

**EQUIPMENT LEASE/PURCHASE AGREEMENT  
(ESCROW ACCOUNT)**

This Equipment Lease/Purchase Agreement (Escrow Account) (this “*Agreement*”) dated as of July \_\_, 2018, and entered into by and between Banc of America Public Capital Corp, a Kansas corporation (“*Lessor*”), and County of San Benito, California, a county existing under the laws of the State of California (“*Lessee*”).

**WITNESSETH:**

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

WHEREAS, Lessee is authorized under the constitution and laws of the State (as such term is defined herein) to enter into this Agreement for the purposes set forth herein;

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

**ARTICLE I**

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

“*Acquisition Amount*” means \$\_\_\_\_\_. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose of acquiring and installing the Equipment.

“*Acquisition Period*” means the period ending five (5) business days prior to \_\_\_\_\_.

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

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

“*Commencement Date*” means the date when Lessee’s obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Escrow Agent.

“*Contract Rate*” means the rate identified as such in the Payment Schedule.

*“Disbursement Request”* means the disbursement request attached to the Escrow Agreement as Schedule 1 and made a part thereof.

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

*“Equipment Costs”* means the total cost of the Equipment, including related soft costs such as freight, installation and taxes and other capitalizable costs, and other costs incurred in connection with the acquisition, installation and/or financing of the Equipment.

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

*“Escrow Account”* means the account of such name established and held by the Escrow Agent pursuant to the Escrow Agreement.

*“Escrow Agent”* means the Escrow Agent identified in the Escrow Agreement, and its successors and assigns.

*“Escrow Agreement”* means the Escrow and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which the Escrow Account is established and administered.

*“Event of Default”* means an Event of Default described in Section 12.01.

*“Event of Non-appropriation”* means the failure of Lessee’s governing body to appropriate or otherwise make available funds to pay Rental Payments under this Agreement following the Original Term or then current Renewal Term sufficient for the continued performance of this Agreement by Lessee.

*“Lease Term”* means the Scheduled Term upon its expiration or as terminated as provided in Section 3.03 hereof.

*“Lessee”* means the entity referred to as Lessee in the first paragraph of this Agreement.

*“Lessor”* means (a) the entity referred to as Lessor in the first paragraph of this Agreement and its successors or (b) any assignee or transferee of any right, title or interest of Lessor in and to this Agreement pursuant to Section 11.01 hereof, including the right, title and interest of Lessor in and to the Equipment, the Rental Payments and other amounts due hereunder and the Escrow Account and other Collateral, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

*“Lien”* means any lien (statutory or otherwise), security interest, mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, preference, priority or other security or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

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

*“Original Term”* means the period from the Commencement Date until June 30, 2019, which is the end of the fiscal year of Lessee in effect at such Commencement Date.

*“Outstanding Balance”* means the amount that is shown for each Rental Payment Date under the column titled “Outstanding Balance” on the Payment Schedule.

*“Payment Schedule”* means the payment schedule attached hereto as *Exhibit B* and made a part hereof.

*“Permitted Encumbrances”* means, as of any time, with respect to the real estate in, on or to which any Equipment is acquired and installed: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent; (b) this Agreement and Lessor’s security interest in Collateral; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law, provided that payment thereof is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings; (d) any easements, rights of way, mineral rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which will not (i) materially impair the use of such real estate for its intended purposes or (ii) impair the value, operation, maintenance or use of the Equipment; and (e) any other lien, security interest, mortgage, deed of trust, pledge, hypothecation, assignment or other security or preferential arrangement of any kind or nature whatsoever of which the prior written consent of Lessor has been obtained.

*“Prepayment Price”* means the amount that is shown for each Rental Payment Date under the column titled “Prepayment Price” on the Payment Schedule.

*“Principal Component”* means the aggregate principal amount of the Rental Payments equal to \$\_\_\_\_\_ on the Commencement Date.

*“Renewal Terms”* means the consecutive renewal terms of this Agreement, the first of which commences on July 1, 2019 immediately after the end of the Original Term and each having a duration and a term coextensive with each successive fiscal year of Lessee; *provided* that the final such Renewal Term shall commence on the first day of the last such fiscal year and end on the first business day after the last scheduled Rental Payment Date.

*"Rental Payment Date"* means each date on which Lessee is required to make a Rental Payment under this Agreement as specified in the Payment Schedule.

*"Rental Payments"* means the basic rental payments payable by Lessee on the Rental Payment Dates and in the amounts as specified in the Payment Schedule, consisting of a principal component and an interest component, and in all cases sufficient to repay the Principal Component and interest thereon at the applicable Contract Rate (or Taxable Rate if then in effect).

*"Scheduled Term"* means the Original Term and all Renewal Terms, with a final Renewal Term ending on \_\_\_\_\_, 20\_\_\_\_, as set forth in Exhibit B attached hereto.

*"Special Counsel"* means Jones Hall, a professional law corporation, San Francisco, of California.

*"State"* means the State of California.

*"Taxable Rate"* means, for each day that the interest component of Rental Payments is taxable for Federal income tax purposes, an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any Rental Payment Date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

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

*"Vendor Agreement"* means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment, including, without limitation, the \_\_\_\_\_ dated \_\_\_\_\_ between [ENGIE Services U.S.] (*"ENGIE"*) and the Lessee (as amended from time to time, including as amended by [the Memorandum of Understanding], collectively, the *"ENGIE Contract"*).

*"Waiver of Interests"* means that certain Waiver of Interests dated as of July \_\_, 2018 pursuant to which the San Benito County Community Services Development Corporation waives for the benefit of the Lessee and the Lessor all interest in, right or claim to and lien on the Collateral and agrees to abide by certain covenants during the term of this Agreement, all in relation to the real estate described therein.

## ARTICLE II

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

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

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

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof. No Event of Non-appropriation has occurred or is threatened with respect to this Agreement.

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

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

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

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within two hundred seventy (270) days after the end of its fiscal year (and Lessee's obligation to so deliver such annual audited financial statements to Lessor may be met by filing the same on EMMA), (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or for the following

fiscal year when approved but not later than thirty (30) days prior to the end of its current fiscal year. The financial statements described in this subsection (g)(i) shall be accompanied by an unqualified opinion of Lessee's independent auditor unless such requirement that said opinion be unqualified is otherwise waived in writing by the Lessor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

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

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

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

(k) Except for the real property described in the Waiver of Interests, Lessee is the fee owner of the real estate where the Equipment is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate other than Permitted Encumbrances. In the event any lien, encumbrance, restriction, asserted encumbrance, claim, dispute or other issue exists or arises with respect to the Lessee's legal title to or valid and marketable, beneficial use and enjoyment of the Real Property or impairs or adversely impacts Lessor's right, title or interest in the Equipment or any of Lessor's rights or remedies under this Agreement with respect to the Equipment (each of the foregoing referred to as a "*Real Property Issue*"), Lessee will take all steps necessary to promptly quiet, resolve and/or eliminate such Real Property Issue to the satisfaction of Lessor and ensure that Lessee and Lessor have adequate access

to and use of (including beneficial use and enjoyment of) the Real Property for all purposes of the Equipment contemplated herein and Lessee shall ensure that its fee interest in the Real Property and Lessor's right, title or interest in the Equipment and rights or remedies under this Agreement with respect to the Equipment remain free and clear of Real Property Issues.

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

(m) Lessee represents to Lessor that that it has adopted a debt policy in compliance with SB 1029 and Section 8855 of the Government Code of California *et seq.* and covenants that it shall comply with Section 8855 of the Government Code of California *et seq.* throughout the Lease Term.

(n) As of the date of execution and delivery of this Agreement, Lessee has not granted any Lien on the Collateral that would be senior in priority to, or *pari passu* with, the first priority Lien on the Collateral granted to Lessor under Section 6.02 of this Agreement.

