT B
RENTAL PAYMENT SCHEDULE

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST PORTION	PRINCIPAL PORTION	OUTSTANDING BALANCE	TERMINATION VALUE ⁽¹⁾
October 31, 2011				\$ 13,586,998.60	
December 1, 2011	\$ 262,080.00	\$ 29,951.78	\$ 232,128.22	13,354,870.38	\$ 13,621,967.79
March 1, 2012	273,185.00	85,471.17	187,713.83	13,167,156.55	13,430,499.69
June 1, 2012	273,185.00	84,269.80	188,915.20	12,978,241.36	13,237,806.18
September 1, 2012	407,067.25	83,060.74	324,006.51	12,654,234.85	12,907,319.55
December 1, 2012	407,067.25	80,987.10	326,080.15	12,328,154.70	12,574,717.80
March 1, 2013	418,510.25	78,900.19	339,610.06	11,988,544.64	12,228,315.54
June 1, 2013	418,510.25	76,726.69	341,783.56	11,646,761.08	11,879,696.30
September 1, 2013	419,793.50	74,539.27	345,254.23	11,301,506.85	11,527,536.99
December 1, 2013	419,793.50	72,329.64	347,463.86	10,954,042.99	11,173,123.85
March 1, 2014	431,575.50	70,105.88	361,469.62	10,592,573.37	10,804,424.84
June 1, 2014	431,575.50	67,792.47	363,783.03	10,228,790.34	10,433,366.15
September 1, 2014	435,630.70	65,464.26	370,166.44	9,858,623.90	10,055,796.38
December 1, 2014	435,630.70	63,095.19	372,535.51	9,486,088.39	9,675,810.16
March 1, 2015	447,767.70	60,710.97	387,056.73	9,099,031.66	9,281,012.29
June 1, 2015	447,767.70	58,233.80	389,533.90	8,709,497.76	8,883,687.71
September 1, 2015	451,944.30	55,740.79	396,203.51	8,313,294.24	8,479,560.13
December 1, 2015	451,944.30	53,205.08	398,739.22	7,914,555.03	8,072,846.13
March 1, 2016	464,444.30	50,653.15	413,791.15	7,500,763.88	7,650,779.16
June 1, 2016	464,444.30	48,004.89	416,439.41	7,084,324.47	7,226,010.96
September 1, 2016	468,746.26	45,339.68	423,406.58	6,660,917.88	6,794,136.24
December 1, 2016	468,746.26	42,629.87	426,116.39	6,234,801.50	6,359,497.53
March 1, 2017	481,619.26	39,902.73	441,716.53	5,793,084.97	5,908,946.67
June 1, 2017	481,619.26	37,075.74	444,543.52	5,348,541.45	5,455,512.28
September 1, 2017	486,050.05	34,230.67	451,819.38	4,896,722.07	4,994,656.51
December 1, 2017	486,050.05	31,339.02	454,711.03	4,442,011.04	4,530,851.26
March 1, 2018	493,748.85	28,428.87	465,319.98	3,976,691.06	4,056,224.88
June 1, 2018	493,748.85	25,450.82	468,298.03	3,508,393.03	3,578,560.89
September 1, 2018	498,312.92	22,453.72	475,859.20	3,032,533.83	3,093,184.50
December 1, 2018	498,312.92	19,408.22	478,904.70	2,553,629.12	2,604,701.71
March 1, 2019	447,726.95	16,343.23	431,383.72	2,122,245.40	2,164,690.31
June 1, 2019	447,726.95	13,582.37	434,144.58	1,688,100.82	1,721,862.84
September 1, 2019	161,394.93	10,803.85	150,591.08	1,537,509.74	1,568,259.93
December 1, 2019	161,394.93	9,840.06	151,554.87	1,385,954.87	1,413,673.97
March 1, 2020	161,394.93	8,870.11	152,524.82	1,233,430.05	1,258,098.65
June 1, 2020	161,394.93	7,893.95	153,500.98	1,079,929.07	1,101,527.65
September 1, 2020	166,236.68	6,911.55	159,325.13	920,603.94	939,016.02
December 1, 2020	166,236.68	5,891.87	160,344.81	760,259.12	775,464.31
March 1, 2021	166,236.68	4,865.66	161,371.02	598,888.10	610,865.86
June 1, 2021	166,236.68	3,832.88	162,403.80	436,484.31	445,213.99
September 1, 2021	110,872.58	2,793.50	108,079.08	328,405.22	334,973.33
December 1, 2021	110,872.58	2,101.79	108,770.79	219,634.43	224,027.12
March 1, 2022	110,872.58	1,405.66	109,466.92	110,167.51	112,370.86
June 1, 2022	110,872.58	705.07	110,167.51	-	-

⁽¹⁾ Including Prepayment Premium, if applicable.

