



RESOLUTION NO. 2008-242

**A RESOLUTION OF THE CITY OF FRESNO, CALIFORNIA AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER LEASE PURCHASE AGREEMENT AND CERTAIN SEPARATE LEASE SCHEDULES, FACILITATING FUTURE CITYWIDE LEASE-PURCHASE EQUIPMENT ACQUISITIONS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH**

WHEREAS, City of Fresno, a Charter City and municipal corporation (the "City"), is authorized by its Charter and the laws of the State of California to purchase, acquire, and lease personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the City desires to purchase, acquire, and lease certain equipment constituting personal property necessary for City operations; and

WHEREAS, to acquire such equipment, the City as Lessee proposes to enter that certain Master Lease Purchase Agreement ("Agreement") with De Lage Landen Public Finance LLC ("Lessor"), and from time to time, to enter separate Lease Schedules, as provided in the Agreement; and

WHEREAS, the City entering the Agreement, and the separate Lease Schedules, as provided in the Agreement, will benefit the City and the efficient and effective administration of City operations.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno, as follows:

Section 1. **Approval of Documents.** Council approves the Agreement, and the separate Lease Schedules, as provided in the Agreement, substantially in the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by either the City Manager, City Controller, or Assistant City Controller, and approved to form by the City Attorney's Office.

Section 2. **Authority to Execute Documents.** Council authorizes and directs either the City Manager, City Controller, or Assistant City Controller to execute the Agreement, each Lease Schedule (subject to meeting any competitive procurement, budgeting, and appropriation requirements), and any related Exhibits attached thereto and to deliver the Agreement, and each Lease Schedule (including such Exhibits) to the respective parties thereto.

Section 3. **Other Actions Authorized.** Council authorizes the above named City officers and employees to take all action reasonably required to effectively carry out the transactions contemplated in the Agreement and the separate Lease Schedules. Actions may include, without limitation, executing and delivering Acceptance Certificates, any tax certificates and agreements, closing and other documents all as required under and consistent with the Agreement and separate Lease Schedules.

Section 4. **Authorizing City Representatives.** Council designates and authorizes the City Manager, City Controller, or Assistant City Controller, each acting alone, to represent the City in carrying out the Agreement and each Lease Schedule until such time as the Council shall designate any other or different authorized representatives for such purpose.

Adopted 9/23/08  
Approved 9/24/08  
Effective 9/24/08

2008-242



Section 5. **Severability.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held invalid or unenforceable, the invalidity or unenforceability shall not affect any other section, paragraph, clause, or provision of this Resolution.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 23<sup>rd</sup> day of September, 2008.

AYES: Calhoun, Caprioglio, Dages, Duncan, Perea, Sterling, Xiong  
NOES: None  
ABSENT: None  
ABSTAIN: None

Mayor Approval: \_\_\_\_\_ September 24 \_\_\_\_\_, 2008  
Mayor Approval/No Return: \_\_\_\_\_ N/A \_\_\_\_\_, 2008  
Mayor Veto: \_\_\_\_\_ N/A \_\_\_\_\_, 2008  
Council Override Vote: \_\_\_\_\_ N/A \_\_\_\_\_, 2008

REBECCA E. KLISCH  
City Clerk

By: Rebecca Klisch  
~~Deputy~~

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

By: R 8.29.08  
Robert R. Coyle, Senior Deputy

September 24, 2008

RECEIVED

Council Adoption: 9/23/08

Mayor Approval:

Mayor Veto:

Override Request:



TO: MAYOR ALAN AUTRY  
FROM: REBECCA E. KLISCH, City Clerk, FRESNO CA  
2008 SEP 24 PM 2:36  
REC

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 9/23/08, Council adopted the attached Resolution No. 2008- 242, entitled **Auth execution/delivery, Master Lease Pur Agrmnt, acq, purchase, financing and leasing of equipment for public benefit**, Item No. 1B, by the following vote:

Ayes : Calhoun, Caprioglio, Dages, Duncan, Perea, Sterling, Xiong  
Noes : None  
Absent : None  
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before October 6, 2008. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10<sup>th</sup> day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

\*\*\*\*\*

**APPROVED:**

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Alan Autry, Mayor

Date: 9/24/08

COUNCIL OVERRIDE ACTION:

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

Ayes :  
Noes :  
Absent :  
Abstain :



## MASTER LEASE-PURCHASE AGREEMENT

Agreement No.: \_\_\_\_\_  
Date: \_\_\_\_\_

LESSEE:  
City of Fresno  
2600 Fresno Street  
Fresno, California 93721

LESSOR:  
De Lage Landen Public Finance LLC  
2600 Grand Blvd., Suite 380  
Kansas City, Missouri 64108

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

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

*"Acceptance Certificate"* means a certificate in substantially the form attached as *Exhibit A-1* to each Lease and which shall be delivered by Lessee to Lessor upon receipt and acceptance of the Equipment subject to such Lease as provided therein.

*"Acquisition Period"* means the period commencing on the execution of this Agreement and, unless mutually extended as provided herein, ending on the earlier of (a) September 30, 2011, or (b) the aggregate leasing of \$20,000,000 (Twenty Million Dollars) of Equipment, or (c) the occurrence of a Material Adverse Change (as defined below). Lessor and Lessee by mutual consent may extend this Agreement for two successive one-year acquisition periods. Any extension shall be memorialized in a written amendment duly executed by Lessor and Lessee.

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

*"Agreement"* means this Master Equipment Lease-Purchase Agreement, as supplemented and amended from time to time as herein provided.

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

*"Equipment"* means (a) the equipment, vehicles, software, helicopters and other personal property identified in each Schedule, (b) any property acquired in substitution, renewal, repair or replacement for, or as additions, improvements, accessions and accumulations to, any of such equipment and (c) any accessories, equipment, vehicles, software, helicopters and other personal property, parts and appurtenances appertaining or attached to any of such equipment, vehicles, software, helicopters and other personal property or from time to time incorporated therein or installed thereon.



"*Event of Default*" is defined in Paragraph 24 of this Agreement.

"*Event of Non-appropriation*" means the failure of the City Council to appropriate money for any Fiscal Period of Lessee sufficient for the continued performance by Lessee of all of Lessee's obligations under a Lease.

"*Fiscal Period*" means the annual period used from time to time by Lessee for its financial accounting and budgeting purposes. Lessee's current Fiscal Period is identified in each Schedule.

"*Index*" means the rate set forth on either two, three, four, five, six, seven, eight, nine and ten year terms on the then current Average Life SIFMA Swap Rate (the "Rate").

"*Initial Term*" means, with respect to each Lease, the period determined as provided in Paragraph 3 hereof.

"*Lease*" means a Schedule and the terms of this Agreement which are incorporated by reference into such Schedule, together with the Exhibits attached to each such Schedule.

"*Legally Available Funds*" means funds that the governing body of Lessee duly appropriates and are legally available for the purpose of making Payments under each Lease.

"*Lessee*" means the entity referred to as Lessee in the heading for this Agreement.

"*Lessor*" means (a) the entity referred to as Lessor in the heading for this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to any Lease (including Rental Payments and the Equipment thereunder) pursuant to Paragraph 27 hereof, but does not include any entity solely by reason of that entity's retaining or assuming any obligation of Lessor to perform under any Lease.

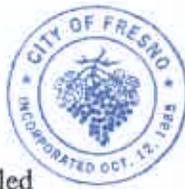
"*Material Adverse Change*" means that the Lessee's general obligation bonds credit rating (or if no general obligation bonds are currently rated, then the issuer's long-term credit rating) without regard to credit enhancements, is reduced below "A3" by Moody's Investors Service or "A-" by Standard & Poor's Ratings Group (or any successor to either such rating agency).

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

"*Notification Date*" means the date as of which the Index is established for each Lease. The Notification Date for each Lease shall be set forth in the applicable Schedule.

