

MASTER LEASE AGREEMENT **35164**

This Master Lease Agreement is made and entered into as of January 17, 2019, between Banc of America Public Capital Corp, a Kansas corporation, as Lessor, whose mailing address is 555 California Street, 4th Floor, CA5-705-04-01, San Francisco, CA 94104, and City of Long Beach *and its affiliates ("City of Long Beach")*, as Lessee, whose mailing address is 333 W. Ocean Boulevard, 6th Floor, Long Beach, California, 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 3 and which shall be delivered by Lessee to Lessor upon receipt and acceptance of the Equipment as provided in Paragraph 10 hereof.

"Acquisition Fund" means the fund of that name established and administered pursuant to an Acquisition Fund Agreement (see Exhibit 12)

"Acquisition Fund Agreement" means an Acquisition Fund Agreement, which will be dated the Commencement Date for such Lease and will be among Lessor, Lessee and Acquisition Fund Custodian, relating to an Acquisition Fund.

"Acquisition Fund Custodian" means MUFG Union Bank, N.A., in its capacity as acquisition fund custodian under an Acquisition Fund Agreement, and its successors. The parties may agree to use a different acquisition fund custodian with respect to any Acquisition Fund Agreement and such acquisition fund custodian shall be the Acquisition Fund Agreement for the applicable Lease.

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

"Affiliates" means departments, divisions, enterprise funds and internal service funds including, but not limited to the Port of Long Beach, Long Beach Gas and Oil Department, Long Beach Water Department and Long Beach Airport.

"Agreement" means this Master Lease Agreement, as supplemented and amended from time to time in accordance with Paragraph 30 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 10, 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 dated date of this Agreement as hereinabove first written.

"Equipment" means (a) the equipment, vehicles and other personal property identified in a Schedule, (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 25 hereof.

"Event of Non-appropriation" means a non-renewal 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 Lease Term as provided herein.

"Fiscal Period" means the annual period used from time to time by Lessee for its financial accounting and budgeting purposes. Lessee's current Fiscal Period is currently ends September 30, 2018.

"Initial Lease Term" means with respect to each Lease, the period from the Commencement Date to midnight of the last day of Lessee's then current Fiscal Year.

"Initial Master Term" means the period from the Dated Date to the fifth anniversary of the Dated Date.

"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.

"Lease Term" means, with respect to each Lease, the Initial Lease Term and all Renewal Lease Terms specified in the related Schedule.

"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, or the designate Affiliate set forth in a Schedule.

"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 a Lease, the Equipment, thereunder, the Acquisition Fund for such Lease, and rights in this Agreement with respect to the Lease (including Rental Payments under the Lease) pursuant to Paragraph 28 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 8 hereof at which Lessee may prepay the aggregate principal component of Rental Payments under a Lease 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 Lease Term" means the renewal terms of a Lease, each having a duration of one year and a term coextensive with Lessee's fiscal year; provided that the final Renewal Lease Term shall terminate upon the final Rental Payments, and any other amounts due, under the Lease.

"Renewal Master Term" means each of three (3) successive twelve-month periods after the Initial Master Term and for which Lessee and Lessor have agreed to extend this Agreement as provided in Paragraph 3 hereof.

"Rental Payments" means the amounts set forth in Exhibit B to a Schedule (allocable to a principal component and an interest component) payable by Lessee pursuant to Paragraph 6 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 to a Schedule, as such schedule may be amended in accordance with this Agreement, which shows the date and amount of each Rental Payment. A form of the Rental Payment Schedule is set forth in Exhibit B to the form of Schedule, attached hereto as Exhibit 2.

"Schedule" means each separately numbered Schedule of Property substantially in the form of Exhibit 2 attached hereto, each of which incorporates the terms

and conditions of this Agreement and constitutes a separate Lease of Equipment hereunder.

“Utilization Period” means the date by which Lessee must deliver the final Acceptance Certificate (Exhibit 3) for the Equipment financed under a Lease as indicated in the applicable Schedule.

2. **Agreement to Lease-Purchase Equipment; Deviation from this Agreement with Respect to Structure and Pricing.** 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 and the applicable Schedule.

Lessor and Lessee acknowledge that certain Equipment, for example, aircraft and vessels, will require special provisions given the unique nature, means of perfection of a security interest therein and risks associated with operation of such Equipment, which will be incorporated into an addendum to the Schedule for said Equipment. In addition, Lessor and Lessee acknowledge that certain Equipment will require multiple Schedules due to progress payments at varying times to various vendors, and that Lessor may require that Schedules for such related Equipment (“Project Related Equipment”) be (i) cross collateralized, (ii) cross defaulted, (iii) subject to an Event of Non-appropriation with respect to all related Schedules, (iv) subject to prepayment of all such related Schedules in whole to terminate such Schedules by prepayment in accordance Paragraph 8, hereof, and (v) other terms and conditions. Such additional terms for Project Related Equipment will be incorporated into an addendum for all Schedules related to the Project Related Equipment. Additionally, Lessor and Lessee acknowledge that certain Schedules may be more appropriate to be entered into by an Affiliate, may require a different source of Legally Available Funds and given the restricted source of Legally Available Funds, may be required by Lessor to be a binding obligation, not subject to an Event of Non-appropriation which will require certain revisions to the applicable Schedule and, possibly, a project addendum to address such changes. Additionally, there could arise situations where a third party vendor will be handling procurement of the Equipment as agent of the Lessee, which may require revisions to the Schedule to address the procurement procedures in a manner agreeable to Lessee and Lessor. The parties agree and understand that the nature of the forgoing differences in the structure of the Schedules, unique nature of certain Equipment, the entity as Lessee under the Schedules and other factors are such that the payment dates, payment frequency, pricing and other terms as set forth in this Agreement may need to be modified to reflect the nature the Schedules, the Equipment, the needs of the Lessee with respect to payment structure and other issues relevant to the parties. The parties agree to work together to address such issues, while maintaining basically the economic effect of the terms of this Agreement.