Contract Rate. The Contract Rate is 2.56% per annum.

Purchase Option Commencement Date. For purposes of Section 10.01 of the Agreement, the Purchase Option Commencement Date is December 1, 2011.

[Execution page follows.]

LESSOR:

BANC OF AMERICA PUBLIC CAPITAL CORP
11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration
Fax No.: (443) 556-6977

By: _____
Name: _____
Title: _____

(Seal)

Attest: _____
By: _____
Name: _____
Title: _____

LESSEE:

CITY OF EL PASO, TEXAS
2 Civic Center Plaza
El Paso, TX 79901
Attention: Chief Financial Officer
Fax No.: (915) 541-4229

By: _____
Name: _____
Title: _____

EXHIBIT C-1

INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected and acting _____ of the City of El Paso, Texas ("*Lessee*") certifies as follows:

The following listed persons are duly elected or appointed and acting officials of Lessee (the "*Officials*") in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof:

Name of Official	Title	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: _____

By: _____

Name: _____

Title: _____

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

EXHIBIT C-2

FORM OF AUTHORIZING RESOLUTION

EXHIBIT D
OPINION OF COUNSEL TO LESSEE

EXHIBIT E

FORM OF ACCEPTANCE CERTIFICATE

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

Re: Equipment Lease/Purchase Agreement, dated as of October 25, 2011
between Banc of America Public Capital Corp, as Lessor, and the City of
El Paso, Texas, as Lessee

Ladies and Gentlemen:

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

1. All of the Equipment (as such term is defined in the Agreement) has been delivered, installed and accepted on the date hereof.

2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.

3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.

4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.

5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Date: _____

LESSEE:
CITY OF EL PASO, TEXAS

By: _____

Name: _____

Title: _____

(Seal)

EXHIBIT F

FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

DATED _____

BANC OF AMERICA PUBLIC CAPITAL CORP ("*Assignor*") hereby gives notice that it has assigned and sold to _____ ("*Assignee*") all of Assignor's right, title and interest in, to and under the Equipment Lease/Purchase Agreement (the "*Agreement*") dated as of October 25, 2011 between Assignor and the City of El Paso, Texas ("*Lessee*"), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor's right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor's right, title and interest in, to and under the Acquisition Fund and Account Control Agreement dated October 31, 2011 (the "*Acquisition Fund Agreement*") by and among Lessee, Assignor and Deutsche Bank National Trust Company, as Acquisition Fund Custodian, together with the Acquisition Fund related thereto (collectively, the "*Assigned Property*").

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

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

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

Number of Rental Payments Remaining	—	_____
Amount of Each Rental Payment	—	\$ _____
Total Amount of Rents Remaining	—	\$ _____
Frequency of Rental Payments	—	Quarterly
Next Rental Payment Due	—	_____
Funds Remaining in Acquisition Fund	—	\$ _____

4. The Agreement remains in full force and effect, has not been amended and no nonappropriation or Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

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

ACKNOWLEDGED AND AGREED:

LESSEE: CITY OF EL PASO, TEXAS

By: _____

Name: _____

Title: _____

ASSIGNOR: BANC OF AMERICA PUBLIC CAPITAL CORP

By: _____

Name: _____

Title: _____

EXHIBIT G

FORM OF SELF INSURANCE CERTIFICATE

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

Re: Equipment Lease/Purchase Agreement, dated as of October 25, 2011 (the "Agreement") between Banc of America Public Capital Corp, as Lessor, and the City of El Paso, Texas, as Lessee

In connection with the above-referenced Agreement, the City of El Paso, Texas (the "Lessee"), the Lessee warrants and represents to Banc of America Public Capital Corp the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

1. The Lessee is self-insured for damage or destruction to the Equipment. The dollar amount limit for property damage to the Equipment under such self-insurance program is \$_____. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for property damage to the Equipment which policy has a dollar limit for property damage to the Equipment under such policy of \$_____.]

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

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund [are/are not] subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee's self-insurance liabilities is \$_____. [Amounts paid from the Lessee's self-insurance fund are subject to a dollar per claim of \$_____.]

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources: _____; Amounts payable for claims from the such sources are limited as follows: _____

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

LESSEE:

CITY OF EL PASO, TEXAS

By: _____

Name: _____

Title: _____

EXHIBIT H

FORM OF ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

THIS ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT (this "*Agreement*"), dated as of October 31, 2011 by and among Banc of America Public Capital Corp (hereinafter referred to as "*Lessor*"), the City of El Paso, Texas, a political a body corporate and politic existing under the laws of the State of Texas (hereinafter referred to as "*Lessee*") and Deutsche Bank National Trust Company (hereinafter referred to as "*Acquisition Fund Custodian*").