"*Payments*" means, with respect to each Lease, the Rental Payments and the Additional Payments thereunder, collectively.

"*Prepayment Option Amount*" means, with respect to each Lease for which a Prepayment Option Amount is identified under the column titled "PREPAYMENT OPTION AMOUNT" on the related Schedule, the amount determined pursuant to such Lease at which Lessee may prepay the aggregate principal component



of Rental Payments thereunder on any Rental Payment date provided in such Lease prior to the scheduled payment of all Rental Payments to be paid thereunder for the Equipment identified therein.

*"Purchase Price"* means, with respect to each Lease, the total cost of the Equipment subject to such Lease, including all delivery charges, installation charges, capitalizable consulting and training fees, legal fees, financing costs, motor vehicle registration fees, recording and filing fees and other costs necessary to vest full, clear legal title (or license in the case of software) to such Equipment in Lessee, subject to the security interest granted to and retained by Lessor as set forth in such Lease, and otherwise incurred in connection with the financing provided by the lease-purchase of the Equipment as provided in such Lease.

*"Renewal Term"* means, with respect to each Lease, each successive period, in addition to the applicable Initial Term, that is coextensive with Lessee's Fiscal Period and for which Lessee has extended the term of such Lease as provided therein.

*"Rental Payments"* means, with respect to each Lease, the amounts (allocable to a principal component, and an interest component) payable by Lessee pursuant to such Lease, as payments for the installment financing of the Purchase Price for the Equipment as set forth in such Lease. The interest component of Rental Payments shall be a fixed rate of interest established on the Notification Date of each Lease by adding the Spread Bid to the Index published for the term on the Notification Date.

*"Schedule"* means a Lease Schedule in substantially the form attached to this Agreement as *Exhibit A* that may be executed by Lessor and Lessee from time to time pursuant to this Agreement.

*"Spread Bid"* means the spread in basis points ("bps.") bid by the Lessor which is to be applied to the Index in the calculation of the Rental Payments in a Lease. The Spread Bid for leases of a two-year term is the one-year Rate +125 bps., the Spread Bid for leases of a three-year term is the two-year Rate +125 bps., the Spread Bid for leases of a four-year term is the 2 ½-year Rate +125 bps., the Spread Bid for leases of a five-year term is the three-year Rate +125 bps., the Spread Bid for leases of a six-year term is the four-year Rate +125 bps., the Spread Bid for leases of a seven-year term is the four-year Rate +125 bps., the Spread Bid for leases of a eight-year terms is the five-year Rate +125 bps., the Spread Bid for leases of a nine-year term is the 5 ½-year Rate +125 bps., and the Spread Bid for leases of a ten-year term is the six-year Rate +125 bps.

*"State"* means the State of California.

*"Termination Rights Agreement"* means the Termination Rights Agreement in substantially the form attached as *Exhibit A-7* to each Lease in which software ("software Equipment") is identified on the Schedule.

2. *Agreement to Lease-Purchase Equipment Under Each Lease.* Lessee hereby agrees to acquire, purchase and lease all of the Equipment identified in each of the Schedules that may from time to time be executed by Lessor and Lessee pursuant hereto, and Lessor hereby agrees to furnish the Equipment under each such Schedule to Lessee, all on the terms and conditions set forth in this Agreement. Each Schedule executed and delivered by Lessor and Lessee pursuant to this Agreement shall constitute a separate and independent Lease. The termination of a Lease as a consequence of an Event of Non-appropriation shall not terminate any other Lease.