3. **Term of the Agreement.** The Initial Master Term shall commence as of the Dated Date and shall expire at midnight on the fifth anniversary of the Dated Date. The term of this Agreement may be extended for three additional Renewal Master Terms upon approval of such extension by Lessee and a written request by Lessee to Lessor for such extension. Such extension shall be subject to written approval by Lessor. The term of this Agreement shall be the same for such Renewal Master Terms. Notwithstanding the foregoing, the term of the Agreement pursuant to which Leases may be entered into will terminate upon the first to occur of (a) the expiration of the Initial Master Term without extension thereof for an additional Renewal Master Term, (b) the expiration of a Renewal Master Term without extension thereof for an additional Renewal Master Term, (c) upon the occurrence of an Event of Non-Appropriation under any Lease; (d) upon the occurrence of an Event of Default under any Lease. Notwithstanding a termination this Agreement, the terms of this Agreement shall continue in full force and effect with respect to any outstanding Leases. The parties may agree in writing to waive any such termination of this Agreement. Notwithstanding the foregoing, prior to each anniversary of the Dated Date, the credit of Lessee and the pricing set forth in the Exhibit 1 – Proposed Rates, shall be subject to annual review and approval by Lessor. As part of such annual credit review, Lessee shall provide Lessor with the anticipated volume of Leases contemplated for the following year.
4. **Lease Term for a Lease.** The Initial Lease Term for a Lease shall commence as of the Commencement Date for such Lease and expire at midnight on the last day of Lessee's current Fiscal Period. Beginning at the expiration of the Initial Lease Term, the term of a Lease 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 Lease Term, as are necessary for all Rental Payments identified on the Rental Payment Schedule hereto to be paid in full. Notwithstanding the foregoing, the term of a Lease will expire upon the first to occur of (a) the expiration of the Initial Lease Term or any Renewal Lease Term during which an Event of Non-appropriation 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 8 hereof, except as otherwise therein provided, or (d) an Event of Default and a termination of Lessee's rights under said Lease as provided in Paragraph 25 hereof. The terms of a Lease during the Initial Lease Term shall be the same for such Renewal Lease Term except for the Rental Payments during said Renewal Lease Term.
5. **Conditions to Lessor's Performance.**

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

- 5.1.1 A fully completed Schedule of Property in the form of Exhibit 2 executed by Lessor and Lessee.
 - 5.1.2 An Acceptance Certificate in substantially the form attached to as Exhibit 3, if Lessor is to pay 100% of the Purchase Price directly to the vendor or manufacturer of the Equipment (or reimburse itself for a prior payment by Lessee to the vendor or manufacturer) upon execution of the Lease, otherwise, an Acquisition Fund Agreement, executed by Lessor, Lessee and the Acquisition Fund Custodian;
 - 5.1.3 An Incumbency Certificate executed by the Clerk, in substantially the form attached hereto as Exhibit 8, completed to the satisfaction of Lessor;
 - 5.1.4 A certified copy of a minute order of Lessee's governing body in the form of authorizing the execution and delivery of this Agreement and any Lease incorporating this Agreement, and performance by Lessee of its obligations hereunder and thereunder;
 - 5.1.5 An opinion of counsel to Lessor in substantially the form attached hereto as Exhibit 7 respecting such Lease and otherwise satisfactory to Lessor;
 - 5.1.6 If the principal amount of a Schedule is equal to or exceeds \$5,000,000, a tax opinion of counsel to Lessor respecting such Lease and otherwise satisfactory to Lessor that the Lease is exempt from federal income tax;
 - 5.1.7 Evidence of insurance as required by Paragraph 17;
 - 5.1.8 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 15;
 - 5.1.9 A copy of a fully completed and executed Form 8038 for the Lease;
 - 5.1.10 A Tax Certificate executed by an authorized officer of Lessee in substantially the form attached hereto as Exhibit 10 for the Lease;
 - 5.1.11 A certified copy of the performance and payments bonds (if applicable) assuring completion of construction and installation of the Equipment as described in Subparagraph 17.1; and,
 - 5.1.12 Such other items, if any, as are set forth in such Lease or are reasonably required by Lessor.
- 5.2 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 or Event of Non-appropriation having occurred, and (iii) if an 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 final day of the Utilization Period for such Schedule.

- 5.3 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 10 and 15; 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.
- 5.4 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.
- 5.5 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 any applicable Affiliates and other matters related to Lessee.

6. **Rental Payments.** Lessee hereby agrees to pay Rental Payments for the Equipment for the term of each Lease under this Agreement from and after the Commencement 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 28 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 a Lease pursuant to 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.

7. **Agreement to Seek Appropriations; Notice of Event of Non-appropriation.** 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 Non-appropriation with respect to any Lease.

8. **Prepayment Option.** Lessee is hereby granted the option to prepay the aggregate principal component of Rental Payments (in whole but not in part), under a Lease prior to the scheduled payment of the Rental Payments in full pursuant to this Agreement, on each Rental Payment date as follows:

<u>Term of Schedule</u>	<u>First Prepayment Date</u>	<u>Prepayment Option Amount</u>
5 Years	Rental Payment One Year after the Commencement Date	Par
8 Years	Rental Payment Two Years after the Commencement Date	Par
10 Years	Rental Payment Three Years after the Commencement Date	Par
15 Years	Rental Payment Six Years after the Commencement Date	Par

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) To exercise the option granted under this Paragraph 8, 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.

9. **Essentiality.** Lessee's present intention is to make Rental Payments and Additional Payments for the Initial Lease Term and all Renewal Lease Terms for each Lease, as long as Lessee 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 Lease Terms) scheduled to be paid under said Lease.

10. **Delivery and Installation.** Lessee shall select the type, quantity and supplier, including the use of third-party vendors on behalf of the Lessee, with respect to Equipment designated in a Schedule. 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 Commencement Date for a Schedule shall be deemed to be executed by Lessee in its capacity as Lessor's agent for purposes of said Schedule. 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 10, 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 in the Schedule using its own criteria and not in reliance on any representations of Lessor.