(o) The street addresses and legal descriptions affixed to the UCC-1 financing statements and fixture filings filed and recorded pursuant to Section 3.04(vi), Section 6.01 and/or Section 6.02 hereof are true, accurate and complete street addresses and legal descriptions of all the properties on which the Equipment is located or to be installed. In the event any street address, legal description, other information, UCC-1 financing statement or fixture filing (or continuations or amendments thereof) filed or recorded with respect to the Lessor's interests in the Equipment or any of the real property on which the Equipment is located or to be installed reflects any incorrect or incomplete real property legal description, equipment description or other information, Lessee shall take all steps necessary (with the Lessor's prior written approval) to promptly correct any errors or deficiencies with respect to such legal descriptions, street address, other information, UCC-1 financing statements and/or fixture filings and to protect Lessor's interests in the Equipment.

(p) Lessee shall deliver to the Lessor such information as the Lessor shall request regarding the ENGIE Contract, including any information provided by ENGIE to the Lessee thereunder. Lessee shall comply with the terms of the ENGIE Contract [and the Memorandum of Understanding] and shall not, without the prior written consent of the Lessor, terminate M&V Services under the ENGIE Contract or fail to timely pay the Annual M&V Fee required under the ENGIE Contract.

(q) Lessee reasonably expects that (i) the total [EC Savings] (as defined in the ENGIE Contract) realized from the acquisition, installation and implementation of the

["Work"] as defined in the ENGIE Contract will be greater in each [Measurement Period] (as defined in the ENGIE Contract) than the aggregate of Rental Payments due under this Agreement for such [Measurement Period] and (ii) the net [Guarantee Payments] (as defined in the ENGIE Contract) relating to ["Work"] as defined in the ENGIE Contract for each [Measurement Period] will at least equal the amounts set forth in [Attachment \_\_\_\_] to the ENGIE Contract for such [Measurement Period].

(r) All financial statements and other information delivered to Lessor by the Lessee is correct as of the date thereof. Since June 30, 2017, no material adverse change has occurred in the Lessee's financial condition that would adversely affect the Lessee's ability to perform its obligations hereunder.

(s) Lessee will pay all Equipment Costs in excess of the Acquisition Amount available therefor out of its own funds. Lessor shall not have any responsibility to pay amounts for any Equipment Costs with respect to this Agreement or the Equipment that individually or collectively exceed the Acquisition Amount.

(t) Lessee has complied with California Government Code Section 4217.10 *et seq.* and other applicable law pertaining to the authorization of this Agreement and the financing and acquisition by the Lessee of the Equipment.

(u) To the extent applicable, as determined by Lessee in its sole discretion, Lessee has complied with the requirements of California Government Code Section 5852.1 *et seq.* in connection with this Agreement and the Equipment.

### ARTICLE III

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

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03 hereof, to continue the Lease Term through the Original Term and all Renewal Terms and to pay the Rental Payments due hereunder. Lessee affirms that sufficient funds are legally available to pay all Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Scheduled Term can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully

within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted in accordance with applicable provisions of law. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds or to extend the Lease Term for any Renewal Term is within the sole discretion of the governing body of Lessee, and the failure to appropriate is not an “Event of Default”.

*Section 3.03. Nonappropriation.* Lessee is obligated only to pay such Rental Payments as may lawfully be made during Lessee’s then current fiscal year from funds budgeted and appropriated for that purpose. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the Lease Term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section 3.03, Lessee agrees to cease use of the Equipment and peaceably remove and deliver to Lessor at Lessee’s sole expense (from legally available funds) the Equipment at the location(s) to be specified by Lessor; *provided*, that Lessee shall pay month-to-month rent at the Contract Rate for each month or part thereof that Lessee fails to return the Equipment hereunder pursuant to this Section 3.03.

*Section 3.04. Conditions to Lessor’s Performance.* (a) As a prerequisite to the performance by Lessor of any of its obligations under this Agreement, Lessee shall deliver to Lessor, in form and substance satisfactory to Lessor, the following:

(i) An Escrow Agreement substantially in the form attached hereto as *Exhibit I*, satisfactory to Lessor and executed by Lessee and the Escrow Agent;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee’s governing body, substantially in the form attached hereto as *Exhibit C-1*, authorizing the execution and delivery of this Agreement and the Escrow Agreement and performance by Lessee of its obligations under this Agreement and the Escrow Agreement;

(iii) A Certificate completed and executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as *Exhibit C-2*, completed to the satisfaction of Lessor;

(iv) Opinions of Special Counsel and general counsel to Lessee which in the aggregate opine on the matters set forth in the form attached hereto as *Exhibit D* and which are otherwise satisfactory to Lessor;

(v) Evidence of insurance as required by Section 7.02 hereof, or, at Lessor’s sole discretion, such insurance may be provided after the Commencement Date, *provided, however*, that no “Disbursement Request” pursuant to the Escrow Agreement shall be

authorized by Lessor until such insurance in form and substance satisfactory to the Lessor has been delivered to Lessor;

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

(vii) A waiver or waivers of interest in the Equipment, satisfactory to Lessor, from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located and amendments and agreements releasing liens and encumbrances on the real property where the Equipment is and will be located;

(viii) A copy of the Form 8038-G, fully completed by Special Tax Counsel as paid preparer and executed by Lessee;

(ix) In the event that Lessee is to be reimbursed for expenditures that it has paid more than sixty (60) days prior to the Commencement Date, 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;

(x) Copies of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to Equipment has passed to Lessee), to the extent required by Section 5.01(b) hereof;

(xi) Wire instructions for payments to be made to Vendors and Form W-9 from each such Vendor;

(xii) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, *provided, however*, that no "Disbursement Request" pursuant to the Escrow Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 have been delivered to Lessor;

**[(xiii) A Memorandum of Understanding (the "*Memorandum of Understanding*") amongst Lessee, ENGIE and Lessor in form and substance satisfactory to Lessor and its counsel;]**

(xiv) An executed and recordable copy of the Waiver of Interests; and

(xv) Such other items reasonably required by Lessor.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lessor of any of its obligations under this Agreement and the Escrow Agreement shall be subject to: (i) no Material Adverse Change having occurred since the

date of this Agreement, (ii) no Event of Default having occurred and then be continuing and (iii) no Event of Non-appropriation having occurred or being threatened with respect to this Agreement.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Escrow Agent for deposit into the Escrow Account and disbursement as provided in the Escrow Agreement.

## ARTICLE IV

*Section 4.01. Rental Payments.* Subject to Section 3.03 of this Agreement, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the Rental Payment Dates and in such amounts as provided in the Payment Schedule. If any Rental Payment or other amount payable hereunder is not paid within ten (10) days of its due date, Lessee shall pay an administrative late charge of five percent (5%) of the amount not timely paid or the maximum amount permitted by law, whichever is less. Rental Payments consist of principal and interest components as more fully detailed on the Payment Schedule, the interest on which begins to accrue as of the Commencement Date.

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

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

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

*Section 4.05. Tax Covenants.* 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 a 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. In connection with the foregoing, Lessee hereby agrees that (a) so long as any Rental Payments remain unpaid, moneys on deposit in the Escrow Account shall not be used in a manner that will cause this Agreement to be classified as an “arbitrage bond” within the meaning of Section 148(a) of the Code; and (b) Lessee shall rebate, from funds legally available for the purpose, an amount equal to excess earnings on the Escrow Account to the Federal Government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code. Lessee shall not permit the Federal government to guarantee any Rental Payments under this Agreement.

