

Equipment Lease-Purchase Agreement
30957

This Equipment Lease-Purchase Agreement is made and entered into as of October 24, 2008, between Bank of America, N.A., as Lessor, whose mailing address is 555 California Street, 4th Floor, MAC CA5-705-04-01, San Francisco, CA 94104, and City of Long Beach, as Lessee, whose mailing address is 333 W. Ocean Boulevard, 11th Floor, Long Beach, CA 90802-4664. For and in consideration of the mutual promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Unless the context otherwise clearly requires, the following terms shall have the respective meanings set forth below for all purposes of this Agreement:

“Acceptance Certificate” means a certificate in substantially the form attached hereto as *Exhibit C* and which shall be delivered by Lessee to Lessor upon receipt and acceptance of the Equipment as provided in Paragraph 9 hereof.

“Acquisition Fund” means the fund of that name established and administered pursuant to the Acquisition Fund Agreement.

“Acquisition Fund Agreement” means that certain agreement dated the Dated Date, among Lessor, Lessee and Acquisition Fund Custodian, relating to the Acquisition Fund.

“Acquisition Fund Custodian” means Wells Fargo Bank Northwest, National Association, in its capacity as acquisition fund custodian under the Acquisition Fund Agreement, and its successors.

“Additional Payments” means any amounts (other than Rental Payments) required to be paid by Lessee pursuant to the terms of this Agreement.

“Agreement” means this Equipment Lease-Purchase Agreement, as supplemented and amended from time to time in accordance with Paragraph 31 hereof.

“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, for each Lease, the date when Lessee’s obligation to pay rent commences under such Lease, which date shall be the earlier of (i) the date on which the Equipment listed in such Lease is accepted by Lessee in the manner described in Paragraph 9, or (ii) the date on which sufficient moneys to purchase the Equipment listed in such Lease are deposited for that purpose with the Acquisition Fund Custodian.

“Dated Date” means the date hereinabove first written.

“Equipment” means (a) the equipment, vehicles and other personal property identified in *Exhibit A* hereto, (b) any property acquired in substitution, renewal, repair or replacement for or

as additions, improvements, accessions and accumulations to any of such equipment and (c) any accessories, equipment, vehicles and other personal property, parts and appurtenances appertaining or attached to any of such equipment, vehicles and other personal property or from time to time incorporated therein or installed thereon.

“Event of Default” is defined in Paragraph 24 hereof.

“Event of Nonappropriation” means a nonrenewal of the term of this Agreement by Lessee, determined by the failure or refusal of the governing body of Lessee to appropriate moneys sufficient to pay the Rental Payments and reasonably estimated Additional Payments for the next succeeding Renewal Term as provided herein.

“Fiscal Period” means the annual or biennial period used from time to time by Lessee for its financial accounting and budgeting purposes. Lessee’s current Fiscal Period is identified in *Exhibit A* attached hereto.

“Initial Term” means the period from the Dated Date to midnight of the last day of Lessee’s current Fiscal Period.

“Lease” means a Schedule and the terms of this Agreement which are incorporated by reference into such Schedule. Each Schedule shall constitute a separate and independent Lease.

“Legally Available Funds” means funds that the governing body of Lessee duly appropriates or are otherwise legally available for the purpose of making Payments under this Agreement.

“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 the Equipment, the Acquisition Fund or this Agreement (including Rental Payments) pursuant to Paragraph 27 hereof, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

“Net Proceeds” means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys’ fees) incurred in the collection of such claim or award.

“Payments” means the Rental Payments and the Additional Payments, collectively.

“Prepayment Option Amount” means the amount determined pursuant to Paragraph 6 hereof at which Lessee may prepay the aggregate principal component of Rental Payments on any Rental Payment date for which a Prepayment Option Amount is identified under the column titled “Prepayment Option Amount” on the Rental Payment Schedule prior to the scheduled payment of all Rental Payments to be paid hereunder for the Equipment.

“Purchase Price” means the total cost of the Equipment, including all delivery charges, installation charges, financing costs, recording and filing fees and other costs necessary to vest

full, clear legal title to the Equipment in Lessee, subject to the security interest granted to and retained by Lessor as set forth in this Agreement, and otherwise incurred in connection with the financing provided by the lease-purchase of the Equipment as herein provided.

“Renewal Term” means each successive period, in addition to the Initial Term, that is coextensive with Lessee’s Fiscal Period and for which Lessee has extended the term of this Agreement as provided in Paragraph 3 hereof.

“Rental Payments” means the amounts (allocable to a principal component and an interest component) payable by Lessee pursuant to Paragraph 4 hereof, as payments for the installment financing of the Purchase Price for the Equipment as set forth in the Rental Payment Schedule.

“Rental Payment Schedule” means the schedule attached as *Exhibit B* hereto, as such schedule may be amended in accordance with this Agreement, which shows the date and amount of each Rental Payment.

“Schedule” means each separately numbered Schedule of Property substantially in the form of *Exhibit A* hereto, each of which incorporates the terms and conditions of this Agreement and constitutes a separate Lease of Equipment hereunder.

“State” means the State identified in *Exhibit A* attached hereto.

“Utilization Period” means the date by which Lessee must deliver the final Acceptance Certificate for the Equipment financed under this Agreement as indicated in the applicable Schedule.

2. Agreement to Lease-Purchase Equipment. Lessee hereby agrees to acquire, purchase and lease all the Equipment from Lessor, and Lessor hereby agrees to sell, transfer and lease all the Equipment to Lessee, all on the terms and conditions set forth in this Agreement.

3. Term. The Initial Term shall commence as of the Dated Date and expire at midnight on the last day of Lessee’s current Fiscal Period. Beginning at the expiration of the Initial Term, the term of this Agreement shall automatically be extended upon the successive appropriation by Lessee’s governing body of amounts sufficient to pay Rental Payments and reasonably estimated Additional Payments during the next succeeding Renewal Term in the number of Renewal Terms, each coextensive with Lessee’s Fiscal Period, as are necessary for all Rental Payments identified on the Rental Payment Schedule hereto to be paid in full, unless this Agreement is terminated as provided in Paragraph 25 hereof.

The term of this Agreement will expire upon the first to occur of (a) the expiration of the Initial Term or any Renewal Term during which an Event of Nonappropriation occurs, (b) the day after the last scheduled Rental Payment shown on the Rental Payment Schedule is paid in full, (c) the day after the Prepayment Option Amount is paid in full pursuant to Paragraph 6 hereof, except as otherwise therein provided, or (d) an Event of Default and a termination of Lessee’s rights under this Agreement as provided in Paragraph 25 hereof.

3A. Conditions to Lessor's Performance.

(a) As a prerequisite to the performance by Lessor of any of its obligations pursuant to any Lease, Lessee shall deliver to Lessor the following:

(i) A fully completed Schedule in the form of *Exhibit A*, executed by Lessee, and prior to each funding an Acceptance Certificate in substantially the form attached to as *Exhibit C*;

(ii) An Acquisition Fund Agreement, executed by Lessee and the Acquisition Fund Custodian, unless Lessor pays 100% of the Purchase Price directly to the vendor or manufacturer of the Equipment upon execution of the Lease;

(iii) An Incumbency Certificate executed by the Clerk, in substantially the form attached hereto as *Exhibit H*, completed to the satisfaction of Lessor;

(iv) A certified copy of a minute order of Lessee's governing body in the form of *Exhibit F* authorizing the execution and delivery of this Agreement and any Lease incorporating this Agreement, and performance by Lessee of its obligations hereunder and thereunder;

(v) An opinion of counsel to Lessee in substantially the form attached hereto as *Exhibit G* respecting such Lease and otherwise satisfactory to Lessor;

(vi) Evidence of insurance as required by Paragraph 16;

(vii) 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 Paragraph 14;

(viii) A copy of a fully completed and executed Form 8038;

(ix) A Tax Certificate executed by an authorized officer of Lessee in substantially the form attached hereto as *Exhibit K*;

(x) A certified copy of the performance and payments bonds (if applicable) assuring completion of construction and installation of the Equipment as described in Paragraph 16A; and

(xi) Such other items, if any, as are set forth in such Lease or are reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations pursuant to any Lease shall be subject to: (i) no material adverse change in the financial condition of Lessee since the date of this Agreement, (ii) no Event of Default having occurred, and (iii) if no Acquisition Fund has been established, the Equipment must be accepted by Lessee as evidenced by its execution of a final Acceptance Certificate no later than the date indicated in the applicable Schedule (the "*Utilization Period*").

(c) Subject to satisfaction of the foregoing, Lessor will pay the Purchase Price for Equipment described in a Schedule to the vendor upon receipt of the documents described in Paragraphs 9 and 14; or if an Acquisition Fund has been established pursuant to an Acquisition Fund Agreement, Lessor will deposit the Purchase Price for Equipment described in the Schedule with the Acquisition Fund Custodian.

(d) This Agreement is not a commitment by Lessor to enter into any Lease not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Lease, it being understood that whether Lessor enters into any proposed Lease shall be a decision solely within Lessor's discretion.

(e) Lessee will cooperate with Lessor in Lessor's review of any proposed Lease. Without limiting the foregoing, Lessee will provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Lease. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of Lessee and other matters related to Lessee.

4. Rental Payments. Lessee hereby agrees to pay Rental Payments for the Equipment for the term of this Agreement from and after the Dated Date (but only from Legally Available Funds) to Lessor at Lessor's mailing address set forth above (or at such other address as may be designated from time to time pursuant to Paragraph 27 hereof) in the amounts and on the dates specified in the Rental Payment Schedule. Rental Payments made by check will be accepted subject to collection.

Lessee's obligation to make Rental Payments and to pay any Additional Payments payable under this Agreement constitutes a current obligation payable exclusively from Legally Available Funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement. Lessee has not pledged its full faith and credit or its taxing power to make any Rental Payments or any Additional Payments under this Agreement. Lessee shall not permit any person or entity (including the federal government) to guarantee any Rental Payments under this Agreement.

5. Agreement to Seek Appropriations; Notice of Event of Nonappropriation. Lessee agrees that its primary business official will do all things lawfully within such official's power (a) to include amounts to make Payments hereunder in each annual or biennial budget (as appropriate) to be submitted to Lessee's governing body and (b) to use best efforts to obtain and maintain funds from which Payments under this Agreement may be made.

Lessee hereby agrees to notify Lessor immediately (and in no case later than 30 days prior to the last day of its then current Fiscal Period) of the occurrence of an Event of Nonappropriation.