- 11. 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 WHATEVER, 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 Non-appropriation 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.

- 12. 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 a Lease pursuant to Paragraph 26 hereof or an Event of Non-appropriation occurs with respect to such Lease, in which event title to such 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.

13. 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 with respect to each Lease 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 excludability 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 4 hereto with respect to each Lease 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 a Lease 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 13, 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 excludability (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 13 shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that this Agreement not constitutes 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.

14. **Use of Equipment, Inspection and Reports.** During the term of the applicable Lease, 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. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body, including, without limitation, all anti-money laundering laws and regulations; provided that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest (including the reversionary interest) of Lessor in and to the Equipment or its interest or rights hereunder. Lessee 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 Leases 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 said Lease for the next succeeding Renewal Lease Term as may be reasonably requested by Lessor.

During the term of the Leases, 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.

15. **Security Agreement; Further Assurances.** To secure the performance of all of Lessee's obligations under each Lease, Lessee hereby grants to Lessor, and Lessor shall have and retain, a security interest constituting a first and exclusive lien on (a) the Equipment under such Lease delivered hereunder, on all attachments, repairs, replacements and modifications hereto or therefore and on any proceeds therefrom and (b) moneys and investments held from time to time in the Acquisition Fund for such Lease 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 therefore) 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 Non-appropriation 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 therefore, Lessor is authorized to file financing statements signed only by Lessor, if necessary, in accordance with the applicable Uniform Commercial Code.

16. **Risk of Loss.** All risk of loss, damage, theft or destruction to each item of Equipment shall be borne 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 related to the applicable Lease. 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. If the Lease is not subject to prepayment under Section 8, hereof, then the Prepayment Option Amount for such Lease under this Section 16 shall be 101% of the outstanding principal component for such Lease on the date of prepayment.
17. **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 5 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 5 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.

17.1 Surety Bonds; Lessee to Pursue Remedies against Contractors and Subcontractors and their Sureties. If required by Lessor, Lessee shall secure 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 is to cover completion of the work in accordance with the plans and specifications for the Equipment and 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, where Lessee has secured payment and performance bonds, 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.

18. 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.

19. **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, any Acquisition Fund, the Rental Payments or the use, registration, rental, shipment, transportation, delivery, ownership or operation of the Equipment and on or relating to each Lease, this Agreement or any Acquisition Fund Agreement; *provided, however*, that the foregoing shall not include any federal, state or local income or franchise taxes of Lessor.
20. **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 21 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.
21. **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 26 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 percent per annum or the highest rate permitted by law, whichever is less.
22. **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 22 shall be payable solely from Legally Available Funds and only to the extent authorized by law.

- 23. No Offset; Unconditional Obligation.** Each Lease under this Agreement is "triple net" and Lessee's obligation to pay all Rental Payments and Additional Payments thereunder 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 or any Lease 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 any Lease, or lack of right, power or authority of Lessor to enter into this Agreement or any Lease 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 Non-appropriation) 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, any Lease or any of the items of Equipment except in accordance with the express terms hereof.

24. 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:

- 24.1 Lessee is a state or a political subdivision thereof within the meaning of Section 103(c) of the Code.
- 24.2 Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Agreement and the Acquisition Fund Agreement with respect to such Lease 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 to the Schedule as Exhibit 6 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, the Schedule and the applicable Acquisition Fund Agreement. Attached hereto as Exhibit 7 to the Schedule 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, the Schedule and the applicable Acquisition Fund Agreement on Lessee and certain other related matters.
- 24.3 All requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement, the Lease and the applicable 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, the Lease and the applicable Acquisition Fund Agreement.
- 24.4 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, the Lease or the applicable 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.
- 24.5 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 therefore, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement, the Lease, the applicable 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, the Lease and the applicable 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, the Lease and the applicable 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.

- 24.6 The payment of the Rental Payments or any portion thereof is not (under the terms of this Agreement, the Lease, the applicable 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 with respect to such Lease 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 with respect to the Lease 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 with respect to the Lease.
- 24.7 The entering into and performance of this Agreement, the Lease and the applicable 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, subject to such Lease, 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.
- 24.8 Lessee is acquiring the Equipment, subject to such Lease, for use within its geographical boundaries.
- 24.9 The useful life of the Equipment, subject to such Lease, will not be less than the stated full term of this Agreement and the Schedule, including all contemplated Renewal Lease Terms.
- 24.10 Lessee has entered into this Agreement, the Lease and the applicable Acquisition Fund Agreement for the purpose of purchasing, acquiring and leasing the Equipment, subject to such Lease, 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.

- 24.11 Lessee has made sufficient appropriations or has other Legally Available Funds to pay all Rental Payments due during the Initial Lease Term for such Lease.
- 24.12 Lessee has not previously failed (for whatever reason) to appropriate amounts sufficient to pay its obligations that are subject to annual appropriation.
- 24.13 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. Unqualified opinion of Lessee's auditor is a requirement not for the annual budget but for the annual audited financial statements. 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.

25. Events of Default. With respect to a Lease, each of the following events constitutes an "Event of Default" hereunder:

- 25.1 Lessee fails to pay in full the Rental Payment due on any date upon which such Rental Payment is due;
- 25.2 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;
- 25.3 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;
- 25.4 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,

25.5 Actual or attempted sale, lease or encumbrance of any of the Equipment or the making of any levy, seizure or attachment thereof or thereon.

26. **Repossession and Lessor's Other Rights upon Event of Default or Event of Non-appropriation.** With respect to a Lease, immediately upon the occurrence of an Event of Default or immediately after the expiration of the Initial Lease Term or any Renewal Lease Term during which an Event of Non-appropriation occurs, Lessor may terminate said Lease and Lessee's rights hereunder with respect to such Lease 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 26 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 such a Lease at Lessor's option as provided in this Paragraph 26 shall take effect at the end of the Initial Lease Term or the Renewal Lease Term then in effect, unless Lessor (at its option) elects to terminate said Lease 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 a Lease pursuant to this Paragraph 26 or an Event of Non-appropriation occurs and Lessee continues to use the Equipment after the Initial Lease Term or any Renewal Lease Term during which the Event of Default or Event of Non-appropriation occurs or if Lessee otherwise refuses to pay Rental Payments due during a Renewal Lease 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 Lease 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.