*Section 4.06. Event of Taxability.* Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for Federal income tax purposes (which retroactive date shall be the earliest date as of which the interest component of any Rental Payment is deemed includible in the gross income of the owner or owners thereof for Federal income tax purposes, which may be earlier than the date of delivery of such determination by the Internal Revenue Service), and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

For purposes of this Section, “*Event of Taxability*” means the circumstance of the interest component of any Rental Payment paid or payable pursuant to this Agreement becoming includible for Federal income tax purposes in an owner’s gross income as a consequence of any act, omission or event whatsoever, including but not limited to the matters described in the immediately succeeding sentence, and regardless of whether the same was within or beyond the control of Lessee. An Event of Taxability shall be presumed to have occurred upon (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment is includable in the gross income of the owner thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment is includable in the gross income of the owner thereof; or (c) receipt by Lessor or Lessee of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions to the effect that the interest component of any Rental Payment has become includable in the gross income of the owner thereof for Federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest component of any Rental Payment is deemed includable in the gross income of the owner thereof for Federal income tax purposes.

*Section 4.07. Payment of Equipment Costs from Escrow Account; Mandatory Prepayment from Unspent Escrow Account Moneys.* (a) Amounts on deposit in the Escrow Account may be expended for the payment of Equipment Costs in accordance with the Escrow Agreement to and including the earliest of (a) the expiration of the Acquisition Period, (b) the date on which Lessee

delivers to the Lessor the executed Final Acceptance Certificate or the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from the Escrow Account or (c) a termination of the Escrow Account as provided in the Escrow Agreement. All amounts remaining on deposit in the Escrow Account as of the earliest of such dates ("*Excess Proceeds*"), shall be applied by Lessor as prepayment of the unpaid Principal Component of Rental Payments owing hereunder in the inverse order of Rental Payment Dates, on the following terms:

*first*, the portion of the Excess Proceeds that is equal to 5% or less of the original aggregate Principal Component of all Rental Payments under this Agreement shall be applied to prepay principal components of Rental Payments at a price of 100% of such prepaid Principal Component plus accrued interest thereon to the prepayment date; and

*second*, any remaining Excess Proceeds, if any, shall be applied to further prepay the Principal Component of Rental Payments at a price of 102% of such prepaid Principal Component plus accrued interest thereon to the prepayment date.

(b) In connection with any prepayment pursuant to subsection (a) of this Section 4.07, Lessee shall pay the prepayment premium and interest portion of Rental Payments accrued to the prepayment date on such principal portion to be prepaid from funds legally available to Lessee for that purpose, but not from funds remaining in the Escrow Account pursuant to subsection (a) of this Section 4.07.

(c) Lessee will give Lessor notice of any such prepayment in accordance with this Section 4.07 not less than 60 days in advance of the prepayment date.

(d) In connection with any partial prepayment of Rental Payments, Lessor shall prepare a new Payment Schedule and deliver the same to the Lessee, which shall be binding, absent manifest error.

## ARTICLE V

### *Section 5.01. Acquisition, Delivery, Installation and Acceptance of Equipment.*

(a) Lessee shall order the Equipment to be acquired and financed hereunder, cause the Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. Lessee shall conduct such inspection and testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering Disbursement Requests to the Lessor pursuant to the Escrow Agreement for the purpose of effecting disbursements from the Escrow Account and the to pay (or reimburse) Equipment Costs for the Equipment so acquired and installed. In connection with the execution and delivery by Lessee to Lessor of the final Disbursement Request, Lessee shall deliver to Lessor a "Final Acceptance Certificate" in the form attached hereto as *Exhibit E*.

(b) Lessee shall deliver to Lessor together with each Disbursement Request copies of invoices (and proof of payment of such invoices if Lessee seeks reimbursement for prior expenditures) and bills of sale or other evidence of title transfer to Lessee relating to each item of Equipment accepted by Lessee as evidenced by such Disbursement Request. Once approved, Lessor shall deliver such Disbursement Request to the Escrow Agent for disbursement from the Escrow Account in accordance with the Escrow Agreement.

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

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

*Section 5.04. Use and Maintenance of the Equipment.* Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body, 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 of Lessor in and to the Equipment or its interest or rights hereunder.

Lessee agrees that it shall (a) maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer; (b) proceed promptly, at its expense, to protect its rights and exercise its remedies under any warranty then in effect with respect to the Equipment; and (c) replace or rebuild any component of the Equipment that becomes permanently unfit for normal use or inoperable during the Lease Term (herein, the "*Inoperable Component*") in order to keep the Equipment as a whole in good repair and working order during the Lease Term. Lessee shall promptly replace or rebuild the Inoperable Component with a similar component of comparable or improved make and model that has at least the equivalent value and utility of the Inoperable Component, a remaining useful life of no less than the remaining Scheduled Term and such replacement or rebuilt component shall be in good operating condition. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for in Section 3.03 and 12.02(b) of this Agreement.

Lessee shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally

intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

## ARTICLE VI

*Section 6.01. Title to the Equipment.* During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment and Lessor's first priority security interest constituting a first Lien on the Collateral from and against all claims, Liens and legal processes of its creditors, and keep all Equipment and the Collateral free and clear of all such claims, Liens and processes. Lessee will, at its expense, do any further act and execute, acknowledge, deliver, file, register and record any further documents the Lessor may reasonably request in order to protect Lessor's first priority security interest in the Collateral. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 3.03 or 12.02 of this Agreement, as applicable. Upon payment of all amounts due and owing hereunder by Lessee in accordance with Section 10.01 hereof, Lessor's security interest or other interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the termination of Lessor's security interest in the Equipment.

*Section 6.02. Security Interest.* As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first Lien on (a) the Equipment, (b) moneys and investments held from time to time in the Escrow Account, (c) all accounts, chattel paper, deposit accounts, documents, instruments, general intangibles and investment property (including any securities accounts and security entitlements relating thereto) evidenced by or arising out of or otherwise relating to the foregoing collateral described in clauses (a) and (b) above, as such terms are defined in Article 9 of the Uniform Commercial Code of the State of California, and (d) any and all proceeds of any and all of the foregoing, including, without limitation, insurance proceeds (collectively, the "Collateral"). Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Collateral, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as Lessee.

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

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* Lessee shall keep the Equipment free of all levies, Liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the purchase, sale, use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay (a) all sales and other taxes, special assessments and other charges of any kind that are at any time lawfully assessed or levied against or with respect to the Equipment, the Rental Payments or any part of either thereof, or which become due during the Lease Term, whether assessed against Lessee or Lessor; and (b) the fee charged by the California Debt and Investment Advisory Commission with respect to this Agreement pursuant to Section 8856 (or any successor provision) of the California Government Code. Lessee shall also pay all utility and other charges incurred in the operation, use and maintenance of the Equipment. Lessee shall pay such taxes, assessments or charges as the same may become due; *provided* that, with respect to any such taxes, assessments or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

*Section 7.02. Insurance.* Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Prepayment Price or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$5,000,000 per occurrence for bodily injury and property damage coverage (such liability insurance coverage may be in a combination of primary general liability and/or excess liability

umbrella coverage), and in all events under clauses (a) and (b) above issued in form and amount satisfactory to Lessor and by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of "A-" or better; and (c) worker's compensation coverage as required by the laws of the State. Notwithstanding the foregoing, Lessee may self-insure against the risks described in clauses (a) and/or (b) through a government pooling arrangement, self-funded loss reserves, risk retention program or other self-insurance program, in each case with Lessor's prior written consent (which Lessor may grant, withhold or deny in its sole discretion) and provided that Lessee has delivered to Lessor such information as Lessor may request with respect to the adequacy of such self-insurance to cover the risks proposed to be self-insured and otherwise in form and substance acceptable to Lessor. In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section 7.02, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as *Exhibit F*. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least thirty (30) days in advance of such cancellation or modification.