6. Prepayment Option. Lessee is hereby granted the option to prepay the aggregate principal component of Rental Payments (in whole but not in part), prior to the scheduled payment of the Rental Payments in full pursuant to this Agreement, on each Rental Payment date for which a Prepayment Option Amount is identified under the column titled "Prepayment

Option Amount” on the Rental Payment Schedule. Such prepayment amount shall equal the Prepayment Option Amount (assuming that all Rental Payments and Additional Payments due on and prior to the prepayment date have been paid) shown for the Rental Payment date on which such prepayment is to be effective under the column titled “Prepayment Option Amount” on the Rental Payment Schedule. To exercise the option granted under this Paragraph 6, Lessee shall give Lessor a written notice exercising such option and designating the Rental Payment date on which such prepayment is to be effective and the applicable Prepayment Option Amount, which notice shall be delivered to Lessor at least thirty (30) days in advance of the proposed prepayment date. The prepayment option herein granted may be exercised by Lessee whether or not one or more Events of Default have occurred and are then continuing at the time of such exercise; *provided, however*, that the prepayment of such principal component of Rental Payments upon the exercise of such option during the continuance of an Event of Default shall not limit, reduce or otherwise affect liabilities or obligations that Lessee has incurred as a result of such Event of Default or otherwise terminate the term of this Agreement notwithstanding anything in this Agreement to the contrary.

Immediately upon any such prepayment being made, Lessor shall execute all documents necessary to confirm in Lessee title in and to the Equipment free and clear of any lien, encumbrance or other interest created by Lessor, but without warranties and in “where-is, as-is” condition, and release Lessor’s security interest in the Equipment and shall deliver such documents to Lessee. Lessor shall further cooperate in providing for the filing of any necessary releases, termination statements or other similar documents and the release of certificates of title or certificates of origin to Lessee.

7. Essentiality. Lessee’s present intention is to make Rental Payments and Additional Payments for the Initial Term and all Renewal Terms as long as it has Legally Available Funds. In that regard, Lessee represents that (a) the use and operation of the Equipment is essential to its proper, efficient and economic governmental operation and (b) the functions performed by the Equipment could not be transferred to other equipment available for its use. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

8. Nonsubstitution. [intentionally omitted]

9. Delivery and Installation. Lessee shall select the type, quantity and supplier of each item of Equipment designated in *Exhibit A* hereto. Lessee, as Lessor’s agent for this purpose, shall then order such Equipment from such supplier. Any existing purchase order for any portion of the Equipment that has not been delivered and installed as of the Dated Date shall be deemed to be executed by Lessee in its capacity as Lessor’s agent for purposes of this Agreement. Lessor shall have no liability for any delay in delivery or failure by the supplier to deliver any Equipment or to fill any purchase order or meet the conditions thereof. Lessee, at its expense, will pay or cause the supplier to pay all transportation, packing, taxes, duties, insurance, installation, testing and other charges in connection with the delivery, installation and use of the Equipment. As soon as practicable after receipt of the Equipment, Lessee shall furnish Lessor with an Acceptance Certificate. Execution of the Acceptance Certificate by any employee, official or agent of Lessee having authority in the premises or having managerial, supervisory or

procurement duties with respect to equipment of the same general type as the Equipment shall constitute acceptance of the Equipment on behalf of Lessee. Regardless of whether Lessee has furnished an Acceptance Certificate pursuant to this Paragraph 9, by making a Rental Payment after its receipt of the Equipment pursuant to this Agreement, Lessee shall be deemed to have accepted the Equipment on the date of such Rental Payment for purposes of this Agreement. All Rental Payments paid prior to delivery of the Acceptance Certificate shall be credited to Rental Payments as they become due as shown on the Rental Payment Schedule.

Lessee understands and agrees that neither the manufacturer, seller or supplier of any Equipment, nor any salesman or other agent of any such manufacturer, seller or supplier, is an agent of Lessor. No salesman or agent of the manufacturer, seller or supplier of any Equipment is authorized to waive or alter any term or condition of this Agreement, and no representation as to Equipment or any other matter by the manufacturer, seller or supplier of any Equipment shall in any way affect Lessee's duty to pay the Rental Payments and perform its other obligations as set forth in this Agreement. Lessee hereby acknowledges that it has or will have selected the Equipment identified on *Exhibit A* hereto using its own criteria and not in reliance on any representations of Lessor.

10. Disclaimer of Warranties. LESSOR, NOT BEING THE MANUFACTURER, SELLER OR SUPPLIER OF ANY OF THE EQUIPMENT, NOR A DEALER IN ANY OF SUCH EQUIPMENT, HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY, REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE DESIGN OR CONDITION OF THE EQUIPMENT, THE QUALITY OR CAPACITY OF THE EQUIPMENT, THE WORKMANSHIP IN THE EQUIPMENT, COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, PATENT INFRINGEMENT OR LATENT DEFECTS. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for any direct, indirect, consequential, incidental or special damages or loss of any classification. Lessor shall have no obligation to install, erect, test, adjust, service or maintain any Equipment. Lessee shall look solely to the manufacturer, seller and/or supplier for any and all claims related to the Equipment. LESSEE ACQUIRES, PURCHASES AND LEASES THE EQUIPMENT "WHERE-IS, AS-IS" AND "WITH ALL FAULTS."

Lessor hereby acknowledges that, so long as no Event of Default or Event of Nonappropriation has occurred and is continuing hereunder, the warranties of the manufacturer, seller and/or supplier of the Equipment, if any, are for the benefit of Lessee.

11. Title to Equipment. During the term of this Agreement, title to the Equipment shall be vested in Lessee, subject to the rights of Lessor under this Agreement, unless Lessor terminates this Agreement pursuant to Paragraph 25 hereof or an Event of Nonappropriation occurs, in which event title to the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee. Lessee, at its expense, will protect and defend Lessee's title to the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and

other persons. All items of Equipment shall at all times be and remain personal property notwithstanding that any such Equipment may now or hereafter be affixed to realty.

12. Tax Covenants; Tax Indemnity Payments. 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. Lessee agrees to (a) execute and deliver to Lessor, upon Lessor's request, a tax certificate and agreement in form and content acceptable to Lessor and Lessee, relating to the establishment and maintenance of the excludibility from gross income of the interest component of Rental Payments for federal income tax purposes, and (b) complete and file or cause to be filed in a timely manner an information reporting return (either I.R.S. Form 8038-G or I.R.S. Form 8038-GC, as appropriate) in the form attached as *Exhibit D* hereto with respect to this Agreement as required by the Code.

Lessee represents that neither Lessee nor any agency or unit of Lessee has on hand any property, including cash and securities, that is legally required or otherwise restricted (no matter where held or the source thereof) to be used directly or indirectly to purchase the Equipment. Lessee has not and will not establish any funds or accounts (no matter where held or the source thereof) the use of which is legally required or otherwise restricted to pay directly or indirectly any Rental Payments under this Agreement. Lessor and Lessee certify and covenant to each other and to the owners from time to time of Lessor's interests in this Agreement that, so long as any Rental Payments remain unpaid hereunder, moneys on deposit in the Acquisition Fund will not be used in a manner that will cause this Agreement to be classified as "arbitrage bonds" within the meaning of Section 148(a) of the Code.

If Lessee breaches the covenant contained in this Paragraph 12, the interest component of Rental Payments may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, Lessee agrees to pay promptly after any such determination of taxability and on each Rental Payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludibility (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Paragraph 12 shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that this Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment for federal income tax purposes.

13. Use of Equipment, Inspection and Reports. During the term of this Agreement, Lessee shall be entitled to quiet enjoyment of the Equipment and may possess and use the Equipment in accordance with this Agreement, provided that Lessee is in compliance in all respects with the terms of this Agreement and that such possession and use are in conformity with all applicable laws, any insurance policies and any installation requirements (including

environmental specifications) or warranties of the manufacturer, seller and/or supplier with respect to the Equipment. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. Lessor shall have the right, upon reasonable prior notice to Lessee and during regular business hours, to inspect the Equipment at the premises of Lessee or wherever the Equipment may be located. Lessee shall promptly notify Lessor of any alleged encumbrances on the Equipment or any accident allegedly resulting from the use or operation thereof or any claim relating thereto.

During the term of the Agreement and at Lessor's request, Lessee shall provide Lessor, no later than ten days prior to the end of each Fiscal Period (commencing with Lessee's current Fiscal Period), with current budgets or other proof of appropriation for the ensuing Fiscal Period and such other information relating to Lessee's ability to continue the term of this Agreement for the next succeeding Renewal Term as may be reasonably requested by Lessor.

During the term of this Agreement, Lessee shall furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available and in any event not later than 180 days after the close of each Fiscal Period, the audited financial statements of Lessee as at the close of and for such Fiscal Period, all in reasonable detail, audited by and with the report of Lessee's auditor.

14. Security Agreement; Further Assurances. To secure the performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor, and Lessor shall have and retain, a security interest constituting a first and exclusive lien on (a) the Equipment delivered hereunder, on all attachments, repairs, replacements and modifications thereto or therefor and on any proceeds therefrom and (b) moneys and investments held from time to time in the Acquisition Fund and any proceeds therefrom. Lessee agrees to execute and deliver such additional documents, including, without limitation, financing statements, certificates of title or certificates of origin (or applications therefor) noting Lessor's interest thereon, opinions of counsel, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment and in the moneys and investments in the Acquisition Fund or for the confirmation or perfection of this Agreement and Lessor's rights hereunder. Upon the occurrence of an Event of Default or an Event of Nonappropriation or in the event that Lessee refuses or is otherwise unwilling to execute and file financing statements to which Lessor is entitled in accordance with this Agreement within ten days after Lessor's written request to Lessee therefor, Lessor is authorized to file financing statements signed only by Lessor in accordance with the applicable Uniform Commercial Code.

15. Risk of Loss. All risk of loss, damage, theft or destruction to each item of Equipment shall be born by Lessee. No such loss, damage, theft or destruction of the Equipment, in whole or in part, shall impair the obligations of Lessee hereunder (including, but not limited to, the obligation to pay Rental Payments when due), all of which shall continue in full force and effect subject to the terms of this Agreement. If (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 is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the Net Proceeds of any insurance claim or condemnation award to be applied, at Lessor's option to (i) the prompt repair, restoration, modification or replacement of the Equipment or (ii) the

payment in full of the then applicable Prepayment Option Amount. Any balance of Net Proceeds remaining after completion of such work or payment of such Prepayment Option Amount shall be paid promptly to Lessee. If the Net Proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Prepayment Option Amount in full, Lessee shall, at Lessor's direction, either complete the work or pay the then applicable Prepayment Option Amount in full and in either case pay any cost in excess of the amount of Net Proceeds, but only from Legally Available Funds.