Reference is made to that certain Equipment Lease/Purchase Agreement dated as of October 25, 2011 between Lessor and Lessee (hereinafter referred to as the "*Lease*"), covering the acquisition and lease of certain Equipment described therein (the "*Equipment*"). It is a requirement of the Lease that the Acquisition Amount (\$13,586,998.60) 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 and Delivery Costs Fund.

(a) There is hereby created a special trust fund to be known as the "City of El Paso 2011 Equipment Lease/Purchase Acquisition Fund" (the "*Acquisition Fund*") to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof. There is hereby created a special trust fund to be known as the "City of El Paso 2011 Equipment Lease/Purchase Delivery Costs Fund" (the "*Delivery Costs Fund*") to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

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

Funds. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements of the laws of the State of Texas.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (e) 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 Lessor, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Acquisition Fund on or after the earlier of (i) the expiration of the Acquisition Period and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof.

(d) Unless the Delivery Costs Fund is earlier terminated in accordance with the provisions of paragraph (e) below, amounts in the Delivery Costs Fund shall be applied to pay Delivery Costs upon receipt by Acquisition Fund Custodian of written directions from Lessee, which are approved in writing by Lessor, that identifies the payees and the amounts to be paid for Delivery Costs. Upon the earlier of January 31, 2012 or payment of all Delivery Costs, amounts in the Delivery Costs Fund shall be transferred to, and used for the purposes of, the Acquisition Fund.

(e) The Acquisition Fund and the Delivery Costs Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund and the Delivery Costs Fund or (ii) written notice given by Lessor of the occurrence of a default or termination of the Lease due to non-appropriation.

(f) 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.

(g) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder and to the extent permitted by applicable law, Lessee agrees to and does hereby release and indemnify the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this agreement; and in connection therewith, does to the extent permitted by applicable law indemnify the Acquisition Fund Custodian against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

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

(i) 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 gross negligence or willful misconduct.

(j) 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 Delivery Costs 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 and the Delivery Costs Fund.

2. Acquisition of Property.

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

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

(c) Requisition Procedure. No disbursement from the Acquisition Fund shall be made unless and until Lessor has approved such requisition. 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 Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due. Each such requisition shall be signed by an authorized representative of Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:

(i) an obligation in the stated amount has been incurred by 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 (or has been paid by Lessee and Lessee requests reimbursement thereof); (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 Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (iv) the Equipment is insured in accordance with the Lease; (v) no Event of Default (nor any event which, with notice or laps of time or both, would become an Event of Default) has occurred and is continuing and (vi) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

2. Delivery to Lessor invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Equipment has passed to Lessee) therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and
3. The disbursement shall occur during the Acquisition Period.

3. Deposit to Acquisition Fund and the Delivery Costs Fund. Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause \$13,586,998.60 to be deposited in the Acquisition Fund and \$-0- to be deposited into the Delivery Costs Fund. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Acquisition Fund and to pay Delivery Costs in excess of amounts available therefor in the Delivery Costs Fund.

4. Excessive Acquisition Fund. Any funds remaining in the Acquisition Fund (including any funds transferred from the Delivery Costs Fund pursuant to Section 1(d) hereof) on or after the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate, or upon a termination of the Acquisition Fund and the Delivery Costs Fund as otherwise provided herein, shall be applied by the Acquisition Fund Custodian to amounts owed under the Lease in accordance with Section 4.07 of the Lease.

5. Security Interest. The Acquisition Fund Custodian and Lessee acknowledge and agree that the Acquisition Fund, the Delivery Costs 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, the Delivery Costs Fund, and all proceeds thereof, and all investments made with any amounts in the

Acquisition Fund and the Delivery Costs Fund. If the Acquisition Fund, the Delivery Costs 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. Control of Acquisition Account. In order to perfect Lessor's security interest by means of control in (i) the Acquisition Fund established hereunder, (ii) the Delivery Costs Fund established hereunder, (iii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund or the Delivery Costs Fund, as the case may be, (iv) all of Lessee's rights in respect of the Acquisition Fund and the Delivery Costs Fund, such securities entitlements, investment property and other financial assets, and (v) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "Collateral"), Lessor, Lessee and Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 6 which are defined in the Business and Commerce Code of the state of Texas (the "*Commercial Code*") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