*Section 7.03. Risk of Loss.* Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to, any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to make the Rental Payments (subject to Section 3.03 hereof) or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of: (a) entering into this Agreement or any of the transactions contemplated hereby; (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment; (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person; and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this Section 7.03 shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

*Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a payment and performance bond ("*Surety Bond*") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor

Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied in accordance with such Surety Bond to the payment and performance of the Vendor's obligations in accordance with the related Vendor Agreement and, if for whatever reason such proceeds are not so applied, then first to amounts due Lessor under this Agreement and any remaining amounts shall be payable to Lessee.

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

*Section 7.05. Advances.* In the event Lessee shall fail to keep the Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate (or the Taxable Rate if then in effect) plus five percent (5%) per annum or the maximum amount permitted by law, whichever is less.

## **ARTICLE VIII**

*Section 8.01. Damage, Destruction and Condemnation.* If, prior to the termination of the Lease Term, (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment or such part thereof and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations hereunder in accordance with Section 10.01(b) hereof.

If Lessee elects to replace any item of the Equipment ("*Replaced Equipment*") pursuant to this Section 8.01, the replacement equipment ("*Replacement Equipment*") shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal

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

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

*Section 8.02. Insufficiency of Net Proceeds.* If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Prepayment Price *plus* all other amounts then owing hereunder, and, upon such payment, the Lease Term shall terminate and Lessor's security interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds remaining, if any, after completing such repair, restoration, modification or improvement or after paying such Prepayment Price *plus* all other amounts then owing hereunder shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section 8.02, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

## ARTICLE IX

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

*Section 9.02. Vendor's Agreements; Warranties.* Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written

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

## ARTICLE X

*Section 10.01. Prepayment Option.* Lessee shall have the option to prepay or satisfy all, but not less than all, of its obligations hereunder, at the following times and upon the following terms:

(a) *Optional Prepayment.* From and after the date specified (if any) in the Payment Schedule (the "*Prepayment Option Commencement Date*"), on the Rental Payment Dates specified in the Payment Schedule, upon not less than thirty (30) days prior written notice, and upon payment in full of (i) the sum of all Rental Payments then due *plus* all other amounts then owing under this Agreement *plus* (ii) the then applicable Prepayment Price (which (A) prior to and including [ ] shall include a prepayment premium of 2% on the unpaid Outstanding Balance as set forth in the Payment Schedule and (B) after [ ] shall include a prepayment premium of 1% on the unpaid Outstanding Balance as set forth in the Payment Schedule); or

(b) *Casualty or Condemnation Prepayment.* In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment Date or sixty (60) days after the casualty event) upon payment in full to Lessor of (1) in the event such prepayment occurs on a Rental Payment Date, the sum of (i) all Rental Payments then due *plus* (ii) the then applicable Prepayment Price (which (A) prior to and including [ ] shall include a prepayment premium of 2% on the unpaid Outstanding Balance as set forth in the Payment Schedule and (B) after [ ] shall include a prepayment premium of 1% on the unpaid Outstanding Balance as set forth in the Payment Schedule) *plus* (iii) all other amounts then owing hereunder OR, (2) in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of (i) the applicable Prepayment Price (which (A) prior to and including [ ] shall include a prepayment premium of 2% on the unpaid Outstanding Balance as set forth in the Payment Schedule and (B) after [ ] shall include a prepayment premium of 1% on the unpaid Outstanding Balance as set forth in the Payment Schedule) shown on the Payment Schedule for the Rental Payment Date immediately preceding the applicable date of such prepayment (or if the date of such prepayment occurs prior to the first Rental Payment Date, the earliest Prepayment Price shown on the Payment Schedule) *plus* (ii) accrued interest at the

Contract Rate (or the Taxable Rate if then in effect) on the Outstanding Balance as of the Rental Payment Date immediately preceding the applicable date of such prepayment from such Rental Payment Date (or if the date of such prepayment occurs prior to the first Rental Payment Date, the Commencement Date) to the date of such prepayment *plus* (iii) all other amounts then owing hereunder; or

(c) *Payment in Full.* Upon the expiration of the Scheduled Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder.

After (i) payment of the applicable Prepayment Price and all other amounts then owing hereunder in accordance with Section 10.01(a) or (b) of this Agreement or (ii) upon the expiration of the Scheduled Term, payment in full of all Rental Payments then due and all other amounts then owing hereunder in accordance with Section 10.01(c) of this Agreement, Lessor's security interests in and to such Equipment will be terminated and Lessee will own such Equipment free and clear of Lessor's security interest in such Equipment.

## ARTICLE XI

*Section 11.01. Assignment by Lessor.* Lessor is entering into this Agreement for its own account without a present intention to sell or transfer, however (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Escrow Agreement, its security interest in the Collateral (collectively, the "*Assigned Rights*") may be assigned and reassigned by Lessor at any time, in whole only, to one assignee or sub-assignee by Lessor without the necessity of obtaining the consent of Lessee, but no such assignment, transfer or conveyance shall be effective as against Lessee unless and until Lessor has delivered to Lessee written notice thereof that discloses the name and address of the assignee and Lease Servicer, if any (as hereafter provided); *provided*, that any such assignment, transfer or conveyance (i) shall be made only to an investor whom Lessor reasonably believes is a "*qualified institutional buyer*" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "*accredited investor*" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing the Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute such Assigned Rights (or interest therein), subject to such investor's right at any time to dispose of the Assigned Rights or any interest therein as it determines to be in its best interests, and (ii) shall not require Lessee to make Rental Payments, to send notices or otherwise to deal with respect to matters arising hereunder or under the Escrow Agreement with or to more than one Lease Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which an ownership interest in the Assigned Rights is created shall provide the method by which the owner of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "*Lease Servicer*") to act on its behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies of Lessor on behalf of such owner upon the occurrence of an Event of Default or an Event of Non-appropriation under this Agreement. If an entity other than Banc of America Public Capital Corp or one of its affiliates is to be designated as Lease Servicer,

such designation of such other entity may be made only with the prior consent of Lessee, which consent shall not be unreasonably withheld or delayed. Lessor and Lessee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 11.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein).

Lessor acknowledges that this Agreement has not been, and will not be, registered under the Securities Act of 1933, as amended, or any state securities laws and that Lessee has not prepared, and will not prepare, any offering or disclosure materials or document for use in connection with any assignment under this Section. Any assignment under this Section shall be subject to the condition that Lessee shall incur no costs nor be required to provide or execute any documents (except as expressly provided in subsection (c) of this Section) or participate in any manner in connection with such assignment, and Lessor and any such assignee shall be solely responsible for compliance with any securities or other laws, if applicable, in connection with such assignment.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective as against Lessee until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank, trust company or other entity that acts as the Lease Servicer. Notices of assignment provided pursuant to this Section 11.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 11.01(a) hereof. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Lease Servicer last designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or a Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of Lessor's security interest in and to the Collateral, or all rights in, to and under the Escrow Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of *Exhibit H* attached hereto within five (5) days after its receipt of such request.

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

## ARTICLE XII

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

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within ten (10) days after the date when due as specified herein, (ii) maintain insurance as required herein or (iii) observe and perform any covenant, condition or agreement on its part to be observed or performed under Section 6.01 or 6.02 hereof;

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

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

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

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

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for Lessee or of all or a substantial part of the assets of Lessee, in each case without its

application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days.