16. Insurance. In the event that Lessee is not self-insured as hereinafter provided, Lessee, at its expense, shall throughout the term of this Agreement keep the Equipment insured against theft, fire, collision (in the case of vehicles) and such other risks as may be customary for each item of Equipment in the amounts and for the coverage set forth in *Exhibit E* hereto, with carriers acceptable to Lessor, under a policy or policies containing a loss payable endorsement in favor of Lessor, and affording to Lessor such additional protection as Lessor shall reasonably require. Lessee shall further, at its expense, maintain in effect throughout the term of this Agreement a policy or policies of comprehensive public liability and property damage insurance in the amounts and for the coverage set forth in *Exhibit E* hereto, with carriers satisfactory to Lessor. All such insurance shall name Lessor as an additional insured. The policies required hereby shall provide that they may not be canceled or materially altered without at least 30 days prior written notice to Lessor. Lessee shall deliver to Lessor copies or other evidence satisfactory to Lessor of each insurance policy and each renewal thereof. Failure by Lessor to request evidence of such insurance policies or renewals, or otherwise to verify the existence of such insurance, shall not constitute a waiver of the requirements hereof. Lessor shall have the right, on behalf of itself and Lessee, to make claim for, receive payment of and execute and endorse all documents, checks or drafts received in payment for loss or damage under said insurance policies. If Lessee is self-insured with respect to equipment such as the Equipment, Lessee shall maintain during the term of this Agreement an actuarially sound self-insurance program in form satisfactory to Lessor and shall provide evidence thereof in form and substance satisfactory to Lessor.

16A. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Subcontractors and Their Sureties. Lessee has secured from each contractor directly employed by Lessee, in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, payment and performance bonds executed by a surety company authorized to do business in the State in a sum equal to the entire amount to become payable under the contract with such contractor. Each bond was 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 deliver a certified copy of each such bond to Lessor promptly upon receipt thereof by Lessee.

In the event of a material default of any contractor under any contract in connection with the acquisition, construction, improvement or equipping of the Equipment or in the event of a material breach of warranty with respect to any material, workmanship or performance guaranty, Lessee will promptly proceed to exhaust its remedies against the contractor, or supplier in default and against any surety for the performance of such contract with respect to the contractor. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by way of damages, refunds, adjustments or otherwise in connection with

the foregoing shall be paid to Lessor and applied against Lessee's obligations hereunder, net of legal fees.

17. Maintenance and Repairs. Lessee shall use the Equipment in a careful and proper manner, in compliance with all applicable laws and regulations and, at its expense, keep and maintain the Equipment in good repair and working order, performing all maintenance and servicing necessary to maintain the value and utility of the Equipment, reasonable wear and tear excepted. Without the prior written consent of Lessor, Lessee shall not make any alterations, modifications or attachments to the Equipment which cannot be removed without materially damaging the functional capabilities, economic value or utility of the Equipment.

18. Taxes. Unless Lessee has provided Lessor with evidence necessary to sustain an exemption therefrom, Lessee shall timely pay all assessments, license fees, taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lessor or Lessee, now or hereafter imposed by any governmental body or agency on or relating to the Equipment, the Acquisition Fund, the Rental Payments or the use, registration, rental, shipment, transportation, delivery, ownership or operation of the Equipment and on or relating to this Agreement or the Acquisition Fund Agreement; *provided, however*, that the foregoing shall not include any federal, state or local income or franchise taxes of Lessor.

19. Lessor's Performance of Lessee's Obligations. If Lessee shall fail duly and promptly to perform any of its obligations hereunder, Lessor may, at its option, perform any act or make any payment that Lessor deems necessary for the maintenance and preservation of the Equipment and Lessor's interests therein, including, but not limited to, payments for satisfaction of liens, repairs, taxes, levies and insurance. All expenses incurred by Lessor in performing such acts and all such payments made by Lessor together with late charges as provided in Paragraph 20 below, and any reasonable legal fees incurred by Lessor in connection therewith, shall be payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of Lessee.

20. Late Charges. Should Lessee fail to duly pay any part of any Rental Payment or other sum to be paid to Lessor hereunder (including, but not limited to, any amounts due as a result of Lessor's exercise of its rights under Paragraph 25 hereof) on the date on which such amount is due hereunder, then Lessee shall pay to Lessor late charges on such delinquent payment from the due date thereof until paid at the rate of 12% per annum or the highest rate permitted by law, whichever is less.

21. Indemnification. Lessee assumes liability for, agrees to and does hereby indemnify, protect and hold harmless Lessor and its agents, employees, officers, directors, parents, subsidiaries and stockholders from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorneys' fees), of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by Lessee or Lessor), operation, ownership, selection, delivery, storage, leasing or return of any item of Equipment, regardless of where, how and by whom operated, or any failure on the part of Lessee to accept

the Equipment or otherwise to perform or comply with any conditions of this Agreement. Lessee is an independent contractor and nothing contained herein shall authorize Lessee or any other person to operate any item of Equipment so as to incur to impose any liability or obligation for or on behalf of Lessor. Notwithstanding anything herein to the contrary, any indemnity amount payable by Lessee pursuant to this Paragraph 21 shall be payable solely from Legally Available Funds and only to the extent authorized by law.

22. No Offset; Unconditional Obligation. This Agreement is “triple net” and Lessee’s obligation to pay all Rental Payments and Additional Payments hereunder shall be absolute and unconditional under any and all circumstances subject to the terms and conditions of this Agreement. Without limiting the generality of the foregoing, Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of Lessee against Lessor hereunder or otherwise; nor, except as otherwise expressly provided herein, shall this Agreement terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any failure of the Equipment to perform in the manner or to the extent that Lessee anticipated or to achieve cost or other savings that Lessee anticipated, any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee’s use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement, or lack of right, power or authority of Lessor to enter into this Agreement or any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessor or Lessee or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rental Payments and Additional Payments payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall expire or be terminated pursuant hereto (including upon the occurrence of an Event of Nonappropriation) or until the Equipment has been returned to the possession of Lessor as herein provided (for all purposes of this Agreement any item of Equipment shall not be deemed to have been returned to Lessor’s possession until all of Lessee’s obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, Lessee hereby waives any and all rights that it may now have or that at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Agreement or any of the items of Equipment except in accordance with the express terms hereof.

23. Representations, Warranties of Lessee. Lessee hereby represents and warrants to and agrees with Lessor on the date hereof and as of the Commencement Date of each Lease as follows:

(a) Lessee is a state or a political subdivision thereof within the meaning of Section 103(c) of the Code.

(b) Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Agreement and the Acquisition Fund Agreement and has been duly authorized to execute and deliver this Agreement and the Acquisition Fund Agreement and to carry out its obligations hereunder and thereunder. Attached hereto as *Exhibit F* is a full, true

and correct copy or an original of a resolution or other appropriate official action of Lessee's governing body specifically authorizing Lessee to execute and deliver this Agreement and the Acquisition Fund Agreement. Attached hereto as *Exhibit G* is a full, true and correct copy or an original of an opinion of Lessee's legal counsel regarding the legal, valid and binding nature of this Agreement and the Acquisition Fund Agreement on Lessee and certain other related matters.

(c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement and the Acquisition Fund Agreement, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Agreement and the Acquisition Fund Agreement.

(d) Lessee is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Lessee from entering into this Agreement or the Acquisition Fund Agreement or performing any of its obligations hereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement, the Acquisition Fund Agreement or any other agreement or instrument to which Lessee is a party and which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement and the Acquisition Fund Agreement. All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement and the Acquisition Fund Agreement or in connection with the carrying out by Lessee of its obligations hereunder and thereunder have been obtained, except with respect to annual budgeting and appropriation procedures as required by State law.

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

(g) The entering into and performance of this Agreement and the Acquisition Fund Agreement will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment or the Acquisition Fund pursuant to any indenture, mortgage, deed of trust, bank loan or credit

agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(h) Lessee is acquiring the Equipment for use within its geographical boundaries.

(i) The useful life of the Equipment will not be less than the stated full term of this Agreement, including all contemplated Renewal Terms.

(j) Lessee has entered into this Agreement and the Acquisition Fund Agreement for the purpose of purchasing, acquiring and leasing the Equipment and not for the purpose of refinancing any outstanding obligation of Lessee more than 90 days in advance of its payment or prepayment date. The Purchase Price for the Equipment will be paid directly by the Acquisition Fund Custodian from the Acquisition Fund pursuant to the Acquisition Fund Agreement to the manufacturer, seller or supplier thereof, and no portion of the Purchase Price for the Equipment will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the execution and delivery of this Agreement.

(k) Lessee has made sufficient appropriations or has other Legally Available Funds to pay all Rental Payments due during the Initial Term.

(l) Lessee has not previously failed (for whatever reason) to appropriate amounts sufficient to pay its obligations that are subject to annual appropriation.

(m) Lessee 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 notes, and (4) 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) its annual budget for the following fiscal year within 90 days after the current fiscal year end. Such statements shall be accompanied by an unqualified opinion of Lessee's auditor. Any of the foregoing statements and any public credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

24. Events of Default. Each of the following events constitutes an "Event of Default" hereunder:

(a) Lessee fails to pay in full the Rental Payment due on any date upon which such Rental Payment is due;

(b) Lessee fails to comply with any other agreement or covenant of Lessee hereunder for a period of 30 days following receipt of written notice of violation of such agreement or covenant and demand that such violation be remedied;

(c) Lessee institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar officer is appointed for Lessee or any of its property;

(d) any warranty, representation or statement made in writing by or on behalf of Lessee in connection with this Agreement is found to be incorrect or misleading in any material respect on the date made; or

(e) actual or attempted sale, lease or encumbrance of any of the Equipment or the making of any levy, seizure or attachment thereof or thereon.

25. Repossession and Lessor's Other Rights Upon Event of Default or Event of Nonappropriation. Immediately upon the occurrence of an Event of Default or immediately after the expiration of the Initial Term or any Renewal Term during which an Event of Nonappropriation occurs, Lessor may terminate this Agreement or Lessee's rights hereunder and in any such event repossess the Equipment, which Lessee hereby agrees, at its expense, to surrender promptly to Lessor at such location in the continental United States as Lessor shall direct. Such right of repossession and other rights as specifically provided in this Paragraph 25 shall constitute the sole remedies for Lessee's failure to make Payments or otherwise perform its obligations when required hereunder. If Lessor is entitled to repossess the Equipment hereunder, Lessee shall permit Lessor or its agents to enter the premises where the Equipment is then located. In the event of any such repossession, Lessee shall execute and deliver such documents as may reasonably be required to transfer title to and possession of the Equipment to Lessor, free and clear of all liens and security interests to which the Equipment may have become subject.

Any termination of this Agreement at Lessor's option as provided in this Paragraph 25 shall take effect at the end of the Initial Term or the Renewal Term then in effect, unless Lessor (at its option) elects to terminate this Agreement on an earlier date.

Upon repossession, if the Equipment is damaged or otherwise made less suitable for the purposes for which it was manufactured than when delivered to Lessee (reasonable wear and tear excepted), Lessee agrees, at its option, to: (a) repair and restore the Equipment to the same condition in which it was received by Lessee (reasonable wear and tear excepted) and, at its expense, promptly return the Equipment to Lessor (or to a location identified in a written notice to Lessee) or (b) pay to Lessor the actual costs of such repair, restoration and return.