Lessor is committed to enter into Leases during the Acquisition Period on the terms and conditions provided in this Master Lease so long as (a) the Equipment identified in a Schedule (i) is of the type generally described in Lessee's request for proposals/bidding documents related to this Agreement (such as copiers, furniture, public safety equipment, communications equipment, computers, computer systems [including software] and vehicles [including helicopters with all additional documentation reasonably required by Lessor]. Lessor also commits to consider entering into other Leases as part of this Agreement for other capital equipment for general governmental purposes as requested by Lessee), and (ii) constitutes a capital asset that can be financed on a federally tax-exempt basis over the term stated in such Schedule; and (b) no Material Adverse Change has occurred and Lessee, upon Lessor's reasonable request provides a certificate of its chief fiscal officer in form and substance acceptable to Lessor in support of Lessee's ability to meet all of its obligations under its existing indebtedness and all Leases hereunder including the proposed Lease.

**Delivery of Proceeds:** For each Lease and the financing of Equipment to be acquired thereunder, Lessor shall pay the vendor directly or, upon receipt of satisfactory documentation reimburse Lessee for payments made by Lessee to the vendor. Lessor and Lessee may enter into an escrow agreement in substantially the form attached as *Exhibit B* establishing a fund from which the Equipment cost is to be paid, and an amount equal to such cost is to be deposited therein by Lessor. Lessor and Lessee shall immediately complete and execute *Exhibits A and B* relating to the Equipment and the Payments relating to the Equipment shall be due and payable commencing upon the date of said deposit of funds as provided in *Exhibit A*.

3. **Term.** The term of this Agreement begins as of the date set forth above and will continue so long as any amount remains unpaid under any Lease. The Initial Term of each Lease begins as of the date identified in such Lease and expires at midnight on the last day of the Fiscal Period during which such Lease is executed and delivered. Beginning at the expiration of its Initial Term, the term of each Lease shall automatically be extended upon the successive appropriation by Lessee's governing body of amounts sufficient to pay Rental Payments and reasonably estimated Additional Payments during the next succeeding Renewal Term, for the number of Renewal Terms, each coextensive with Lessee's Fiscal Period, as are necessary for all Rental Payments identified in the applicable Schedule to be paid in full, unless such Lease is terminated as provided therein.

The term of each Lease will expire upon the first to occur of (a) the expiration of the Initial Term or any Renewal Term of such Lease during which an Event of Non-appropriation occurs, (b) the day after the last scheduled Rental Payment under such Lease is paid in full, (c) the day after the Prepayment Option Amount under such Lease is paid in full and (d) an Event of Default under such Lease and a termination of Lessee's rights thereunder as provided therein.

The term of this Agreement for purposes of the signing of Leases shall be the Acquisition Period.

4. **Rental Payments.** Lessee hereby agrees to pay (but only from Legally Available Funds) Rental Payments for the Equipment identified in each Schedule. All Rental Payments shall be made to Lessor at Lessor's mailing address set forth above (or at such other address as may be designated from time to time pursuant to Paragraph 27 hereof) in the amounts and on the dates provided in the pertinent Schedule. Rental Payments made by check will be accepted subject to collection.



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

5. *Agreement to Seek Appropriations; Notice of Event of Nonappropriation.* Lessee agrees that its primary business official will do all things lawfully within such official's power (a) to include amounts to make Payments under each Lease in each annual or biennial budget (as appropriate) to be submitted to Lessee's governing body and (b) and to maintain and utilize any such amounts appropriated in any given Fiscal Period for the purpose for which those funds were appropriated.

Lessee hereby agrees to notify Lessor immediately (and in no case later than 30 days prior to the last day of its then current Fiscal Period) of the occurrence of an Event of Non-appropriation under any Lease. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make moneys available for the purpose of this Agreement.