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

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

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

(c) Lessor may terminate the Escrow Agreement and apply any proceeds in the Escrow Account to the Rental Payments scheduled to be paid hereunder; and/or

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

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

## ARTICLE XIII

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

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

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

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

*Section 13.05. Execution in Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided*, that only Counterpart No. 1 of this Agreement shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

*Section 13.06. Applicable Law; Venue; Waiver of Jury Trial.* This Agreement shall be governed by and construed in accordance with the laws of the State. The parties hereto consent and submit to the jurisdiction of the State and venue in any state or Federal court of such State for the purposes of any suit, action or other proceeding arising in connection with this Agreement, and each party expressly waives any objections that it may have to the venue of such courts. The parties hereto expressly waive any right to trial by jury in any action brought on or with respect to this Agreement. If the waiver of jury trial contained herein is unenforceable for any reason, then the parties hereto agree that the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision.

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

*Section 13.08. No Advisory or Fiduciary Relationship.* In connection with all aspects of each transaction contemplated by this Agreement (including in connection with any amendment, waiver or other modification hereof or of any other related document), the Lessee acknowledges and agrees that: (a) (i) the transactions regarding this Agreement provided by the Lessor and any

affiliate thereof are arm's-length commercial transactions between the Lessee, on the one hand, and the Lessor and its affiliates, on the other hand, (ii) the Lessee has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Lessee is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and by the other related documents; (b) (i) the Lessor and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Lessee, or any other person and (ii) neither the Lessor nor any of its affiliates has any obligation to the Lessee with respect to the transactions contemplated by this Agreement except those obligations expressly set forth herein and in the other related documents; and (c) the Lessor and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Lessee, and neither the Lessor nor any of its affiliates has any obligation to disclose any of such interests to the Lessee. To the fullest extent permitted by law, the Lessee, hereby waives and releases any claims that it may have against the Lessor or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated by this Agreement.

*Section 13.09. Entire Agreement.* The parties agree that this Agreement constitutes the final and entire agreement between the parties superseding all conflicting terms or provisions of any prior proposals, term sheets, solicitation documents, requests for proposals, award notices, approval letters or any other agreements or understandings between the parties.

*[Remainder of Page Intentionally Left Blank]*

*[Signature Page Follows]*

IN WITNESS WHEREOF, Lessor and Lessee have caused this Equipment Lease/Purchase Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:  
Banc of America Public Capital Corp  
11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 541-3057

LESSEE:  
County of San Benito, California  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

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

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

(Seal)

APPROVED AS TO LEGAL FORM:

San Benito County Counsel

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

Counterpart No. \_\_\_\_\_ of \_\_\_\_\_ manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security interest or ownership herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

## LIST OF EXHIBITS

Exhibit A	—	Equipment Schedule
Exhibit B	—	Payment Schedule
Exhibit C-1	—	Form of Authorizing Resolution
Exhibit C-2	—	Form of Incumbency and Authorization Certificate
Exhibit D	—	Form of Opinion of Lessee's Counsel
Exhibit E	—	Form of Final Acceptance Certificate
Exhibit F	—	Form of Self-Insurance Certificate
Exhibit G	—	Reserved
Exhibit H	—	Form of Notice and Acknowledgement of Assignment
Exhibit I	—	Form of Escrow and Account Control Agreement

**EXHIBIT A**

**EQUIPMENT SCHEDULE**

**Location of Equipment:**

**Equipment Description (Scope of Work):**

## EXHIBIT B

## PAYMENT SCHEDULE

[illegible]

Total					

*Contract Rate.* The Contract Rate is \_\_\_\_\_% per annum.

*Prepayment Option Commencement Date.* For purposes of Section 10.01 of the Agreement, the Prepayment Option Commencement Date is \_\_\_\_\_.

*[Signature Page Follows]*

LESSOR:  
Banc of America Public Capital Corp

LESSEE:  
County of San Benito, California

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

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

**EXHIBIT C-1**

**FORM OF AUTHORIZING RESOLUTION**

**[JONES HALL TO PROVIDE RESOLUTION]**

The undersigned, a duly elected or appointed and acting County Clerk of the Lessee identified in the above Resolution No. \_\_\_\_ (the "*Resolution*"), hereby certifies that the Resolution is a full, true and correct copy of such Resolution as adopted by the governing body of the Lessee on \_\_\_\_\_, 20\_\_\_. The Resolution is in full force and effect on the date hereof and has not been amended, modified or otherwise changed by the governing body of the Lessee since the date of adoption of the Resolution.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C-2**

**FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE**

The undersigned, a duly elected or appointed and acting County Clerk of the County of San Benito, California (“*Lessee*”) certifies as follows:

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

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver that certain offer letter from Banc of America Public Capital Corp dated \_\_\_\_\_, 2018, the Equipment Lease/Purchase Agreement dated as of July \_\_\_, 2018, between Lessee and Banc of America Public Capital Corp (“*Lessor*”), the Escrow and Account Control Agreement dated as of July \_\_\_, 2018, among Lessor, Lessee and Bank of America, National Association, as Escrow Agent, the \_\_\_\_\_ dated \_\_\_\_\_, between Lessee and ENGIE Energy Services, Inc. (as amended, the “*ENGIE Contract*”), [the Memorandum of Understanding amongst Lessee, Lessor and ENGIE Energy Services, Inc. relating to ENGIE Contract,] and all documents related thereto and delivered in connection therewith (collectively, the “*Agreements*”), and the Agreements are each the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

NAME OF OFFICIAL	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____

Dated: July \_\_\_, 2018

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

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

**EXHIBIT D**

**FORM OF OPINION OF COUNSEL TO LESSEE**

(to be typed on letterhead of counsel)

[Closing Date]

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

Re: Equipment Lease/Purchase Agreement, dated as of July \_\_, 2018,  
between Banc of America Public Capital Corp, as Lessor, and County of  
San Benito, California, as Lessee

Ladies and Gentlemen:

As legal counsel to the County of San Benito, California ("*Lessee*"), I have examined (a) executed counterparts of that certain Equipment Lease/Purchase Agreement, dated as of July \_\_, 2018 (the "*Agreement*"), and Exhibits thereto, between Banc of America Public Capital Corp ("*Lessor*") and Lessee, which, among other things, provides for the lease of certain property (the "*Equipment*"), (b) executed counterparts of that certain Escrow and Account Control Agreement dated as of July \_\_, 2018 (the "*Escrow Agreement*") among Lessor, Lessee, and Bank of America, National Association, as Escrow Agent, (c) executed counterparts of the \_\_\_\_\_ dated \_\_\_\_\_, between Lessee and ENGIE Energy Services, Inc. (as amended, the "*ENGIE Contract*"), [(d) executed counterparts of the Memorandum of Understanding (the "*MOU*") amongst Lessee, Lessor and ENGIE Energy Services, Inc. relating to the ENGIE CONTRACT], (e) a certified copy of the ordinances or resolutions of Lessee with respect to the authorization of the transactions contemplated by the Agreement, the Escrow Agreement, the ENGIE Contract, the MOU and documents related thereto and (f) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Purchase Contract, the Agreement, the Escrow Agreement, the ENGIE Contract, the MOU and the documents relating thereto are referred to collectively as the "Transaction Documents."

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

1. Lessee is a county and a body corporate and politic and a political subdivision of the State of California duly organized and existing under the laws of the State, and is a political subdivision of a state within the meaning of Section 103(c) of the

Internal Revenue Code of 1986, as amended (the “*Code*”), and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code.

2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with their respective terms, except to the extent limited by State and federal law affecting creditor’s remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors’ rights.

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

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Equipment, the Escrow Account or other Collateral thereunder.

6. The portion of Rental Payments designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor’s gross income for Federal income tax purposes under Section 103 of the Code and is exempt from State of \_\_\_\_\_ personal income taxes; and such interest is not a specific item of tax preference or other collateral for purposes of the Federal individual or corporate alternative minimum taxes.

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns are entitled to rely on this opinion.