If Lessor terminates this Agreement pursuant to this Paragraph 25 or an Event of Nonappropriation occurs and Lessee continues to use the Equipment after the Initial Term or any Renewal Term during which the Event of Default or Event of Nonappropriation occurs or if Lessee otherwise refuses to pay Rental Payments due during a Renewal Term for which Lessee's governing body has appropriated sufficient Legally Available Funds to pay such Rental Payments, Lessor shall be entitled to bring such action at law or in equity to recover damages attributable to such holdover period for the Equipment that Lessee continues to use or to the remainder of such Renewal Term for which such appropriations have been made, provided that Lessor shall have no right to accelerate Rental Payments or otherwise declare any Rental Payment not then in default to be immediately due and payable.

Lessor shall also be entitled to exercise any or all remedies available to a secured party under the applicable Uniform Commercial Code and all other rights and remedies that Lessor may have at law or in equity, including the exercise of any rights and remedies to which Lessor

is entitled with respect to the Acquisition Fund under the Acquisition Fund Agreement and hereunder.

No right or remedy herein conferred upon or reserved to Lessor is exclusive of any right or remedy herein or at law or in equity or otherwise provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

No waiver of or delay or omission in the exercise of any right or remedy herein provided or otherwise available to Lessor shall impair, affect or be construed as a waiver of its rights thereafter to exercise the same. Any single or partial exercise by Lessor of any right hereunder shall not preclude any other or further exercise of any right hereunder.

26. No Sale, Assignment or Other Disposition by Lessee. Lessee agrees not to (a) sell, assign, transfer, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Agreement, the Acquisition Fund Agreement (including the Acquisition Fund thereunder) or the Equipment, (b) remove the Equipment from its Equipment Location identified in *Exhibit A* hereto or (c) enter into any contract or agreement with respect to the use and operation of any of the Equipment by any person other than Lessee, without Lessor's prior written consent in each instance. Lessee shall at all times remain liable for the performance of the covenants and conditions on its part to be performed, notwithstanding any assigning, transferring or other conveyance that may be made with such consent. Lessee shall take no action that may adversely affect the excludibility from gross income for federal income tax purposes or any portion of the interest component of the Rental Payments.

27. Assignment by Lessor. Lessor may, at any time and from time to time without Lessee's consent, assign, transfer or otherwise convey all or any part of its interest in the Equipment, the Acquisition Fund, this Agreement or the Acquisition Fund Agreement, including Lessor's rights to receive the Rental Payments or any part thereof (in which event Lessee agrees to make all Rental Payments thereafter to the assignee designated by Lessor), to terminate this Agreement or Lessee's rights hereunder if an Event of Default has occurred, to receive tax indemnity payments pursuant to Paragraph 12 hereof and to repossess the Equipment and exercise Lessor's other rights and remedies under Paragraph 25 hereof; *provided, however*, 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 any applicable State law. In addition, Lessor shall be entitled to assign its right, title and interest in this Agreement and any Lease to a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in such Lease, provided such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represent that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment (ii) such purchaser understands neither the Lease or certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) that it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the

Securities Act of 1933. Nothing in this Paragraph 27 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance on a private placement basis that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust, interests in which are offered and sold in a private placement or limited offering only to investors whom Lessor reasonably believes are qualified institutional buyers or accredited investors within the meaning of the applicable federal securities law; *provided, however*, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity. No assignment, transfer or conveyance permitted by this Paragraph 27 shall be effective until Lessee's registration agent shall have received a written notice of assignment (in substantially the form of *Exhibit I* attached hereto) that discloses the name and address of each such assignee; *provided, however*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable hereunder, it shall thereafter be sufficient that a copy of the agency or trust agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency or trust agreement is no longer in effect. During the term of this Agreement, 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 agrees, if so requested, to acknowledge each such assignment in writing within 15 days after request therefor, but such acknowledgment shall in no way be deemed necessary to make any assignment effective. Lessee further agrees that any moneys or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

28. Costs. Lessee shall pay to Lessor all costs and expenses, including reasonable attorneys' fees and costs related to repossession of the Equipment (including, without limitation, the costs and expenses to deliver possession of the Equipment to such location as Lessor directs pursuant to Paragraph 25 hereof) and the exercise of remedies with respect to the Acquisition Fund, incurred by Lessor in enforcing any of the terms, conditions or provisions of this Agreement and the Acquisition Fund Agreement.

29. Severability. If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, which shall be valid and enforceable to the fullest extent permitted by law.

30. Notices. All notices, reports and other documents provided for in this Agreement shall be deemed to have been given or made when delivered or if mailed by certified mail, postage prepaid, addressed to Lessor or Lessee at their respective mailing addresses set forth above or such other addresses as either of the parties hereto may designate in writing to the other from time to time for such purpose, then on the date shown on the return receipt.

31. Amendments. This Agreement, the Acquisition Fund Agreement and the Exhibits attached hereto constitute the entire agreement between Lessor and Lessee with respect to the Equipment and the subject matter hereof. No term or provision of this Agreement may be changed, waived, amended or terminated except by a written agreement signed by both Lessor

and Lessee, except that Lessor may insert the serial number and additional description details on *Exhibit A* hereto of any item of Equipment after delivery thereof.

32. Construction. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State. The titles of the Paragraphs of this Agreement are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence of this Agreement in each of its provisions.

33. Parties; Survival of Certain Obligations and Indemnities.

(a) The provisions of this Agreement shall be binding upon, and (subject to the limitations of Paragraph 26 hereof) shall inure to the benefit of, the respective assignees and successors of Lessor and Lessee.

(b) The indemnities, assumptions of liabilities and obligations of Lessee provided for in Paragraphs 8, 12 and 21 of this Agreement shall continue in full force and effect notwithstanding the expiration or termination of the term of this Agreement.

34. Interest. If under applicable law any part of the Rental Payments is deemed or determined to be imputed interest, finance charges or time-price differential ("Interest"), Lessor and Lessee agree that the Rental Payments shall be deemed to be level payments of principal and Interest, with such Interest accruing on principal amounts outstanding from time to time. The rate of such Interest is not intended to exceed the maximum rate or amount of interest permitted by applicable law. If the Interest exceeds such maximum, then at Lessor's option, if permitted by law, the Interest payable will be reduced to the legally permitted maximum amount of interest, and any excessive Interest will be used to reduce the principal amount of Lessee's obligation or be refunded to Lessee.

35. Acquisition Fund Agreement.

(a) In order to provide financing to pay the Purchase Price for the Equipment, Lessor and Lessee hereby agree to execute and deliver the Acquisition Fund Agreement, substantially in the form of *Exhibit J* hereto, on the date of execution and delivery of this Agreement.

(b) If an Event of Nonappropriation or an Event of Default occurs prior to Lessee's acceptance of all the Equipment, the amount then on deposit in the Acquisition Fund shall be applied to prepay the unpaid principal component of the Rental Payments in whole on the first business day of the month next succeeding the occurrence of either such Event plus accrued interest to the prepayment date; *provided, however,* that the amount to be prepaid by Lessee pursuant to this Paragraph 35 shall first be paid from moneys in the Acquisition Fund and then from Legally Available Funds and other moneys available for such purpose as a result of the exercise by Lessor of its rights and remedies under this Agreement. Any funds on deposit in the Acquisition Fund on the prepayment date described in this subparagraph (b) in excess of the unpaid principal component of the Rental Payments to be prepaid plus accrued interest thereon to the prepayment date shall be paid promptly to Lessee.

(c) To the extent that Lessee has not accepted all items of Equipment before the twelve-month anniversary of the date of the Schedule, or there otherwise remains a balance on deposit in the Acquisition Fund on the twelve-month anniversary of the date of the Schedule, the amount then on deposit in the Acquisition Fund shall be applied to prepay the unpaid principal component of the Rental Payments in part, in inverse order of Rental Payments, on the first business day of the next month plus accrued interest to the prepayment date; *provided, however,* that the amount to be prepaid by Lessee pursuant to this Paragraph 35 shall first be paid from moneys in the Acquisition Fund and then from Legally Available Funds. Notwithstanding any such partial prepayment, this Agreement shall remain in full force and effect with respect to the portion of the Equipment accepted by Lessee during such twelve-month period, and the portion of the principal component of Rental Payments remaining unpaid after such prepayment plus accrued interest thereon shall remain payable in accordance with the terms of this Agreement. Upon Lessor's request, Lessee shall execute an amendment to the Rental Payment Schedule that reflects the change to the Rental Payments as a result of such partial prepayment.

Lessee hereby acknowledges that it has read and understands this Agreement.

In Witness Whereof, Lessor and Lessee have each caused this Agreement to be duly executed and delivered as of the date first above written.

APPROVED AS TO FORM

10-14, 2008
ROBERT E. SHANNON, City Attorney
By Amy R. Burton
AMY R. BURTON
DEPUTY CITY ATTORNEY

Lessee: City of Long Beach

ENTERED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

By: [Signature] Assistant City Manager
Name: Patrick H. West
Title: City Manager

Lessor: Bank of America, N.A.

By: [Signature]
Name: Tessie G. Panganiban
Title: Vice President

Duplicate Original No. 2 of 2 manually executed and serially numbered duplicate originals. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Duplicate Original other than Duplicate Original No. 1.

List of Exhibits

- Exhibit A – Schedule of Property
- Exhibit B – Rental Payment Schedule
- Exhibit C – Acceptance Certificate
- Exhibit D – IRS Form 8038-G
- Exhibit E – Insurance Coverage Requirements
- Exhibit F – Minute Order of Lessee's Governing Body
- Exhibit G – Form of Lessee's Opinion of Counsel
- Exhibit H – Incumbency Certificate
- Exhibit I – Notice and Acknowledgement of Sale
- Exhibit J – Acquisition Fund Agreement
- Exhibit K – Tax Certificate

EXHIBIT A

SCHEDULE OF PROPERTY NO. 1

Re: Equipment Lease-Purchase Agreement, dated as of October 24, 2008, between Bank of America, N.A., as Lessor, and City of Long Beach, as Lessee

1. *Defined Terms.* All terms used herein have the meanings ascribed to them in the above-referenced Equipment Lease-Purchase Agreement (the "Agreement").

2. *Equipment.* The following items of Equipment are hereby included under this Schedule of the Agreement. Automated parking equipment and security systems (detailed equipment description will be evidenced by invoices to be submitted by Lessee upon commencement of disbursement from the Acquisition Fund).

Quantity	Description	Serial No.	Model No.	Location

3. *Payment Schedule.* The Rental Payments shall be in such amounts and payable on such dates as set forth in the Rental Payment Schedule attached to this Schedule as Exhibit B. Rental Payments shall commence on the date on which the Equipment listed in this Schedule is accepted by Lessee, as indicated in an Acceptance Certificate substantially in the form of Exhibit C to the Agreement or the date on which sufficient moneys to purchase the Equipment are deposited for that purpose with an Acquisition Fund Custodian, whichever is earlier.