27. **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, any Lease, any Acquisition Fund Agreement (including the Acquisition Fund thereunder) or the Equipment, (b) remove the Equipment from its Equipment Location 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 excludability from gross income for federal income tax purposes or any portion of the interest component of the Rental Payments.
28. **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 a Lease, the Equipment related to said Lease, the Acquisition Fund related to said Lease, the rights under this Agreement related to said Lease and the Acquisition Fund Agreement related to said Lease, 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 13 hereof and to repossess the Equipment and exercise Lessor's other rights and remedies under Paragraph 26 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 28 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 28 shall be effective until Lessee's registration agent shall have received a written notice of assignment (in substantially the form of Exhibit 9 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 therefore, 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.

- 29. 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 26 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, a Lease and any Acquisition Fund Agreement.

30. **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.
31. **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.
32. **Amendments**. This Agreement, each Lease, any applicable Acquisition Fund Agreement and the Exhibits attached hereto and thereto constitute the entire agreement between Lessor and Lessee with respect to the Equipment subject to such Lease 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 the Schedule of any item of Equipment after delivery thereof.
33. **Disclosure of this Agreement or Schedules**. The Lessor acknowledges that, in connection with the Lessee's compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Agreement") entered into by the Lessee pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), the Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("EMMA"), notice of its incurrence of its obligations under this Agreement, any Schedule, any Acquisition Fund Agreement and related documents, and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with this Agreement, any Schedule, any Acquisition Fund Agreement and related documents, in each case including a description of the material terms thereof (each such notice, an "EMMA Notice"). Except to the extent required by applicable law, including the Rule, the Lessee shall not file or submit or permit the filing or submission of any EMMA Notice that includes the following unredacted confidential information about the Lessor in any portion of such EMMA Notice: Lessor's address and account information, and e-mail addresses, addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of Lessor.

The Lessee acknowledges and agrees that the Lessor is not responsible for the Lessee's or any other City-related entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities laws, including but not limited to those relating to the Rule.

34. Construction. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California. 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.

35. Parties; Survival of Certain Obligations and Indemnities.

34.1 The provisions of this Agreement shall be binding upon, and (subject to the limitations of Paragraph 28 hereof) shall inure to the benefit of, the respective assignees and successors of Lessor and Lessee.

34.2 The indemnities, assumptions of liabilities and obligations of Lessee provided for in Paragraphs 11, 13 and 20 of this Agreement shall continue in full force and effect notwithstanding the expiration or termination of the term of this Agreement.

36. 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.

37. Acquisition Fund Agreement.

36.1 In order to provide financing to pay the Purchase Price for the Equipment under a Lease, Lessor and Lessee hereby agree to execute and deliver an Acquisition Fund Agreement, substantially in the form of Exhibit 12 hereto, on the date of execution and delivery of the Schedule for such Lease.

36.2 If an Event of Non-appropriation or an Event of Default occurs prior to Lessee's acceptance of all the Equipment, the amount then on deposit in the Acquisition Fund for such Equipment shall be applied to prepay the unpaid principal component of the Rental Payments for such Equipment 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 36 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.


- 36.3 To the extent that Lessee has not accepted all items of Equipment before the end of the Utilization Period as set forth in the Schedule, or there otherwise remains a balance on deposit in the Acquisition Fund at the end of the Utilization Period for the Schedule, the amount then on deposit in the Acquisition Fund shall be applied first to the next Rental Payment for said Schedule, and second, any balance 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 36 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 the Utilization 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. Lessee may request in writing from Lessor the recomputed Rental Payment Schedule that reflects the change to the Rental Payments as a result of such partial prepayment and Lessor shall provide to Lessee such recomputed Rental Payment Schedule.


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

[Signature page follows.]


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

Lessee: City of Long Beach

APPROVED AS TO FORM
 1-22, 2019
 CHARLES PARKER City Attorney
 By: 
 AMY R. WEBBER
 DEPUTY CITY ATTORNEY

By: 
 Name: Tom Modica
 Title: Assistant City Manager
 Title: EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER

Lessor: Banc of America Public Capital Corp

By: 
 Name: Torri J. Preston
 Title: Authorized Agent

List of Exhibits:

EXHIBIT	DESCRIPTION
1	Proposed rates
2	Form of Schedule of Property with Form of Rental Payment Schedule as <u>Exhibit B</u>
3	Form of Acceptance Certificate
4	Form of IRS Form 8038G
5	Insurance Coverage Requirements
6	Minute Order of Lessees Governing Body
7	Form of Lessee's Opinion of Counsel
8	Form of Incumbency Certificate
9	Form of Notice and Acknowledgement of Sale
9.1	Form of Identification of all Leases Assigned to a Notice and Acknowledgement of Sale
10	Form of Tax Agreement and Arbitrage Certificate
11	Form of Acquisition Fund Agreement with Schedule 1 - Form of Disbursement Request

EXHIBIT 1

PROPOSED RATES

LEASE TERM	PAYMENT MODE	Avg. Life Index Term ¹	Swap Index Term Rate ²	Percent of Swap Index Term Rate ³	ADJUSTED INDEX RATE	SPREAD	Tax Exempt Lease Rate
			A	B	C (A x B)	D	E (C+D-E)
5 YR	Mthly in Arrears	3 YR	2.87%	79.00%	2.27%	0.72%	2.99%
8 YR	Mthly in Arrears	4 YR	2.93%	79.00%	2.31%	0.84%	3.15%
10 YR	Mthly in Arrears	5 YR	2.96%	79.00%	2.34%	0.93%	3.27%
15 YR	Mthly in Arrears	8 YR	2.99%	79.00%	2.36%	1.24%	3.60%

Footnotes:

¹ Average Life Index Term represents the average life of the Lease Term based on monthly payments in arrears. All terms, rates and spreads shall be determined by interpolation.