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

(c) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that Lessee is the sole owner of the Collateral, (b) that Acquisition Fund Custodian has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lessor under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Acquisition Fund Custodian shall promptly notify Lessor if any person requests Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, Acquisition Fund Custodian may allow Lessee to effect sales, trades,

transfers and exchanges of Collateral within the Acquisition Fund and the Delivery Costs Fund, but will not, without the prior written consent of Lessor, allow Lessee to withdraw any Collateral from the Acquisition Fund and the Delivery Costs Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to the Acquisition Fund Custodian, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Acquisition Fund and the Delivery Costs Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lessor to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lessor to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Acquisition Fund Custodian and Lessee hereby agree that any property held in the Acquisition Fund and the Delivery Costs Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

~~(i) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 7 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Acquisition Fund and Delivery Costs Fund statements or reports issued or sent to Lessee with respect to the Acquisition Fund and the Delivery Costs Fund.~~

7. 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 Lessor: Banc of America Public Capital Corp
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration
Fax: (443) 556-6977

If to Lessee: City of El Paso, Texas
2 Civic Center Plaza
El Paso, Texas 79901
Attn: Chief Financial Officer
Fax: (915) 541-4229

If to Acquisition
Fund Custodian: Deutsche Bank National Trust Company
200 South Tryon Street, Suite 550
Charlotte, NC 28202
Attn: Michael Weber
Phone: 704-333-5744
Fax: 704-333-5852

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

BANC OF AMERICA PUBLIC CAPITAL CORP,
as Lessor

CITY OF EL PASO, TEXAS,
as Lessee

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Acquisition Fund Custodian

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**SCHEDULE 1
TO THE ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT**

FORM OF DISBURSEMENT REQUEST

Re: Equipment Lease/Purchase Agreement dated as of October 25, 2011 by and between Banc of America Public Capital Corp, as Lessor and the City of El Paso, Texas, as Lessee (the "Lease") (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of October 31, 2011 (the "Acquisition Fund and Account Control Agreement") by and among Banc of America Public Capital Corp (the "Lessor"), the City of El Paso, Texas (the "Lessee") and Deutsche Bank National Trust Company, (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 and Account Control Agreement for the following purposes:

PAYEE'S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE

The undersigned hereby certifies as follows:

(i)The date on which Equipment Acceptance occurred with respect to the portion of the Equipment for which disbursement is hereby requested is _____, and such portion of Equipment is hereby accepted by Lessee for all purposes of the Lease.

(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 (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Equipment relating to such obligation has been delivered, installed and accepted by Lessee. Attached hereto is the original invoice with respect to such obligation.

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

(iv)This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

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

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

(vii) The disbursement shall occur during the Acquisition Period.

(viii) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

(ix)The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: _____

CITY OF EL PASO, TEXAS

By: _____
Authorized Representative

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

BANC OF AMERICA PUBLIC CAPITAL CORP

as Lessor under the Lease

By: _____
Name: _____
Title: _____

Dedicated to Outstanding Customer Service for a Better Community

SERVICE SOLUTIONS SUCCESS



October 3, 2011

Banc of America Public Capital Corp.
P. O. Box 4431
Atlanta, GA 30302-4431

RE: Master Lease/Pruchase Agreement dated October 19, 2011 between Banc of America Public Capital Corp and City of El Paso

To Whom It May Concern:

The purpose of this letter is to verify that the City of El Paso is a governmental entity as that term is defined in the Texas Tort Claims Act and as such operates under a policy of self-insurance. If you have any questions, you may contact me at 915-541-4448.

Very truly yours,

Irene Y. Morales
Risk Manager
City of El Paso

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carisle Niland

City Manager
Joyce A. Wilson

HUMAN RESOURCES DEPARTMENT
2 CIVIC CENTER PLAZA 3RD FLOOR, EL PASO, TEXAS 79901 • 915-541-4504



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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/3/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Commercial Lines - (915) 544-3111 Wells Fargo Insurance Services USA, Inc. 2505 E. Missouri El Paso, TX 79903	CONTACT NAME: Cristy Urquidi PHONE (A/C, No, Ext): 915-534-9456 FAX (A/C, No): 915-534-9431 E-MAIL ADDRESS: cristy.urquidi@wellsfargo.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED City of El Paso One Civic Center Plaza El Paso, Texas 79901	INSURER A: Affiliated FM Insurance Company	NAIC # 10014
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 3349066 **REVISION NUMBER:** See below

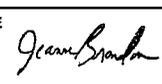
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A A	Total Loss Limits Deductible			GQ200 GQ200	01-03-2011 01-03-2011	01-03-2012 01-03-2012	600,000,000 250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder is listed as Loss Payee as their interest may appear by written contract with regards to the Master Lease/Purchase Agreement dated October 17, 2011 between Banc of America Public Capital Corp ("Lessor") and City of El Paso, Texas ("Lessee")

CERTIFICATE HOLDER CANCELLATION

Banc of America Public Capital Corp., and its assigns as their interest may appear P.O. Box 4431 Atlanta, GA30302-4431	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	--