4. *Prepayment Option Amount Schedule.* The Prepayment Option Amount on each Rental Payment date for the applicable Term in the Equipment listed in this Schedule shall be the amount set forth for such Rental Payment date in the "Prepayment Option Amount" column of the Rental Payment Schedule attached to this Schedule. The Prepayment Option Amount is in addition to all Rental Payments then due under this Schedule (including the Rental Payment shown on the same line in the Rental Payment Schedule).

5. *Representations and Warranties.* Lessee hereby represents and warrants that its representations and warranties set forth in the Agreement are true and correct as though made on the date of commencement of Rental Payments on this Schedule. Lessee further represents and warrants that (a) no material adverse change in Lessee's financial condition has occurred since the date of the Agreement, (b) the governing body of Lessee has authorized the execution and delivery of the Agreement and the Leases pursuant to the Council approval dated September 2, 2008 (c) the Equipment described in Agreement referenced above is essential to the function of Lessee or the services Lessee provides its citizens; (d) Lessee has immediate need for, and expects to make immediate use of, substantially all such Equipment, which will be used by

Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of its authority; and (f) Lessee expects and anticipates adequate funds to be available for all future payments or rent due after the current budgetary period.

6. *The Lease.* The terms and provisions of the Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

7. *Purchase Price.* The Purchase Price which Lessor shall pay to the Acquisition Fund Custodian in connection with this Schedule is \$421,000, all of which is for deposit to the Acquisition Fund. It is expected that by twelve (12) months from the date of this Schedule No. 1, Lessee will have taken possession of all items of Equipment shown above and that a Lessee's Acceptance Certificate, or Acceptance Certificates, will be signed by Lessee and delivered to Lessor on or before twelve months from the date of this Schedule No. 1.

8. *Lease Term.* The Lease Term shall consist of the Original Term and (4) four consecutive Renewal Terms, with the final Renewal Term ending on September 30, 2013.

9. *Utilization Period.* The Utilization Period applicable to this Schedule shall end no later than September 30, 2009.

10. *State.* For purposes of this Agreement, "State" means the State of California.

11. *Fiscal Period.* Lessee's current Fiscal Period extends from October 1, 2008 to September 30, 2009.

Dated: October 24, 2008

LESSOR:
Bank of America, N.A.
555 California Street, 4th Floor
CA5-705-04-01
San Francisco, California 94104

LESSEE:
City of Long Beach
333 W. Ocean Boulevard, 11th Floor
Long Beach, California 90802-4664

APPROVED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

By: [Signature]
Name: Tessie G. Panganiban
Title: Vice President

By: [Signature] Assistant City Manager
Name: Patrick H. West
Title: City Manager

(Seal)

Attest:

By: [Signature]
Name: City Clerk Larry Heron
Title: _____

Duplicate Original No. 2 of 2 manually executed and serially numbered duplicate originals. To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Duplicate Original other than Duplicate Original No. 1.

APPROVED AS TO FORM
10-14, 2008
ROBERT E. SHANNON, City Attorney
BY [Signature]
AMY R. BURTON
DEPUTY CITY ATTORNEY

EXHIBIT B

RENTAL PAYMENT SCHEDULE

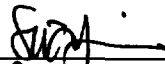
Rental Payment Schedule	Interest Portion 4.99%	Principal Portion	Rental Payment Amount	Prepayment Option Amount
10/24/2008				\$ 421,000.00
11/24/2008	\$ 1,750.66	\$ 6,192.20	\$ 7,942.86	\$ 414,807.80
12/24/2008	\$ 1,724.91	\$ 6,217.95	\$ 7,942.86	\$ 408,589.85
1/24/2009	\$ 1,699.05	\$ 6,243.81	\$ 7,942.86	\$ 402,346.04
2/24/2009	\$ 1,673.09	\$ 6,269.77	\$ 7,942.86	\$ 396,076.27
3/24/2009	\$ 1,647.02	\$ 6,295.84	\$ 7,942.86	\$ 389,780.42
4/24/2009	\$ 1,620.84	\$ 6,322.02	\$ 7,942.86	\$ 383,458.40
5/24/2009	\$ 1,594.55	\$ 6,348.31	\$ 7,942.86	\$ 377,110.09
6/24/2009	\$ 1,568.15	\$ 6,374.71	\$ 7,942.86	\$ 370,735.38
7/24/2009	\$ 1,541.64	\$ 6,401.22	\$ 7,942.86	\$ 364,334.16
8/24/2009	\$ 1,515.02	\$ 6,427.84	\$ 7,942.86	\$ 357,906.32
9/24/2009	\$ 1,488.29	\$ 6,454.57	\$ 7,942.86	\$ 351,451.75
10/24/2009	\$ 1,461.45	\$ 6,481.41	\$ 7,942.86	\$ 344,970.35
11/24/2009	\$ 1,434.50	\$ 6,508.36	\$ 7,942.86	\$ 338,461.99
12/24/2009	\$ 1,407.44	\$ 6,535.42	\$ 7,942.86	\$ 331,926.56
1/24/2010	\$ 1,380.26	\$ 6,562.60	\$ 7,942.86	\$ 325,363.96
2/24/2010	\$ 1,352.97	\$ 6,589.89	\$ 7,942.86	\$ 318,774.08
3/24/2010	\$ 1,325.57	\$ 6,617.29	\$ 7,942.86	\$ 312,156.78
4/24/2010	\$ 1,298.05	\$ 6,644.81	\$ 7,942.86	\$ 305,511.98
5/24/2010	\$ 1,270.42	\$ 6,672.44	\$ 7,942.86	\$ 298,839.54
6/24/2010	\$ 1,242.67	\$ 6,700.19	\$ 7,942.86	\$ 292,139.35
7/24/2010	\$ 1,214.81	\$ 6,728.05	\$ 7,942.86	\$ 285,411.30
8/24/2010	\$ 1,186.84	\$ 6,756.03	\$ 7,942.86	\$ 278,655.28
9/24/2010	\$ 1,158.74	\$ 6,784.12	\$ 7,942.86	\$ 271,871.16
10/24/2010	\$ 1,130.53	\$ 6,812.33	\$ 7,942.86	\$ 265,058.83
11/24/2010	\$ 1,102.20	\$ 6,840.66	\$ 7,942.86	\$ 258,218.17
12/24/2010	\$ 1,073.76	\$ 6,869.10	\$ 7,942.86	\$ 251,349.07
1/24/2011	\$ 1,045.19	\$ 6,897.67	\$ 7,942.86	\$ 244,451.40
2/24/2011	\$ 1,016.51	\$ 6,926.35	\$ 7,942.86	\$ 237,525.05
3/24/2011	\$ 987.71	\$ 6,955.15	\$ 7,942.86	\$ 230,569.90
4/24/2011	\$ 958.79	\$ 6,984.07	\$ 7,942.86	\$ 223,585.82
5/24/2011	\$ 929.74	\$ 7,013.12	\$ 7,942.86	\$ 216,572.71
6/24/2011	\$ 900.58	\$ 7,042.28	\$ 7,942.86	\$ 209,530.43
7/24/2011	\$ 871.30	\$ 7,071.56	\$ 7,942.86	\$ 202,458.86
8/24/2011	\$ 841.89	\$ 7,100.97	\$ 7,942.86	\$ 195,357.89
9/24/2011	\$ 812.36	\$ 7,130.50	\$ 7,942.86	\$ 188,227.40
10/24/2011	\$ 782.71	\$ 7,160.15	\$ 7,942.86	\$ 181,067.25
11/24/2011	\$ 752.94	\$ 7,189.92	\$ 7,942.86	\$ 173,877.32
12/24/2011	\$ 723.04	\$ 7,219.82	\$ 7,942.86	\$ 166,657.50
1/24/2012	\$ 693.02	\$ 7,249.84	\$ 7,942.86	\$ 159,407.66
2/24/2012	\$ 662.87	\$ 7,279.99	\$ 7,942.86	\$ 152,127.67
3/24/2012	\$ 632.60	\$ 7,310.26	\$ 7,942.86	\$ 144,817.41
4/24/2012	\$ 602.20	\$ 7,340.66	\$ 7,942.86	\$ 137,476.74

5/24/2012	\$ 571.67	\$ 7,371.19	\$ 7,942.86	\$ 130,105.56
6/24/2012	\$ 541.02	\$ 7,401.84	\$ 7,942.86	\$ 122,703.72
7/24/2012	\$ 510.24	\$ 7,432.62	\$ 7,942.86	\$ 115,271.10
8/24/2012	\$ 479.34	\$ 7,463.53	\$ 7,942.86	\$ 107,807.58
9/24/2012	\$ 448.30	\$ 7,494.56	\$ 7,942.86	\$ 100,313.02
10/24/2012	\$ 417.14	\$ 7,525.73	\$ 7,942.86	\$ 92,787.29
11/24/2012	\$ 385.84	\$ 7,557.02	\$ 7,942.86	\$ 85,230.27
12/24/2012	\$ 354.42	\$ 7,588.45	\$ 7,942.86	\$ 77,641.82
1/24/2013	\$ 322.86	\$ 7,620.00	\$ 7,942.86	\$ 70,021.82
2/24/2013	\$ 291.17	\$ 7,651.69	\$ 7,942.86	\$ 62,370.14
3/24/2013	\$ 259.36	\$ 7,683.51	\$ 7,942.86	\$ 54,686.63
4/24/2013	\$ 227.41	\$ 7,715.46	\$ 7,942.86	\$ 46,971.18
5/24/2013	\$ 195.32	\$ 7,747.54	\$ 7,942.86	\$ 39,223.64
6/24/2013	\$ 163.11	\$ 7,779.76	\$ 7,942.86	\$ 31,443.88
7/24/2013	\$ 130.75	\$ 7,812.11	\$ 7,942.86	\$ 23,631.77
8/24/2013	\$ 98.27	\$ 7,844.59	\$ 7,942.86	\$ 15,787.18
9/24/2013	\$ 65.65	\$ 7,877.21	\$ 7,942.86	\$ 7,909.97
10/24/2013	\$ 32.89	\$ 7,909.97	\$ 7,942.86	\$ (0.00)

For purposes of this Lease, "Taxable Rate," with respect to the interest component of Rental Payments, means an annual rate of interest equal to 5.8244%.

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

LESSEE: City of Long Beach Assistant City Manager

By: 

Name: Patrick H. West

Title: City Manager

APPROVED AS TO FORM

10-14 2008

ROBERT E. SHANNON, City Attorney

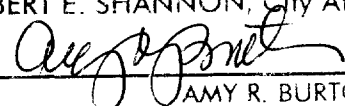
By  AMY R. BURTON
DEPUTY CITY ATTORNEY

EXHIBIT C

ACCEPTANCE CERTIFICATE

Bank of America, N.A.
555 California Street, 4th Floor
San Francisco, California 94104

Re: Schedule of Property No. 1 dated as of October 24, 2008, to Equipment Lease-Purchase Agreement, dated as of October 24, 2008, between Bank of America, N.A., as Lessor, and City of Long Beach, 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) listed in the above-referenced Schedule of Property (the "*Schedule*") has been delivered, installed and accepted on the date hereof.