² Rates are based on then current swap rates which are published each day by Bloomberg ("Swap Index Term Rate"). The rates shown above, as an example, were the rates quoted in the RFP proposal. If Swap Index Term Rates are no longer available through Bloomberg, then Swap Index Term Rates will be obtained through the Intercontinental Exchange ("ICE") website. If Swap Index Term Rates are not available through Bloomberg or ICE, then Lessor shall propose in writing to Lessee a new index, as well as any other relevant modification to the calculation of the Proposed Rates, which proposal shall be subject to the written agreement and acceptance of Lessee.

³ Percent of the Swap Index Rate for the Average Life Index Term.

EXHIBIT 2

FORM OF SCHEDULE OF PROPERTY NO. ____

Re: Master Lease Agreement, dated as of January 17, 2019, between Banc of America Public Capital Corp, 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 Master Lease Agreement (the "Agreement").

2. *Equipment.* The following items of Equipment are hereby included under this Schedule of the Agreement.

Quantity	Description	Serial No.	Model No.	Location

[2. *Equipment.* Attached hereto as Exhibit A are the items of Equipment hereby included under this Schedule of this Agreement.]

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 earlier of the date on which the all of the Equipment listed in this Schedule is accepted by Lessee, as indicated in an Acceptance Certificate substantially in the form of Exhibit 3 to the Agreement or the date in which the Purchase Price, for the purchase of the Equipment, is deposited for that purpose with an Acquisition Fund Custodian, whichever is earlier.

4. *Interest Rate.* The Interest Rate for computing the Rental Payment Schedule for this Schedule is _____% per annum. The Taxable Rate for this Schedule is _____% per annum.

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 Council approval dated _____, (c) the Equipment described in the Agreement referenced above is essential to the functions of the 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 (e) 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 \$_____, all of which is for deposit to the Acquisition Fund.

8. *Lease Term.* The Lease Term shall consist of the Original Term and _____ consecutive Renewal Terms, with the final Renewal Term ending on _____.

9. *Fiscal Period.* Lessee's current Fiscal Period extends from _____ to _____.

[10. *Utilization Period.* Since the Equipment will not be accepted in whole on the dated date of this Schedule, an Acquisition Fund Agreement shall be used. The Utilization Schedule for this Schedule shall be the period from the date of the Schedule to the date [] months following the date of this Schedule.]

[Add any Project Addendum, necessary amendments, designation of Affiliate as Lessor, etc.]

[Signature page follows]

Dated: _____

LESSOR:

Banc of America Public Capital Corp
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

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

(Seal)

Attest:

By: _____

Name: _____

Title: _____

Duplicate Original No. _____ of _____ 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.

Exhibit B to Schedule of Property No. ____

Rental Payment Schedule

PURCHASE PRICE: \$ _____
INTEREST RATE: _____ %
AVERAGE LIFE: _____ YEARS

Rental Payment Number	Rental Payment Date	Rental Payment Amount	Interest Portion _____ %	Principal Portion	Outstanding Balance
1					
2					
3					
4					
5					
6					
Total		\$ _____	\$ _____	\$ _____	

LESSEE: City of Long Beach

By: _____

Name: _____

Title: _____

EXHIBIT 3

FORM OF ACCEPTANCE CERTIFICATE

Re: Schedule of Property No. __, dated _____, 20__ (the "Equipment Schedule"), pursuant to Master Lease Agreement, dated as of January 17, 2019, between Banc of America Public Capital Corp, as Lessor, and City of Long Beach, as Lessee.

I, the undersigned, hereby certify that I am the duly qualified and acting representative of Lessee identified below and, with respect to the above referenced Equipment Schedule and Lease, that:

1. The Equipment under the Equipment Schedule has been delivered and installed in accordance with Lessee's specifications, is in good working order and is fully operational and has been fully accepted by Lessee on or before the date indicated below.

2. Attached are (a) evidence of insurance with respect to the Equipment; (b) Vendor invoice(s) and/or bill(s) of sale relating to the Equipment, and if such invoices have been paid by Lessee, evidence of payment thereof (evidence of official intent to reimburse such payment as required by the Code having been delivered separately by Lessee); and (c) financing statements executed by Lessee as debtor and/or the original certificate of title or manufacturer's certificate of origin and title application, if any, for any Equipment which is subject of certificate of title laws.

3. Rental Payments shall be due and payable by Lessee on the dates and in the amounts indicated on the Payment Schedule attached to the Equipment Schedule. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current Fiscal Year of Lessee. Lessee intends to make Rental Payments for the full Lease Term if funds are appropriated for the Rental Payments in subsequent Fiscal Years.

4. Lessee hereby authorizes and directs Lessor to fund the Acquisition cost of the Equipment by paying, or directing the payment by the Acquisition Fund Custodian (if applicable) of, the invoice prices to the Vendor(s), in each case as set forth above, or by reimbursing Lessee in the event such invoice prices have been previously paid by Lessee.

____ 5. Final Acceptance Certificate. This Acceptance Certificate constitutes final acceptance of all of the Equipment identified in the Equipment Schedule described above. Lessee certifies that upon payment in accordance with paragraph 4 above, or direction to the Acquisition Fund Custodian (if applicable) to make payment, Lessor shall have fully and satisfactorily performed all of its covenants and obligations under the Lease. [CHECK BOX IF APPLICABLE]

Capitalized terms not otherwise defined herein shall have the meaning set forth in the Equipment Schedule and Master Lease Agreement.