Sincerely,

## EXHIBIT E

### FORM OF FINAL ACCEPTANCE CERTIFICATE

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

Re: Equipment Lease/Purchase Agreement, dated as of July \_\_, 2018  
between Banc of America Public Capital Corp, as Lessor, and County of  
San Benito, California, as Lessee

Ladies and Gentlemen:

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

1. All of the Equipment has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee and title thereto has transferred to Lessee and any security interest of Vendor therein has been released.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment and hereby acknowledges that it accepts the Equipment for all purposes.
3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.
4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.
5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.
6. No Material Adverse Change (as defined in the Agreement) has occurred since the date of the execution and delivery of the Agreement.
7. No Event of Non-appropriation has occurred or been threatened.

Date: \_\_\_\_\_

LESSEE:

COUNTY OF SAN BENITO, CALIFORNIA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Seal)

## EXHIBIT F

### FORM OF SELF INSURANCE CERTIFICATE

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

Re: Equipment Lease/Purchase Agreement, dated as of July \_\_, 2018 (the "*Agreement*") between Banc of America Public Capital Corp, as Lessor, and County of San Benito, California, as Lessee

In connection with the above-referenced Agreement, the County of San Benito, California (the "*Lessee*") hereby warrants and represents to Banc of America Public Capital Corp the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

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

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

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

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

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

LESSEE:

County of San Benito, California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT G**

**RESERVED**

## EXHIBIT H

### FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

DATED \_\_\_\_\_

Banc of America Public Capital Corp ("*Assignor*") hereby gives notice that it has assigned and sold to \_\_\_\_\_ ("*Assignee*") all of Assignor's right, title and interest in, to and under the Equipment Lease/Purchase Agreement (the "*Agreement*") dated as of July \_\_\_, 2018, between Assignor and County of San Benito, California ("*Lessee*"), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor's right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor's right, title and interest in, to and under the Escrow and Account Control Agreement dated as of July \_\_\_, 2018 (the "*Escrow Agreement*") by and among Lessee, Assignor and Bank of America, National Association, as Escrow Agent, together with the Escrow Account and the other Collateral (collectively, the "*Assigned Property*"). Each capitalized term used but not defined herein has the meaning set forth in the Agreement.

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

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

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

Number of Rental Payments Remaining	—	_____
Amount of Each Rental Payment	—	\$ _____
Total Amount of Rental Payments Remaining	—	\$ _____
Frequency of Rental Payments	—	_____
Next Rental Payment Due	—	_____
Funds Remaining in Escrow Account	—	\$ _____

4. The Agreement remains in full force and effect, has not been amended. no Event of Default (or event which with the passage of time or the giving of notice or both would constitute an Event of Default) has occurred thereunder and no Event of Non-appropriation has occurred or is threatened with respect thereto.

5. Assignor hereby acknowledges the transfer restrictions imposed by Section 11.01 of the Agreement and confirms that the assignment to Assignee has been made in accordance with the provisions of that Section.

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

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

**ACKNOWLEDGED AND AGREED:**

LESSEE: COUNTY OF SAN BENITO, CALIFORNIA

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

ASSIGNOR:  
 BANC OF AMERICA PUBLIC CAPITAL CORP

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

## EXHIBIT I

### FORM OF ESCROW AND ACCOUNT CONTROL AGREEMENT

This Escrow and Account Control Agreement (this “*Agreement*”), dated as of July \_\_\_, 2018, by and among Banc of America Public Capital Corp, a Kansas corporation (together with its successors and assigns, hereinafter referred to as “*Lessor*”), County of San Benito, California (hereinafter referred to as “*Lessee*”) and Bank of America, National Association (hereinafter referred to as “*Escrow Agent*”).

Reference is made to that certain Equipment Lease/Purchase Agreement dated as of July \_\_\_, 2018, between Lessor and Lessee (hereinafter referred to as the “*Lease*”), covering the acquisition, installation and lease of certain Equipment described therein (the “*Equipment*”). It is a requirement of the Lease that the Acquisition Amount (\$\_\_\_\_\_) be deposited into a segregated escrow account and delivery costs account 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 acquisition and installation of and payment for the Equipment.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. *Creation of Escrow Account.*

(a) There is hereby created an escrow fund to be known as the “County of San Benito, California, 2018 Equipment Escrow Account” (the “*Escrow Account*”) to be held in trust by Escrow Agent 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) Lessee may, from time to time, provide written instructions for Escrow Agent to use any available cash in the Escrow Account to purchase any money market fund or liquid deposit investment vehicle that Escrow Agent from time to time makes available to the parties hereto. Such written instructions shall be provided via delivery to Escrow Agent of a signed and completed Escrow Account Investment Selection Form (such form available from Escrow Agent upon request). All funds invested by Escrow Agent at the direction of Lessee in such short-term investments shall be deemed to be part of the Escrow Account and subject to all the terms and conditions of this Agreement. If any cash is received for the Escrow Account after the cut-off time for the designated short-term investment vehicle, the Escrow Agent shall hold such cash uninvested until the next Business Day. “*Business Day*” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State of California or the State of New York. In the absence of written instructions designating a short-term investment for cash, cash in the Escrow Account shall

remain uninvested. Escrow Agent shall have no obligation to pay interest on cash in respect of any period during which it remains uninvested. 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 Escrow Agent for the reinvestment of any maturing investment. Accordingly, neither the Escrow Agent 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 Escrow Account, and Lessee agrees to and does hereby release the Escrow Agent and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Escrow Account shall become part of the Escrow Account, and gains and losses on the investment of the moneys on deposit in the Escrow Account shall be borne by the Escrow Account. The Escrow Agent shall have no discretion whatsoever with respect to the management, disposition or investment of the Escrow Account. The Escrow Agent shall not be responsible for any market decline in the value of the Escrow Account and has no obligation to notify Lessor and Lessee of any such decline or take any action with respect to the Escrow Account, except upon specific written instructions stated herein. For purposes of this Agreement, "*Qualified Investments*" means [any investments which meet the requirements of California Government Code Sections 53600 *et seq.*]

(c) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (f) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent 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 Escrow Account are insufficient to pay such amounts, Lessee shall deposit into the Escrow Account all of the funds needed to complete the acquisition and installation of the Equipment. Any moneys remaining in the Escrow Account on or after the earliest of (i) the expiration of the Acquisition Period, (ii) the date on which Lessee delivers to the Lessor the executed Final Acceptance Certificate or the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from the Escrow Account or (iii) a termination of the Escrow Account as provided in this Agreement, shall be applied as provided in Section 4 hereof in accordance with Section 4.07 of the Lease.

(d) The Escrow Account shall be terminated at the earlier of (i) the final distribution of amounts in the Escrow Account or (ii) written notice given by Lessor of the occurrence of an Event of Default under the Lease or termination of the Lease due to non-appropriation under Section 3.03 of the Lease. Notwithstanding the foregoing, this Agreement shall not terminate nor shall the Escrow Account be closed until all funds deposited hereunder have been disbursed pursuant to the terms hereof.

(e) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. Notwithstanding and without limiting the generality of the foregoing, concurrent with the execution of this Agreement, Lessee and Lessor, respectively, shall deliver to the Escrow Agent an authorized signers form in the form of *Exhibit A-1* (Lessee) and *Exhibit A-2* (Lessor) attached hereto. Notwithstanding the foregoing sentence, the Escrow Agent 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 parties or by a person or persons authorized by the parties. The Escrow Agent specifically allows for receiving direction by written or electronic transmission from an authorized representative with the following caveat, Lessee and Lessor agree to indemnify and hold harmless the Escrow Agent against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees) (collectively, "*Losses*") incurred or sustained by the Escrow Agent as a result of or in connection with the Escrow Agent's reliance upon and compliance with instructions or directions given by written or electronic transmission given by each, respectively, *provided, however*, that such Losses have not arisen from the gross negligence or willful misconduct of the Escrow Agent, it being understood that forbearance on the part of the Escrow Agent to verify or confirm that the person giving the instructions or directions is, in fact, an authorized person shall not be deemed to constitute gross negligence or willful misconduct.