2. Lessee has conducted such inspection and/or testing of the Equipment listed in the Schedule 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 Paragraph 16 of the Agreement.

4. 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 Long Beach

(Seal)

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT D
ATTACHMENT A
TO TAX CERTIFICATE

FORM 8038-G

Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)
 ► See separate instructions.

OMB No. 1545-0720

Caution: If the issue price is under \$100,000, use Form 8038-GC.

Part I Reporting Authority If Amended Return, check here ►

1 Issuer's name CITY OF LONG BEACH		2 Issuer's employer identification number [REDACTED]	
3 Number and street (or P.O. box if mail is not delivered to street address) 333 West Ocean Blvd., 6th Floor		Room/suite	4 Report number 3 - 2008 - 5
5 City, town, or post office, state, and ZIP code Long Beach, CA 90802		6 Date of issue 10/24/08	
7 Name of issue Schedule 1 - Lease Purchase Agreement		8 CUSIP number	
9 Name and title of officer or legal representative whom the IRS may call for more information David S. Nakamoto		10 Telephone number of officer or legal representative (562) 570-6845	

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input type="checkbox"/> Public safety	14
15 <input type="checkbox"/> Environment (including sewage bonds)	15
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe ►	18
19 If obligations are TANs or RANs, check box ► <input type="checkbox"/> If obligations are BANs, check box ► <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box ► <input checked="" type="checkbox"/>	

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$ 421,000	\$	5 years	4.99 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22	N/A
23 Issue price of entire issue (enter amount from line 21, column (b))	23	N/A
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	N/A
25 Proceeds used for credit enhancement	25	N/A
26 Proceeds allocated to reasonably required reserve or replacement fund	26	N/A
27 Proceeds used to currently refund prior issues	27	N/A
28 Proceeds used to advance refund prior issues	28	N/A
29 Total (add lines 24 through 28)	29	N/A
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	N/A

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	N/A	years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	N/A	years
33 Enter the last date on which the refunded bonds will be called	N/A	
34 Enter the date(s) the refunded bonds were issued	N/A	

Part VI Miscellaneous

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	N/A
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	N/A
b Enter the final maturity date of the guaranteed investment contract ►		
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	N/A
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ► <input type="checkbox"/> and enter the name of the issuer ► and the date of the issue ►		
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(iii) (small issuer exception), check box		<input type="checkbox"/>
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box		<input type="checkbox"/>
40 If the issuer has identified a hedge, check box		<input type="checkbox"/>

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Sign Here **DAVID NAKAMOTO**
CITY TREASURER

Signature of issuer's authorized representative: *David Nakamoto* Date: *10/23/08*
 Type or print name and title

EXHIBIT E

INSURANCE COVERAGE REQUIREMENTS

To Lessor: Bank of America, N.A.
555 California Street, 4th Floor
MAC CA5-705-04-01
San Francisco, CA 94104

From Lessee: City of Long Beach
333 W. Ocean Boulevard, 11th Floor
Long, Beach, CA 90802-4664

In accordance with Paragraph 16 of the Equipment Lease-Purchase Agreement dated as of October 24, 2008 (the "Agreement"), by and between Lessor and Lessee, Lessee shall deliver to Lessor a Certificate of Self-Insurance on Lessee's standard form providing evidence of coverage for:

- (a) Commercial general liability self-insurance equivalent in coverage scope to ISO CG 00 01 10 93 naming the Lessor as additional insured on a form equivalent in coverage scope to ISO CG 20 26 11 85 in an amount of \$250,000 per occurrence and \$500,000 general aggregate. Said insurance shall be primary insurance with respect to Lessor.
- (b) Special perils property coverage in an amount sufficient to cover the full replacement value of Lessee's property and equipment as delineated in Exhibit A or the applicable Prepayment Option Amount in Exhibit A, whichever is greater naming Lessor as additional insured and loss payee as its interests may appear.

The self-insurance program shall not be suspended, voided, changed, or canceled except after thirty (30) days prior written notice to Lessor, and shall be primary and not contributing to any other insurance or self-insurance maintained by Lessor.

With respect to damage to property, Lessor and Lessee hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage. Lessee shall deliver to Lessor evidence of coverage for approval as to sufficiency and form prior to the Agreement hereunder.

APPROVED AS TO FORM
10-14, 2008
 ROBERT E. SHANNON, City Attorney
 By Amy R. Burton
 AMY R. BURTON
 DEPUTY CITY ATTORNEY

**EXECUTED PURSUANT
 TO SECTION 301 OF
 THE CITY CHARTER.**

LESSEE: City of Long Beach
 By: [Signature] Assistant City Manager
 Name: Patrick H. West
 Title: City Manager
 Date: 10/17/08

EXHIBIT F

COPY OF MINUTE ORDER OF LESSEE'S GOVERNING BODY



CITY OF LONG BEACH

R-20

DEPARTMENT OF DEVELOPMENT SERVICES

333 West Ocean Blvd., 4th Floor Long Beach, CA 90802 Phone: 570.6428 Fax: 570.6205

September 2, 2008

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Approve and authorize the City Manager to execute an Agreement with Amano McGann for the purchase of equipment necessary for the automation of parking operations at the Broadway Garage in an amount not to exceed \$421,000 and authorize the City Manager to execute a lease-purchase agreement and related financing documents with Bank of America N.A., or one of its affiliates subject to final credit approval for the financing of parking equipment over a five-year period. (District 2)

DISCUSSION

In order to eliminate increasing maintenance costs, decrease contractual labor costs, improve service and increase customer safety, a request for proposals (RFP) was issued in the fall of 2007 for the placement of state-of-the-art automated parking equipment in the Civic Center Parking Structure (Broadway Garage). A committee evaluated proposals received from seven companies. Amano McGann, a parking equipment manufacturer with over 25 years experience in the United States, was selected as the preferred vendor after site visits were made to evaluate functionality, ease of use and price.

The recommended agreement with Amano McGann will provide for the installation of automated parking equipment and security systems. The equipment includes:

- One new pay-on-foot station (accepts cash, coin, credit/debit cards and validations)
- Two new entry lane ticket dispensers
- Four new gate arm boxes (two entry, two exit)
- Two new exit ticket acceptors with credit card processing capability
- Computer software and communications boards
- Two new computers
- Space counting system with electronic signboards
- CCTV system
- Emergency phone system

HONORABLE MAYOR AND CITY COUNCIL
September 2, 2008
Page 2 of 2

- In-lane and pay station intercom system
- 40 validation encoders

The cost to purchase the automation equipment is \$421,000. Staff is proposing to acquire the equipment under a lease-purchase agreement. A five-year lease will enable the Civic Center Parking management operation to pay for the equipment from its annual parking revenues, thus limiting the impact to the fund. By installing the automation equipment, it is expected that operational expenses will decrease by \$92,000. During the five-year lease period, automation at the Broadway Garage will save the City an estimated \$385,000.

This letter was reviewed by Assistant City Attorney Heather A. Mahood on August 19, 2008 and by Budget Management Officer Victoria Bell on August 18, 2008.

TIMING CONSIDERATIONS

City Council action is requested on September 2, 2008, in order to replace the aging equipment as soon as possible.

FISCAL IMPACT

Ongoing parking operation revenues will fully cover the lease costs. The purchase price of the automation equipment is \$421,000 including installation, freight and tax. The source of the funding for the purchase will be a lease financing at an estimated 4.79 percent, with annual estimated payments of \$95,000 per year for five years, or \$475,000 total. Final lease terms and cost will depend on market conditions and variability. Annual lease payments, which will begin in Fiscal Year 2009, will be budgeted in the Civic Center Fund (IS 380) in the Development Services Department (DS). There is no impact to the General Fund.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

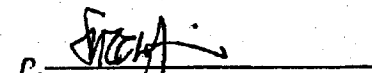


CRAIG BECK
DIRECTOR OF DEVELOPMENT SERVICES



LORI ANN FARRELL
DIRECTOR OF FINANCIAL MANAGEMENT/CFO

APPROVED:


PATRICK H. WEST
CITY MANAGER

Manager to execute all documents necessary for the sale of 100 Long Beach Boulevard (City Hall East) in an amount of \$5,100,000 as specified. (District 2)

This Contract was withdrawn.

see media

20. 08-0863

Recommendation to approve and authorize City Manager to execute an agreement with Amano McGann for the purchase of equipment necessary for the automation of parking operations at the Broadway Garage in an amount not to exceed \$421,000; and authorize City Manager to execute a lease-to-purchase agreement and related financing documents with Bank of America N.A., or one of its affiliates, subject to final credit approval for the financing of parking equipment over a five-year period. (District 2)

A motion was made by Councilwoman Gabelich, seconded by Councilman Andrews, to approve recommendation. The motion carried by the following vote:

Yes: 9 - B. Lowenthal, S. Lowenthal, DeLong, O'Donnell, Schipske, Andrews, Reyes Uranga, Gabelich and Lerch

see media

21. 08-0865

Recommendation to adopt Specifications No. RFP PD08016 authorizing City Manager to award a contract and any amendments thereto with DeBilio Distributors, Inc., for providing jail meal services at the Long Beach City Jail, in an annual estimated amount not to exceed \$320,000 plus a 10 percent contingency if necessary and if funds are available, for a period of three years, with the option to renew for two additional one-year periods, at the discretion of the City Manager. (District 2)

A motion was made by Councilmember S. Lowenthal, seconded by Councilmember B. Lowenthal, to approve recommendation. The motion carried by the following vote:

Yes: 9 - B. Lowenthal, S. Lowenthal, DeLong, O'Donnell, Schipske, Andrews, Reyes Uranga, Gabelich and Lerch

see media

22. 08-0866

Recommendation to adopt Specifications No. PA-01808 and award a contract to FR Construction Inc., for the repair and upgrade of piping and dispenser secondary containment portion of the Underground Storage Tank (UST) at 160 Market Street (Fuel Site 11) and 2950 Redondo Avenue (Fuel Site WD1) as needed to keep these sites in compliance with the rules and regulations set forth in Title 23 of the State Health and Safety Code. The estimated annual amount of the contract is \$130,788 plus a 25 percent contingency if necessary and if funding is available, with the option to renew for two additional one-year periods, at the discretion of the City Manager. (Citywide)

EXHIBIT G

FORM OF LESSEE'S OPINION OF COUNSEL
(COUNSEL'S LETTERHEAD)

Bank of America N.A.
555 California Street, 4th Floor
San Francisco, California 94104

Re: Schedule of Property No. _____, dated _____, to
Equipment Lease-Purchase Agreement, dated as of _____,
between Bank of America N.A., as Lessor, and City of Long Beach, as
Lessee

Ladies and Gentlemen:

As legal counsel to City of Long Beach ("*Lessee*"), I have examined the Equipment Lease-Purchase Agreement, dated as of _____, and Exhibits thereto by and between Lessor and Lessee (the "*Agreement*") and Schedule of Property No. _____, dated _____, by and between Lessor and Lessee (the "*Schedule*"), which, among other things, provides for the lease of certain property listed in the Schedule (the "*Equipment*"), and such other opinions, documents and matters of law as I have deemed necessary in connection with this opinion. The Schedule and the terms and provisions of the Agreement incorporated therein by reference together with the Rental Payment Schedule attached to the Schedule are herein referred to collectively as the "*Lease*".