CITY OF LONG BEACH,
Lessee

Name: David Nakamoto

Title: City Treasurer

Date: _____

EXHIBIT 4

8038G - INFORMATION RETURN FROM TAX-EXEMPT GOVERNMENT OLBIGATIONS

(LESSEE TO COMPLETE AND FILE)

EXHIBIT 5

INSURANCE COVERAGE REQUIREMENTS

To Lessor: Banc of America Public Capital Corp
555 California Street, 4th Floor
CA5-705-04-01
San Francisco, CA 94104

From Lessee: City of Long Beach
333 W. Ocean Boulevard, 6th Floor
Long, Beach, CA 90802-4664

In accordance with Paragraph 16 of the Master Lease Agreement dated as of January 17, 2019 (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 \$1,000,000 per occurrence and \$1,000,000 general aggregate. Said insurance shall be primary insurance with respect to Lessor.

Special perils property coverage in an amount sufficient to cover the full replacement value of Lessee's property and equipment as delineated as the Prepayment Option Amount, which is 101% of the Outstanding Balance, during any period the Lease may not be optionally prepaid, as computed in Section 16 of the Agreement, otherwise, the Outstanding Balance in Exhibit B to the Schedule of Property No. __, 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.

LESSEE: City of Long Beach

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 6

MINUTE ORDER OR OTHER OFFICIAL ACTION OF LESSEE'S GOVERNING BODY
(Approval of a transaction)

EXHIBIT 7

FORM OF OPINION OF LESSEE'S COUNSEL

[LETTERHEAD OF LESSEE'S COUNSEL]

[DATE OF LEASE]

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

Re: Master Lease Agreement dated as of January 17, 2019 (the "Agreement") by and between BANC OF AMERICA PUBLIC CAPITAL CORP ("Lessor") and CITY OF LONG BEACH, CALIFORNIA ("Lessee")

Ladies and Gentlemen:

We have acted as counsel to Lessee with respect to the Agreement described above and various related matters, and in this capacity have reviewed a duplicate original or certified copy thereof and Schedule of Equipment No. ___ executed pursuant thereto (together with the Agreement, the "Lease"). The terms capitalized in this opinion but not defined herein shall have the meanings assigned to them in the Lease. Based upon the examination of these and such other documents as we have deemed relevant, it is our opinion that:

1. Lessee is a municipal corporation and political subdivision of the State of California (the "State") within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended, and is duly organized, existing and operating under the Constitution and laws of the State.
2. Lessee is authorized and has the power under applicable law to enter into the Lease, and to carry out its obligations thereunder and the transactions contemplated thereby.
3. The Lease has been duly authorized, executed and delivered by and on behalf of Lessee, and is a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.
4. The authorization and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public records, public bidding and other laws, rules and regulations of the State.
5. The execution of the Lease and the appropriation of moneys to pay the Rental Payments coming due thereunder do not and will not result in the violation of any

constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

6. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body that challenges the organization or existence of Lessee, the authority of Lessee or its officers or its employees to enter into the Lease, the proper authorization and/or execution of the Lease or the documents contemplated thereby, the appropriation of moneys to make Rental Payments under the Lease for the current Fiscal Year of Lessee, or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby. To the best of our knowledge, no such litigation, action, suit or proceeding is threatened.
7. The Equipment is personal property, and when used by Lessee will not be or become fixtures under the laws of the State.
8. Resolution and/or Minute Order No. _____ of the governing body of Lessee was duly and validly adopted by such governing body on _____, _____, and such resolution has not been amended, modified, supplemented or repealed and remains in full force and effect.

[Tax opinion if the total principal component of the Schedule is \$5 million or more.]

[Add any Project Addendum and/or address an Affiliate as Lessee, if applicable.]

This opinion may be relied upon by the addressee hereof and its successors and assignees of interests in the Lease, but only with regard to matters specifically set forth herein. This opinion may not be relied upon by any third party that is not a successor or assignee of the addressee.

Very truly yours,

(type name and title under signature)

EXHIBIT 8

FORM OF 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:

The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Master Lease Agreement dated as of January 17, 2019, and the Schedules(s) thereunder and all future Schedule(s) (the "Agreement") by and between Lessee and Banc of America Public Capital Corp and these Agreements are binding and authorized Agreements of Lessee, enforceable in all respects in accordance with their terms.

NAME	TITLE	SIGNATURE
John Gross	Director of Financial Management	
David Nakamoto	City Treasurer	
Stephen Hannah	City Controller	
Fidel Aguayo	Assistant City Treasurer/Debt Manager	
Cassandra Tan	Assistant City Treasurer/Investment Manager	
Patrick H. West	City Manager	
Tom Modica	Assistant City Manager	

[Revise, if an Affiliate will be Lessee or if a Project Addendum will be used.]

Dated _____

BY _____

Name: _____

Title: City Clerk

The signer of this certificate cannot be listed above as an authorized signer.

EXHIBIT 9

FORM OF NOTICE OF ASSIGNMENT

Date: _____

City of Long Beach, CA
City Treasurer
333 West Ocean Blvd, 6th Floor
Long Beach, CA 90802

Re: Assignment of Lease(s) (as defined on Exhibit 9.1 hereto) to the Master Lease Agreement, dated as of January 17, 2019, as the same may be amended (the "Agreement") (the "Leases" and the Agreement to the extent it relates to the Leases are collectively, the "Contracts"), between the CITY OF LONG BEACH, CA ("Borrower") and BANC OF AMERICA PUBLIC CAPITAL CORP ("Assignor").

You are hereby notified of Assignor's sale, assignment and transfer to _____ ("Assignee") on _____ (the "Effective Date") of all of its right, title, interest and obligations in, to and under the Contracts referenced on the attached Exhibit 9.1, and the related certificates, instruments and agreements executed in connection therewith (collectively, the "Related Documents"). The term "Leases" specifically excludes all other agreements entered into under the Agreement and rental payments other than with respect to the Leases identified on Exhibit 9.1.

This notice does not change any of the terms, covenants or conditions of the Contracts or the payment schedule thereunder.

From and after the Effective Date, Borrower shall deliver all payments and copies of all notices and other communications given or made by the Borrower with respect to the Contracts and Related Documents to _____ on behalf of Assignee as instructed by either Assignee or by _____, acting as paying agent on behalf of Assignee.