In the event conflicting instructions as to the disposition of all or any portion of the Escrow Account are at any time given by Lessor and Lessee, the Escrow Agent shall abide by the instructions or entitlement orders given by Lessor without consent of the Lessee.

(f) Unless the Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Escrow Agent 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 the Escrow Agent under this Agreement; and in connection therewith, does to the fullest extent authorized by law and from funds legally available for such purpose indemnify the Escrow Agent against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(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 Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action including an interpleader action to resolve the disagreement. The Escrow Agent shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

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

(i) Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for non-routine administration of the Escrow Account and the performance of the Escrow Agent's powers and duties hereunder in connection with any Event of Default under the Lease, any termination of the Lease due to an Event of Non-appropriation or in connection with any dispute between Lessor and Lessee concerning the Escrow Account.

(j) The Escrow Agent or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation (the "*Effective Date*"), which shall be a date not less than 60 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the Lessee and Lessor. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Escrow Account.

(k) The Escrow Agent shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no implied duties responsibilities or obligations shall be read into this Agreement.

## *2. Acquisition and Installation of Equipment.*

(a) *Acquisition Contracts.* Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition and installation of the Equipment with moneys from the Escrow Account. Lessee represents that 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. The Escrow Agent shall have no duty to monitor or enforce Lessee's compliance with the foregoing covenant.

(b) *Authorized Escrow Account Disbursements.* It is agreed as between Lessee and Lessor that disbursements from the Escrow Account 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. Any disbursement from the Escrow Account shall first be approved in writing by Lessor.

(c) *Requisition Procedure.* No disbursement from the Escrow Account shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Escrow Account there shall be filed with the Escrow Agent 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 and the manner of disbursement (check or wire). The Escrow Agent is authorized to obtain and rely on confirmation of such Disbursement Request and payment instructions by telephone call-back to the person or persons designated for verifying such requests on *Exhibit A-2* (such person verifying the request shall be different than the person initiating the request). The Lessor and Lessee hereby confirm that any call-back performed by the Escrow Agent to verify a disbursement instruction before release, shall be made to Lessor only and the Escrow Agent shall have no obligation to call-back Lessee. Each such requisition shall be signed by an authorized representative of Lessee (an "*Authorized Representative*") and by Lessor, and shall be subject to the following conditions, which the Escrow Agent shall conclusively presume have been satisfied at such time as a requisition executed by Lessee and Lessor is delivered to it:

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

(i) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Escrow Account for costs relating to the Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof); (ii) with respect to each item of Equipment for which disbursement is requested, (A) Lessee has conducted such inspection and testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment, (B) such Equipment has been delivered, installed, is operating in a manner consistent with the manufacturer's intended

use and has been inspected and finally accepted for all purposes by Lessee and title thereto has transferred to Lessee and any security interest of Vendor therein has been released and (C) the date on which Equipment acceptance occurred; (iii) 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; (iv) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (v) the Equipment is insured in accordance with the Lease; (vi) no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default) has occurred and is continuing and no Event of Non-appropriation has occurred or is threatened; (vii) such disbursement shall occur during the Acquisition Period; (viii) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date thereof; and (ix) no Material Adverse Change has occurred since the date of the execution and delivery of the Lease.

2. Delivery to Lessor of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale therefor or other evidence of title transfer, and release by Vendor of any security interest, therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and

3. The disbursement shall occur during the Acquisition Period.

Lessee and Lessor agree that their execution of the form attached hereto as Schedule 1 and delivery of the executed form to the Escrow Agent confirms that all of the requirements and conditions with respect to disbursements set forth in this Section 2 have been satisfied.

3. *Deposit to Escrow Account.* Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited into the Escrow Account. Lessee agrees to pay any Equipment Costs with respect to the Equipment in excess of amounts available therefor in the Escrow Account.

4. *Excess Proceeds in Escrow Account.* Upon receipt of written instructions from Lessor including a representation that one of the following conditions has been satisfied (upon which representation the Escrow Agent shall conclusively rely), any funds remaining in the Escrow Account on or after the earliest of (a) the expiration of the Acquisition Period, (b) the date on which Lessee delivers to the Lessor the executed Final Acceptance Certificate or the executed Disbursement Request to effect the final

disbursement to pay (or reimburse) Equipment Costs from the Escrow Account or (c) a termination of the Escrow Account as provided in this Agreement, shall be distributed by the Escrow Agent to the Lessor in order for the Lessor to apply such funds to amounts owed by Lessee under the Lease in accordance with Section 4.07 of the Lease.

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

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

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

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

(c) Provided that account investments shall be held in the name of the Escrow Agent, the Escrow Agent hereby represents and warrants that (i) the records of the Escrow Agent show that Lessee is the sole owner of the Collateral, (ii) the Escrow Agent has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (iii) the Escrow Agent is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that the Escrow Agent is obligated to accept from Lessor under this Agreement and entitlement orders that the Escrow Agent, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, the Escrow Agent will not enter into any agreement by which the Escrow Agent 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. The Escrow Agent shall promptly notify Lessor if any person requests the Escrow Agent 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, the Escrow Agent may allow Lessee to effect sales, trades, transfers and exchanges of Collateral within the Escrow Account, but will not, without the prior written consent of Lessor, allow Lessee to withdraw any Collateral from the Escrow Account. The Escrow Agent acknowledges that Lessor reserves the right, by delivery of written notice to the Escrow Agent, 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 Escrow Account. Further, the Escrow Agent hereby agrees to comply with any and all written instructions delivered by Lessor to the Escrow Agent (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes the Escrow Agent to comply with all instructions and entitlement orders delivered by Lessor to the Escrow Agent.

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

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

7. *Information Required Under USA PATRIOT Act.* The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

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

Notices and other communications hereunder may be delivered or furnished by electronic mail *provided* that any formal notice be attached to an email message in PDF format and *provided further* that any notice or other communication sent to an e-mail address shall be deemed received upon and only upon the sender's receipt of affirmative acknowledgement or receipt from the intended recipient. For purposes hereof no acknowledgement of receipt generated on an automated basis shall be deemed sufficient for any purpose hereunder or admissible as evidence of receipt.

If to Lessor:                   Banc of America Public Capital Corp  
                                      11333 McCormick Road  
                                      Mail Code: MD5-032-07-05  
                                      Hunt Valley, MD 21031  
                                      Attn: Contract Administration  
                                      Fax: (443) 541-3057

If to Lessee:                   County of San Benito, California

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

If to Escrow Agent: Bank of America, National Association  
Global Custody and Agency Services  
135 South LaSalle Street  
Mail Code: IL4-135-18-51  
Chicago, Illinois 60603  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

9. Lessee and Lessor understand and agree that they are required to provide the Escrow Agent with a properly completed and signed Tax Certification (as defined below) and that the Escrow Agent may not perform its duties hereunder without having been provided with such Tax Certification. As used herein "*Tax Certification*" shall mean an IRS form W-9 or W-8 as described above. The Escrow Agent will comply with any U.S. tax withholding or backup withholding and reporting requirements that are required by law. With respect to earnings allocable to a foreign person, the Escrow Agent will withhold U.S. tax as required by law and report such earnings and taxes withheld, if any, for the benefit of such foreign person on IRS Form 1042-S (or any other required form), unless such earnings and withheld taxes are exempt from reporting under Treasury Regulation Section 1.1461-1(c)(2)(ii) or under other applicable law. With respect to earnings allocable to a United States person, the Escrow Agent will report such income, if required, on IRS Form 1099 or any other form required by law. The IRS Forms 1099 and/or 1042-S shall show the Escrow Agent as payor and Lessee as payee.