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

1. Lessee is a municipal corporation, duly organized and existing under the laws of the State, and is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "*Code*") and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code.
2. Lessee has the power and authority to lease and acquire the Equipment and to execute and deliver the Lease and to perform its obligations under the Lease.
3. The Lease has been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Lease is a valid and binding obligation of Lessee enforceable in accordance with its terms.
4. The authorization, approval, execution and delivery of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.
5. To the best of my knowledge, there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely

determined, would adversely affect the transactions contemplated by the Lease or the security interest of Lessor or its assigns, as the case may be, in the Equipment thereunder.

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

Printed Name _____

Signature _____

Firm _____

Dated _____

Address _____

Telephone No. _____



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ROBERT E. SHANNON
City Attorney

HEATHER A. MAHOOD
Chief Assistant City Attorney

MICHAEL J. MAIS
Assistant City Attorney

October 24, 2008

Bank of America, N.A.
555 California Street, 4th Floor
San Francisco, California 94104

RE: Schedule of Property No. 1 dated as of October 24, 2008 to Equipment Lease-Purchase Agreement, dated as of October 24, 2008, between Bank of America, N.A., as Lessor, and City of Long Beach, as Lessee

Dear Ladies and Gentlemen:

As legal counsel to City of Long Beach ("Lessee"), I have examined the Equipment Lease-Purchase Agreement, dated as of October 24, 2008, and Exhibits thereto, by and between Lessor and Lessee (the "Agreement"); the Schedule of Property No. 1, dated as of October 24, 2008, by and between Lessor and Lessee (the "Schedule"), which, among other things, provides for the lease of certain property listed in the Schedule (the "Equipment"); the Acquisition Fund and Account Control Agreement, among Lessor, Lessee and Union Bank of California, N.A., as Acquisition Fund Custodian, dated as of October 24, 2008 (the "Acquisition Fund") and such other opinions, documents and matters of law as I have deemed necessary in connection with this opinion. The Schedule and the terms and provisions of the Agreement incorporated therein by reference together with the Rental Payment Schedule attached to the Schedule are herein referred to collectively as the "Lease".

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

1. Lessee is a municipal corporation, duly organized and existing under the laws of the State, and is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"), and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code.
2. Lessee has the power and authority to lease and acquire the Equipment and to execute and deliver the Lease and to perform its obligations under the Lease.
3. The Lease has been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Lease is a valid and binding obligation of Lessee enforceable in accordance with its terms.

Barbara D. de Jong
Dominic Holzhaus
Belinda R. Mayes
J. Charles Parkin
C. Geoffrey Allred
Gary J. Anderson
Richard F. Anthony
Amy R. Burton
Christina L. Checel
Randall C. Fudge
Charles M. Gale
Anne C. Lattime
Monte H. Machit
Barbara J. McTygue
Barry M. Meyers
Cristyl Meyers
Howard D. Russell
Tiffani L. Shin
Linda Trang

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

5. To the best of my knowledge, there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Lease or the security interest of Lessor or its assigns, as the case may be, in the Equipment thereunder.

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

Very truly yours,

ROBERT E. SHANNON, City Attorney

By:



AMY R. BURTON
Deputy City Attorney

Exhibit H

INCUMBENCY CERTIFICATE

The undersigned City Clerk of The City of Long Beach as Lessee certifies as follows:

A. The following listed persons are duly elected 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;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease-Purchase Agreement dated as of October 24 2008 and the Schedule(s) thereunder and all future Schedule(s) (the "Agreements") by and between Lessee and Bank of America, N.A. and these Agreements are binding and authorized Agreements of Lessee, enforceable in all respects in accordance with their terms.

<u>Name of Official</u>	<u>Title</u>	<u>Signature</u>
Lori Ann Farrell	Director of Financial Mgt/CFO	<u>Lori Ann Farrell</u>
David Nakamoto	City Treasurer	<u>David Nakamoto</u>

Dated Oct 17, 2008

By [Signature] Assistant City Manager

Title City Manager

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

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

EXHIBIT I

**NOTICE AND ACKNOWLEDGMENT OF SALE OF RENTAL PAYMENTS
AND ASSIGNMENT OF EQUIPMENT LEASE-PURCHASE AGREEMENT
AND ACQUISITION FUND AGREEMENT**

Dated as of _____

This Acknowledgement of Assignment and Agreement ("Acknowledgment and Agreement") is made as of the above date by the City of Long Beach (the "Lessee") in favor of the Assignee identified below and Bank of America N.A., as Lessor and Assignor, with respect to the Lease identified below:

Assignee Name: _____

Assignee Address: _____

Lease: _____

For purposes of this Acknowledgment and Agreement, "Lease" means collectively the Lease identified above, together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith. The term "Lease" specifically excludes all Schedules of Property and Rental Payments other than the Schedule(s) of Property identified above. Any other capitalized term used but not defined herein has the meaning set forth in the Equipment Lease-Purchase Agreement described above.

1. Lessee acknowledges the sale and assignment by Assignor to Assignee of all of Assignor's right, title and interest as Lessor, in, to and under the Lease, including but not limited to all Rental Payments and other amounts due under the Lease on or after _____ all of its rights under the related Acquisition Fund and in the Equipment financed under such Lease, and all proceeds of the foregoing, and Lessee hereby consents to such sale and assignment.

2. Lessee agrees that, as of the close of the date of this Acknowledgment and Agreement, the following information about the Lease is true, accurate and complete:

- Number of Rental Payments Remaining.....
- Amount of Each Rental Payment.....
- Total Amount of Rental Remaining.....
- Frequency of Rental Payments.....
- Next Rental Payment Due.....
- Funds Remaining in Acquisition Fund

3. Lessee represents and warrants that as of the date of this Acknowledgment and Agreement: (a) the Lease is in full force and effect and all dates, amounts, equipment descriptions, representations, warranties and other facts set forth in the Lease are true and correct; (b) other than the Lease and the Acquisition Fund Agreement, there are no agreements between Lessor and Lessee relating to the financing or leasing of the Equipment; (c) Lessee is not in default under the Lease; (d) the Equipment is and shall at all times remain free and clear of any liens, security interests and encumbrances created by or through Lessee; (e) Lessee has and had full power, authority and legal right to execute and deliver the Lease, the Acquisition Fund Agreement and this Acknowledgment and Agreement and to perform its obligations under the Lease, the Acquisition Fund Agreement and this Acknowledgment and Agreement, and all such actions have been duly authorized by appropriate findings and actions of Lessee; (f) the Lease, the Acquisition Fund Agreement and this Acknowledgment and Agreement have been duly executed and delivered by Lessee and each constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms; (g) Lessee has complied with the terms set forth in the Lease and the Acquisition Fund Agreement; and (h) the Lessee is not aware of any pending or threatened challenge by a taxing authority to the status of the interest portion of the Rental Payments being excludable from gross income for federal income tax purposes.

4. As of the date of this Acknowledgment and Agreement Assignee shall have all obligations of Assignor, as Lessor, under the Lease, and Lessee shall at all times look solely to Assignee for performance of such obligations.

5. With respect to the Lease, Lessee agrees that, subject to Paragraphs 22 and 25 of the Lease, Lessee is absolutely and unconditionally obligated to pay all of the Rental Payments under the Lease and to perform all of its other obligations under the Lease. Nothing in this paragraph shall be interpreted or construed by Assignee as a waiver or release of any rights that Lessee may have to compel Assignee to perform Assignee's obligations under the Lease.

6. Lessee acknowledges and agrees that from and after the date of this Acknowledgment and Agreement: (a) it will deal exclusively with Assignee with respect to the Lease and will deliver all payments and copies of all notices and other communications given or made by them with respect to each Lease to Assignee at the address listed above, (b) so far as enforcement of the Lease is concerned, notwithstanding the existence of other Schedules of Property issued under the Lease, such Lease is separate and severable and Assignee may take enforcement action independently of other parties having an interest in the Lease and other Schedules not forming a part of such Lease, (c) Assignee may exercise all rights and remedies available to it with respect to the Equipment independently of other parties having an interest in the Lease and in other Schedules not forming a part of such Lease, and (d) it will execute such other instruments and take such actions as Assignee reasonably may require to further confirm the sale, assignment and transfer of each Lease by Assignor to Assignee.

Lessee:
City of Long Beach

By: _____

Name: _____

Title: _____

Lessor:
Bank of America, N.A.

By: _____

Name: _____

Title: _____

Assignee:

By: _____

Name: _____

Title: _____

Exhibit J

ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement (this "Agreement"), dated as of October 24, 2008, by and among Bank of America, N.A., a national banking association (hereinafter referred to as "Lessor"), City of Long Beach, a political subdivision of the state of California (hereinafter referred to as "Lessee") and Union Bank of California, N.A., a national banking association (hereinafter referred to as "Acquisition Fund Custodian").

Reference is made to Schedule of Property No. 1, dated as of October 24, 2008, by and between Lessor and Lessee incorporating the terms of that certain Equipment Lease Purchase Agreement dated as of October 24, 2008 between Bank of America, N.A., and Lessee (hereinafter referred to as the "Lease"), covering the acquisition and lease of certain parking equipment and security systems described therein (the "Equipment"). It is a requirement of the Lease that the Purchase Price of the Equipment (an amount not to exceed \$421,000) is to be deposited into a special trust fund under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

The parties agree as follows:

1. Creation of Acquisition Fund.

(a) There is hereby created a special custody fund to be known as the "City of Long Beach 2008- Schedule No. 1 Acquisition Fund Account" (the "Acquisition Fund") to be held 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 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, 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 shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund, except for liability related to the negligence, willful misconduct or fraud of Acquisition Fund Custodian or Lessor. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements of applicable State of California and local laws and regulations.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from 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 after October 24, 2009 (the "Acquisition Period") shall be applied as provided in Section 4 hereof.

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

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it has determined 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 authority or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of negligence, willful misconduct or fraud with regard to its duties hereunder, 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 law, indemnify the Acquisition Fund Custodian against any and all expenses; including reasonable attorneys' fees and costs.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the 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 Lessor, for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

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

(i) Lessor 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 extra-ordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Acquisition Fund.

(j) Lessor shall from time to time, on demand, pay to the Acquisition Fund Custodian reasonable compensation for its services and shall reimburse the Acquisition Fund Custodian for all its advances and expenditures, including but not limited to advances to and fees and expenses of counsel. The obligation to pay such amounts shall survive the term of this Acquisition Fund Agreement.