For Payments, Notices and Correspondence:

<u>By Wire Transfer:</u>	<u>By Mail:</u>

Please contact Assignee at the phone number above with any questions regarding the foregoing.

BANC OF AMERICA PUBLIC CAPITAL CORP
Assignor

By:
Name: _____

EXHIBIT 9.1

CITY OF LONG BEACH
Master Lease Agreement Dated as of January 17, 2019

Leases Assigned

CUSTOMER NUMBER	SCHEDULE OF LEASE NUMBER	DESCRIPTION	LESSOR CONTRACT NO.

EXHIBIT 10

FORM OF TAX AGREEMENT AND ARBITRAGE CERTIFICATE

This **TAX AGREEMENT AND ARBITRAGE CERTIFICATE** (this "Certificate") is issued by **CITY OF LONG BEACH, CALIFORNIA** ("Lessee") in favor of **BANC OF AMERICA PUBLIC CAPITAL CORP** ("Lessor") in connection with that certain Master Lease Agreement dated as of, January 17, 2019 (the "Agreement"), by and between Lessor and Lessee. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

Section 1. In General

- 1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the "Equipment") to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Schedule of Equipment No. ____ (the "Equipment Schedule") executed under the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply \$_____ (the "Principal Amount") toward the acquisition of the Equipment and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.
- 1.2. The individual executing this Certificate on behalf of Lessee is delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.
- 1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule. The Principal Amount will be deposited in escrow by Lessor on the date of issuance of the Financing Documents and held by MUFG Union Bank, N.A., as acquisition fund custodian (the "Acquisition Fund Custodian") pending acquisition of the Equipment under the terms of that certain Acquisition Fund Agreement, dated as of _____, 20__, (the "Acquisition Fund Agreement"), by and between Lessor, Lessee and Acquisition Fund Custodian.
- 1.4. Lessee will timely file for each payment schedule issued under the Lease a Form 8038-G (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC) relating to such Lease with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code").

Section 2. Non-Arbitrage Certifications

- 2.1. The Rental Payments due under the Financing Documents will be made with legally available and lawfully appropriated monies. No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefore.
- 2.2. There have been and will be issued no obligations by or on behalf of Lessee that would have a material adverse effect on Lessee's ability to enter into a tax-exempt lease purchase or other financing, including any that would be deemed to be (i) issued or sold within fifteen (15) days before or after the date of issuance of the Financing Documents; (ii) issued or sold pursuant to a common plan of financing with the Financing Documents; and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.
- 2.3. Other than the Principal Amount held under the Acquisition Fund Agreement, Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.
- 2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.
- 2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.
- 2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

Section 3. Disbursement of Funds; Reimbursement to Lessee

- 3.1. It is contemplated that the entire Principal Amount deposited in escrow will be used to pay the acquisition cost of Equipment to the Vendors or manufacturers thereof, provided that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2 below are satisfied.
- 3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following conditions have been satisfied:
 - (a) Lessee adopted a resolution and/or minute order or otherwise declared its official intent in accordance with Treasury Regulation § 1.150-2 (the "Declaration of Official Intent"), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to the Vendor not earlier than sixty (60) days before Lessee adopted the Declaration of Official Intent;
 - (b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18)

months after the items of Equipment to which such payment relates were placed in service;

- (c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and,
- (d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

Section 4. Use and Investment of Funds; Temporary Period

- 4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee's control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.
- 4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate. No portion of the Principal Amount will be used to acquire investments that do not carry out the governmental purpose of the Financing Documents and that have a substantially guaranteed yield of five (5) years or more.
- 4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited under the Acquisition Fund Agreement to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by _____.
- (b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless (i) the entire Principal Amount is expended on the Equipment by the date that is the six-month anniversary of the Financing Documents or (ii) the Principal Amount is expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within six (6) months from the date of issuance of the Financing Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within twelve (12) months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents.
- (c) Lessee hereby covenants that (i) Lessee is a governmental unit with general tax powers; (ii) the Lease is not a "private activity bond" under Section 141 of the Code; and

(iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee.

Section 5. Acquisition Fund

The Financing Documents provide that the monies deposited in escrow shall be invested until payments to the Vendor(s) or manufacturer(s) of the Equipment are due. Lessee will ensure that such investment will not result in Lessee's obligations under the Financing Documents being treated as an "arbitrage bond" within the meaning of Section 148(a) of the Code. Any monies which are earned from the investment of these funds shall be labeled as interest earned. All such monies will be disbursed on or promptly after the date that Lessee accepts the Equipment.

Section 6. No Private Use; No Consumer Loan

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than ten percent (10%) of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the "Excess Private Use Portion") will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 6.1, "Private Business Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

6.2. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

Section 7. No Federal Guarantee

7.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

7.2. No portion of the Principal Amount or interest earned thereon shall be (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would

cause the financing under the Financing Documents to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 8. Miscellaneous

- 8.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code unless Lessor or its assignee agrees to act as Lessee's agent for such purpose.
- 8.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of five (5) years after payment in full under the Financing Documents.
- 8.3. To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

IN WITNESS WHEREOF, this Tax Agreement and Arbitrage Certificate has been executed on behalf of Lessee as of [_____, 20__].

CITY OF LONG BEACH, CALIFORNIA,
Lessee

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 11

FORM OF ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement (this "Agreement"), dated as of ____20__, by and among Banc of America Public Capital Corp, a Kansas corporation (hereinafter referred to as "Lessor"), City of Long Beach, a political subdivision of the state of California (hereinafter referred to as "Lessee") and MUFG Union Bank, N.A., a national banking association (hereinafter referred to as "Acquisition Fund Custodian").