Lessee and Lessor agree that they are not relieved of their respective obligations, if any, to prepare and file information reports under Code Section 6041, and the Treasury regulations thereunder, with respect to amounts of imputed interest income, as determined pursuant to Code Sections 483 or 1272. The Escrow Agent shall not be responsible for determining or reporting such imputed interest.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the parties hereto consent to jurisdiction in the State of California and venue in any state or Federal court located in the State of California.

11. Any bank or corporation into which the Escrow Agent may be merged or with which it may be consolidated, or any bank or corporation to whom the Escrow Agent may transfer a substantial amount of its escrow business, shall be the successor to the Escrow Agent without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding. Any bank or corporation into which the Lessor may be merged or with which it may be consolidated, or any bank or corporation to whom the Lessor may transfer a substantial amount of its business, shall be the successor to the Lessor without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding.

12. This Agreement may be amended, modified, and/or supplemented only by an instrument in writing executed by all parties hereto.

13. No party hereto shall assign its rights hereunder until its assignee has submitted to the Escrow Agent (i) Patriot Act disclosure materials and the Escrow Agent has determined that on the basis of such materials it may accept such assignee as a customer and (ii) assignee has delivered an IRS Form W-8 or W-9, as appropriate, to the Escrow Agent which the Escrow Agent has determined to have been properly signed and completed.

14. Escrow Agent will treat information related to this Agreement as confidential but, unless prohibited by law, Lessee and Lessor authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates and other representatives and advisors of Escrow Agent and third parties selected by any of them, wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Escrow Agent and any such subsidiary, officer, affiliate or third party may transfer or disclose any such information as required by any law, court, regulator or legal process.

Lessor will treat information related to this Agreement as confidential but, unless prohibited by law, Escrow Agent and Lessee authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates, other representatives and advisors of Lessor and debt and equity sources and third parties selected by any of them, and to their prospective assignees wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Lessor and any such subsidiary, officer, affiliate, debt and equity source or third party or prospective assignee may transfer or disclose any such information as required by any law, court, regulator or legal process.

Lessee will treat the terms of this Agreement as confidential except on a “need to know” basis to persons within or outside Lessee’s organization (including affiliates of such party), such as attorneys, accountants, bankers, financial advisors, auditors and other consultants of such party and its affiliates, except as required by any law, court, regulator or legal process and except pursuant to the express prior written consent of the other parties, which consent shall not be unreasonably withheld.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Escrow and Account Control Agreement as of the date first above written.

Banc of America Public Capital Corp,  
as Lessor

County of San Benito, California,  
as Lessee

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

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

APPROVED AS TO LEGAL FORM:

San Benito County Counsel

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

Bank of America, National Association,  
as Escrow Agent

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

## SCHEDULE 1

### TO THE ESCROW AND ACCOUNT CONTROL AGREEMENT

#### FORM OF DISBURSEMENT REQUEST

Re: Equipment Lease/Purchase Agreement dated as of July \_\_\_, 2018 (the "*Lease*"), between Banc of America Public Capital Corp, as Lessor, and County of San Benito, California, as Lessee (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow and Account Control Agreement, dated as of July \_\_\_, 2018 (the "*Escrow and Account Control Agreement*") by and among Banc of America Public Capital Corp ("*Lessor*"), County of San Benito, California ("*Lessee*") and Bank of America, National Association (the "*Escrow Agent*"), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow and Account Control Agreement for the following purposes:

#### DISBURSEMENT AMOUNTS:

PAYEE'S NAME AND ADDRESS (IF DISBURSEMENT VIA WIRE, MUST INCLUDE WIRE TRANSFER INSTRUCTIONS)	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE

The undersigned hereby certifies as follows:

(i) Each obligation specified in the table herein titled as "Disbursement Amounts" (a) has been incurred by Lessee in the stated amount, (b) the same is a proper charge against the Escrow Account for Equipment Costs relating to the Equipment identified above and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and (c) has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Equipment relating to such obligation has been delivered, installed and accepted by Lessee.

(ii) For each item of Equipment relating to an obligation specified in the table herein titled as "Disbursement Amounts" (a) Lessee has conducted such inspection and testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment, (b) such Equipment has been delivered, installed, is operating in a manner consistent with the

manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee and title thereto has transferred to Lessee and any security interest of Vendor therein has been released and (c) the date on which Equipment acceptance occurred is \_\_\_\_\_, 20\_\_\_. Attached hereto is the original invoice, and certification from Vendor as to title transfer and release by Vendor of any security interest with respect to such obligation.

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

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

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

(vi) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof. No event has occurred or is threatened that may result in termination of the Lease under Section 3.03 thereof.

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

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

(ix) No Material Adverse Change has occurred since the date of the execution and delivery of the Lease.

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

COUNTY OF SAN BENITO, CALIFORNIA

By: \_\_\_\_\_  
Authorized Representative

Disbursement of funds from the Escrow  
Account in accordance with the foregoing  
Disbursement Request hereby is authorized

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

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

[AN "EXHIBIT A-1" MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

**EXHIBIT A-1**

**FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE**

The undersigned, a duly elected or appointed and acting County Clerk of the County of San Benito, California ("*Lessee*") certifies as follows:

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

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver that certain Equipment Lease/Purchase Agreement dated as of July \_\_, 2018, between Lessee and Banc of America Public Capital Corp ("*Lessor*"), the Escrow and Account Control Agreement dated as of July \_\_, 2018, among Lessor, Lessee and Bank of America, National Association, as Escrow Agent, and all documents related thereto and delivered in connection therewith (collectively, the "*Agreements*"), and the Agreements are each the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

NAME OF OFFICIAL	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: July \_\_, 2018

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

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

[AN "EXHIBIT A-2" MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

## EXHIBIT A-2

### Escrow and Account Control Agreement dated as of July \_\_, 2018 by and among Banc of America Public Capital Corp, Lessor, County of San Benito, California, as Lessee and Bank of America, National Association, Escrow Agent

#### Certificate of Authorized Representatives – Lessor

**Name:** Terri Preston

**Title:** Authorized Agent

**Phone:** 443-541-3642

**Facsimile:** 443-541-3057

**E-mail:** Terri.Preston@baml.com

**Signature:** \_\_\_\_\_

Fund Transfer / Disbursement Authority Level:

- ☐ Initiate  
☐ Verify transactions initiated by others

**Name:** Nancy K. Hepner

**Title:** Authorized Agent

**Phone:** 443-541-3645

**Facsimile:** 804-553-2407

**E-mail:** Nancy.k.hepner@baml.com

**Signature:** \_\_\_\_\_

Fund Transfer / Disbursement Authority Level:

- ☐ Initiate  
☐ Verify transactions initiated by others

**Name:** Nancy Nusenko

**Title:** Authorized Agent

**Phone:** 443-541-3646

**Facsimile:** 443-541-3057

**E-mail:** [Nancy.a.nusenko@baml.com](mailto:Nancy.a.nusenko@baml.com)

**Signature:** \_\_\_\_\_

Fund Transfer / Disbursement Authority Level:

- ☐ Initiate  
☐ Verify transactions initiated by others

**Name:** Arlene Sobieck

**Title:** Authorized Agent

**Phone:** 443-541-3643

**Facsimile:** 443-541-3057

**E-mail:** [Arlene.sobieck@baml.com](mailto:Arlene.sobieck@baml.com)

**Signature:** \_\_\_\_\_

Fund Transfer / Disbursement Authority Level:

- ☐ Initiate  
☐ Verify transactions initiated by others

The Escrow Agent 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: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_