(k) The duties and responsibilities of Acquisition Fund Custodian shall be limited to those expressly set forth in this Agreement. With the exception of this Agreement, Acquisition Fund Custodian is not responsible for or chargeable with knowledge of any terms or provisions contained in any underlying agreement referred to in this Agreement or any other separate agreements and understandings between the parties. The Acquisition Fund Custodian shall not be liable for the accuracy of any calculations or the sufficiency of any funds for any purpose. The Acquisition Fund Custodian shall not have any liability under this Agreement except to the extent of its own gross negligence or willful misconduct. In no event shall the Acquisition Fund Custodian be liable for any special, indirect or consequential damages.

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) Disbursement Procedure. No disbursement from the Acquisition Fund ("Disbursement") shall be made unless and until Lessor has approved such Disbursement. 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 Disbursement 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 a certificate of Lessee to the effect 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; (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 Disbursement contains no item representing payment on

account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain; and (iv) the Equipment is insured in accordance with the Lease;

2. Delivery to Lessor of an Acceptance Certificate executed by Lessee, together with any Purchase Agreement Assignment or bill of sale and invoice therefor as required by Paragraph 3A of the Lease;

3. The disbursement shall occur during the Acquisition Period set forth in the Schedule applicable to such Equipment;

4. There shall exist no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default); and

5. No material adverse change in Lessee's or any guarantor's financial condition shall have occurred since the date of the Lease.

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

4. Excessive Acquisition Fund. Following the final disbursement from the Acquisition Fund at the end of the Acquisition Period, or termination of the Acquisition Fund as otherwise provided herein or in the Lease, the Acquisition Fund Custodian shall transfer any remainder from the Acquisition Fund to Lessor for application to amounts owed under the Lease in accordance with Paragraph 35(c) of the Lease.

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

5A. Control of Acquisition Account. In order to perfect Lessor's security interest by means of control in (i) the Acquisition Fund established hereunder, (ii) all entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (iii) all of Lessee's rights in respect of the Acquisition Fund, such entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of such entitlements, investment property and other financial assets deposited in or credited to the Acquisition Fund (collectively, the "Collateral"), Lessor, Lessee and Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 5A which are defined in the Commercial Code of the state of California ("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) Lessee hereby irrevocably authorizes Acquisition Fund Custodian and Acquisition Fund Custodian hereby agrees, to comply with all instructions entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, in accordance with the terms hereof without further consent by Lessee, except as otherwise specifically provided in this Agreement.

(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 Section 5A, 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, but will not, without the prior written consent of Lessor unless otherwise authorized by other Sections of this Agreement, allow Lessee to withdraw any Collateral from the Acquisition Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to 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 when those withdrawals are intended to be used by Lessee for any purpose other than the acquisition of Equipment in accordance with the terms of this Agreement and the Lease. 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, unless Acquisition Fund Custodian receives notice from Lessee that said instructions from Lessor violate the terms of this Agreement. In that case, Acquisition Fund Custodian shall take no action until Lessor and Lessee resolve their dispute.

(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 is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 6 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to Lessee with respect to the Acquisition Fund.

6. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This Agreement may not be amended except in writing signed by all parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

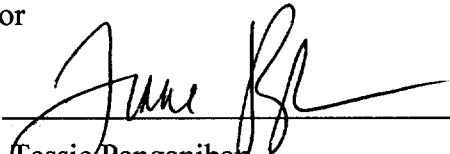
If to Lessor: Banc of America, N.A.
555 California Street
CA5-705-04-01
San Francisco, CA 94104
Attn: Contract Administration
Fax: (415) 343-0533

If to Lessee: City of Long Beach
333 W. Ocean Boulevard, 6th Floor
Long Beach, CA 90802-4664
Attn: Daniel Thurber
Tel No. (562) 570-6169
Fax No. (562) 570-5836

If to Acquisition
Fund Custodian Union Bank of California, N.A.
Corporate Trust Department
120 S. San Pedro Street, Suite 400
Los Angeles, CA 90012
Attn: Alison Braunstein
Phone: (213) 972-5674
Fax: (213) 972-5694

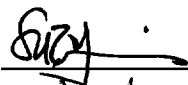
In Witness Whereof, the parties have executed this Acquisition Fund Agreement as of the date first above written.

Bank of America, N.A.
as Lessor

By: 
Name: Jessie Panganiban
Title: Vice President

City of Long Beach,
as Lessee

APPROVED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

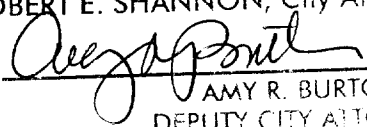
By:  Assistant City Manager
Name: Patrick H. West
Title: City Manager

Union Bank of California, N.A.
as Acquisition Fund Custodian

By: _____
Name: _____
Title: Vice President

APPROVED AS TO FORM:

10-14, 2008
ROBERT E. SHANNON, City Attorney

By: 
AMY R. BURTON
DEPUTY CITY ATTORNEY

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

Bank of America, N.A.
as Lessor

City of Long Beach,
as Lessee

By: _____

By: _____

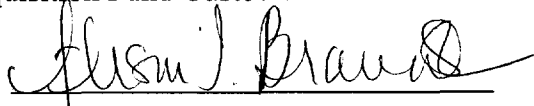
Name: Tessie Panganiban

Name: _____

Title: Vice President

Title: _____

Union Bank of California, N.A.
as Acquisition Fund Custodian

By: 

Name: Alison T. Braunstein

Title: Vice President

Schedule 1

Form of Disbursement Request

Re: Schedule of Property No. 1 dated as of October 24, 2008, by and between Bank of America, N.A., as Lessor and City of Long Beach, as Lessee, incorporating the terms of that certain Equipment Lease-Purchase Agreement dated as of October 24, 2008, by and between Banc of America, N.A., and Lessee (the "Lease")

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of October 24, 2008 (the "Acquisition Fund and Account Control Agreement") by and among Bank of America, N.A. ("Lessor"), City of Long Beach ("Lessee") and Union Bank of California, N.A., (the "Acquisition Fund Custodian"), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement (the "Acquisition Fund") for the following purposes.

Payee's Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

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

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

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

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

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

(vi) The disbursement shall occur prior to the end of the Utilization Period set forth in the Schedule applicable to such Equipment.

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

Dated: _____

CITY OF LONG BEACH

By: _____

Name: _____

Title: Authorized Representative

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

BANK OF AMERICA, N.A.
as Lessor under the Lease

By: _____

Name: _____

Title: _____

Exhibit K

TAX CERTIFICATE

This Tax Certificate (this "Certificate") is being provided by the City of Long Beach, California (the "City") in connection with the execution of that certain Equipment Lease-Purchase Agreement, by and between the City, as Lessee, and Bank of America, N.A., as Lessor, dated as of October 24, 2008 and Schedule No. 1 thereto dated as of October 24, 2008, by and between Bank of America, N.A., as Lessor and Lessee, which among other things, incorporates the terms of the Agreement and provides for the lease by the City of automated parking equipment and security systems to be located in the City (the "Lease") and concerns the requirements that must be met for interest component of the Rental Payments under the Lease to qualify as tax-exempt for federal income tax purposes.

The representations and agreements contained in this Certificate are made by the City for the benefit of Bank of America, N.A.

Many of the terms used in this Certificate have special meanings and provides cross-references to provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations pertaining to tax-exempt obligations. Certain other terms used and not defined herein have the meanings given such terms in the Lease.

The undersigned, acting on behalf of the City, hereby certifies, represents and agrees as follows:

1. The City's Representations. The City represents that it has examined and is familiar with the representations made in this Certificate, and certifies that all such representations are true, complete, and correct and do not omit to state a material fact necessary to make the representations, in light of the circumstances under which they were made, not misleading. Any representation made by the City about its reasonable expectations includes a representation that it has not entered into any contract or other arrangement that is inconsistent with that representation. The City further represents that it has reviewed all parts of this Certificate with its counsel. The undersigned City Manager of the City, certifies that he is duly authorized to execute and deliver this Certificate.

2. The Lease. The Lease, to which this Certificate is attached as Exhibit K, is incorporated herein by reference. The terms and security and sources of payment of the Lease are as described therein. The property to be financed with the proceeds of the Lease shall be the Equipment as defined and described in the Lease.

3. Reasonable Expectation That No Other Obligations Need to be Treated as Part of the Same "Issue" as the Lease. The Lease has been executed as of September 30, 2008. No other obligations reasonably expected to be paid from the same source of funds have been sold since July 30, 2008, and the City reasonably expects that no such obligations will be sold before October 30, 2008. Accordingly, the City intends to treat the Lease as a single "issue" and that no other obligations will be part of this "issue."

4. Interest Rate Hedges. The City has not entered into any contract primarily to modify the risk of interest rate changes with respect to the Lease and does not reasonably expect that it will enter into such a contract.

5. Form 8038-G. The information in the Internal Revenue Service Form 8038-G for the Lease attached to this Certificate as Attachment A is true and correct.

6. Amount of Lease Proceeds. The Lease was awarded by the City on the basis of the presentation of proposals to Bank of America, N.A., for an aggregate lease value of \$421,000. The fair market value of the Equipment is \$421,000.

7. Replacement Proceeds. The City reasonably expects that it will not have Replacement Proceeds as defined in Treas. Reg. §1.148-1(c). The City acknowledges that if Replacement Proceeds arise, they will be treated Gross Proceeds, as defined in the Code.

8. Ownership of the Equipment. The City reasonably expects that it will own the Equipment for the entire term of the Lease.

9. No Private Business Use of Equipment. No portion of any property financed with the proceeds of the Lease will be used for a private business use and the City shall not take any action that would cause the Lease to meet the private business use test of section 141(b)(1) of the Code. Accordingly, the City will not take any action that would cause (i) more than 10% of the Equipment to be used for private business use or (ii) more than 5% of the proceeds of the Equipment to be used for any private business use which is unrelated to any governmental use of such proceeds or which is related to such governmental use but disproportionate to the governmental use.

10. Payment of Rebate. The City shall make, or cause to be made, rebate payments to the United States Treasury with respect to the Lease at such times and such amounts as will meet the requirements of section 148(f) of the Code.

11. Records of Investments. The City shall maintain records that are adequate to determine the amount of required rebate payments with respect to of any proceeds of the Lease, if any. These records shall be maintained by the City until 6 years after the termination or the Lease.

12. Federal Guarantees. The City shall not take any action that would cause the Lease to be "federally guaranteed" under section 149(b) of the Code.

CITY OF LONG BEACH, CALIFORNIA
as Lessee
TO SECTION 301 OF
THE CITY CHARTER.

APPROVED AS TO FORM

10-14 2008
ROBERT E. SHANNON, City Attorney

By Amy R. Burton
AMY R. BURTON
DEPUTY CITY ATTORNEY

By: [Signature] Assistant City Manager
Name: Patrick H. West
Title: City Manager