Reference is made to Schedule of Property No. __, dated as of ____201__, by and between Lessor and Lessee incorporating the terms of that certain Master Lease Agreement dated as of January 17, 2019, as amended, between Banc of America Public Capital Corp and Lessee (hereinafter referred to as the "Lease"), covering the acquisition and lease of certain Equipment therein (the "Equipment"). It is a requirement of the Lease that the Purchase Price of the Equipment (an amount not to exceed \$_____) is to be deposited into a special custody 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 – Acquisition Fund Account Number Schedule No. []" (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 or willful misconduct 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 at the end of the Utilization Period set forth in the Lease, which is _____, 20__, 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 or willful misconduct 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 or willful misconduct.

(i) Lessee shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for 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) Lessee 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.

(l) The Acquisition Fund Custodian shall furnish the Lessor and Lessee periodic cash transaction statements which include detail for all investment transactions effected by the Acquisition Fund Custodian or brokers selected by the Lessor and Lessee. Upon the Lessor or Lessee's election, such statements will be delivered via the Acquisition Fund Custodian's online service and upon electing such service, paper statements will be provided only upon request. The Lessor and Lessee each waives the right to receive brokerage confirmations of security transactions effected by the Acquisition Fund Custodian as they occur, to the extent permitted by law. The Lessor and Lessee further understand that trade confirmations for securities transactions effected by the Acquisition Fund Custodian will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

(m) All non-public information and advice furnished by any party to Acquisition Fund Custodian shall be treated as confidential and will not be disclosed to third parties unless required by law, except that Acquisition Fund Custodian may

disclose (a) the identity of Lessor and/or Lessee as a client or client reference of Acquisition Fund Custodian; (b) any information required to be disclosed to any government regulator of Acquisition Fund Custodian or its affiliates; and (c) any information to Acquisition Fund Custodian's affiliated entities and product and service providers to the extent necessary to provide the financial products and services under the Agreement.

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 10 of the Lease;

3. The disbursement shall occur during the Utilization Period;

4. There shall exist no Event of Default or Event of Non-appropriation (nor any event which, with notice or lapse of time or both, would become an Event of Default or Event of Non-appropriation); 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 5 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 Utilization 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 36.3 of the Lease as directed in writing by Lessor.

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 or by email, addressed to each party at its address below:

If to Lessor: Banc of America Public Capital Corp
555 California Street
CA5-705-04-01
San Francisco, CA 94104
Attn: Contracts Administration
Tel: (415) 765-1897
Fax: (415) 343-0531

If to Lessee: City of Long Beach
333 W. Ocean Boulevard, 6th Floor
Long Beach, CA 90802-4664
Attn: David Nakamoto
Tel No. (562) 570-6845
Fax No. 562-570-5836

If to Acquisition Fund Custodian: MUFG Union Bank, N.A.
Corporate Trust Department
445 S. Figueroa Street, Suite 401

Los Angeles, CA 90071
Fax: (213) 972-5694
Email: CashControlGroup-LosAngeles@unionbank.com

[Intentionally Left Blank]

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

Banc of America Public Capital Corp,
as Lessor

City of Long Beach,
as Lessee

By: _____
Name: _____
Title: Authorized Agent

By: _____
Name: _____
Title: _____

MUFG Union Bank, N.A.
as Acquisition Fund Custodian

By: _____
Name: _____
Title: Vice President

Schedule 1 to Acquisition Fund Agreement

Form of Disbursement Request No. _____

Re: Schedule of Property No. ___ dated as of _____, 20___, by and between Banc of America Public Capital Corp, as Lessor and City of Long Beach, as Lessee, incorporating the terms of that certain Master Lease Agreement dated as of January 17, 2019, by and between Lessor and Lessee (the "Lease")

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of _____, 20___ (the "Acquisition Fund and Account Control Agreement") by and among Banc of America Public Capital Corp ("Lessor"), City of Long Beach ("Lessee") and MUFG Union Bank, 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. Payments shall be made by check or wire transfer in accordance with the payment instructions set forth herein and the Acquisition Fund Custodian shall rely on such payment instructions with no duty to investigate or inquire as to the authenticity of the payment instructions or the authority under which they were given.

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. Each item of Equipment relating to this requisition has been delivered, installed and accepted.

(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 or Event of Non-appropriation, and no event which with notice or lapse of time, or both, would become an Event of Default or Event of Non-appropriation, 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.

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

[(viii) If Lessee is to be reimbursed for expenditures that it has paid more than sixty (60) days prior to the _____, 20__, check here . Lessee has provided Lessor evidence of the adoption of a reimbursement resolution or other official action covering the reimbursement from tax exempt proceeds of expenditures incurred not more than sixty (60) days prior to the date of such resolution or other official action.]

Check, if this is the final Disbursement Request, and attach the executed Acceptance Certificate in the form of Exhibit 3 to the Master Lease Agreement.

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

Banc of America Public Capital Corp

As Lessor under the Lease

**Acquisition Fund and Account Control Agreement dated as of _____, 20__ by
and among Banc of America Public Capital Corp (“Lessor”), the City of Long
Beach (“Lessee”) and MUFG Union Bank, N.A. (the “Acquisition Fund
Custodian”)**

Certificate of Authorized Representatives – Lessor

Name: Jennifer Schlosser

Title: Authorized Agent

Phone: 443-541-3685

Facsimile: 804-662-1781

E-mail: Jennifer.schlosser@baml.com

Signature: _____

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others
others

Name: Terri Preston

Title: Authorized Agent

Phone: 443-541-3642

Facsimile: 804-553-8124

E-mail: terri.preston@baml.com

Signature: _____

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others
others

Name: Augustine Reichenbach

Title: Authorized Agent

Phone: 443-541-2613

Facsimile: 904-312-6101

E-mail: Augustine.reichenbach@baml.com

Signature: _____

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by
others

Name: _____

Title: _____

Phone: _____

Facsimile: _____

E-mail: _____

Signature: _____

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by
others

The Acquisition Fund Custodian is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the person or persons identified above including without limitation, to initiate and verify funds transfers as indicated.

Banc of America Public Capital Corp

By: _____

Name: Nancy Nusenko

Title: Authorized Agent

Date: _____