6. *Prepayment Option.* Lessee is hereby granted the option to prepay (in whole but not in part) the aggregate principal component of Rental Payments identified in a Lease, prior to the scheduled payment of the Rental Payments in full pursuant to such Lease, with such prepayment permitted to be made on any Rental Payment date for which a Prepayment Option Amount is identified under the column titled "PREPAYMENT OPTION AMOUNT" in the applicable Schedule. Assuming that all Rental Payments and Additional Payments due under such Lease on and prior to the prepayment date have been paid, such prepayment amount shall equal the Prepayment Option Amount shown for the Rental Payment date on which such prepayment is to be effective under the column titled "PREPAYMENT OPTION AMOUNT" in the applicable Schedule. To exercise the option provided in this Paragraph 6 and granted in a Lease, Lessee shall give Lessor a written notice exercising such option and designating the affected Lease, the Rental Payment date on which such prepayment is to be effective and the applicable Prepayment Option Amount, which notice shall be delivered to Lessor at least thirty (30) days in advance of the proposed prepayment date. The prepayment option herein granted may be exercised by Lessee with respect to a Lease whether or not one or more Events of Default have occurred and are then continuing under such Lease at the time of such exercise; *provided, however*, that the prepayment of such principal component of Rental Payments under the applicable Lease upon the exercise of such option during the continuance of an Event of Default thereunder shall not limit, reduce or otherwise affect liabilities or obligations that Lessee has incurred as a result of such Event of Default.

Immediately upon any such prepayment being made or the last scheduled Rental Payment under the Lease is paid in full, Lessor shall execute all documents necessary to confirm in Lessee title in and to the Equipment under the affected Lease, free and clear of any lien, encumbrance or other interest created by Lessor, but without warranties and in "As Is, Where Is" condition, and to release Lessor's security interest in such Equipment, and Lessor shall deliver such documents to Lessee. Lessor shall further cooperate in providing for the filing of any necessary releases, termination statements or other similar documents and the release of certificates of title or certificates of origin to Lessee.



7. *Essentiality.* Lessee's present intention is to make Rental Payments and Additional Payments under each Lease for the Initial Term and all Renewal Terms applicable thereto as long as it has Legally Available Funds. In that regard, Lessee represents with respect to each Lease that at the time Lessee enters into each Lease (a) the use and operation of the Equipment under each Lease is essential to its proper, efficient and economic governmental operation and (b) Lessee does not have other equipment or does not have sufficient equipment available to perform the same functions as the Equipment. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment scheduled (including all applicable Renewal Terms) to be paid under the pertinent Lease. To the extent that Lessee may ultimately decide to use other equipment for the same purpose for which Lessee leased equipment under any given Lease for the benefit of the health, safety and welfare of the public, such decision shall not be considered an Event of Default nor a material misrepresentation under this Agreement.

8. Reserved.

9. *Delivery and Installation.* Lessee shall select the type, quantity and supplier of each item of Equipment designated in a Schedule. Once Lessor and Lessee have executed the related Lease, Lessee (as Lessor's agent for this purpose) shall then order the Equipment identified in such Lease from such supplier. Any executed purchase order existing at the time of the execution of a Lease, and relating to any portion of the Equipment therein identified that has not as of such Lease execution date been delivered and installed, shall be deemed to have been executed by Lessee in its capacity as Lessor's agent for purposes of such Lease. Lessor shall have no liability for any delay in delivery or failure by the supplier to deliver any Equipment under any Lease or to fill any purchase order or meet the conditions thereof. Lessee, at its expense, will pay or cause the supplier to pay all transportation, packing, taxes, duties, insurance, installation, testing and other charges in connection with the delivery, installation and use of the Equipment under all Leases. As soon as practicable after receipt of the Equipment identified in a Lease, Lessee shall furnish Lessor with an executed Acceptance Certificate relating thereto. Execution of an Acceptance Certificate with respect to the Equipment identified in a Lease by any employee, official or agent of Lessee having authority in the premises or having managerial, supervisory or procurement duties with respect to equipment of the same general type as the Equipment described in such Acceptance Certificate shall constitute acceptance of such Equipment on behalf of Lessee. By making a Rental Payment after its receipt of the Equipment identified in a Lease, regardless of whether Lessee has furnished an Acceptance Certificate with respect to such Equipment as herein provided, Lessee shall be deemed to have accepted such Equipment on the date of such Rental Payment for all purposes of such Lease.

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

10. *Disclaimer of Warranties.* LESSOR, NOT BEING THE MANUFACTURER, SELLER OR SUPPLIER OF ANY OF THE EQUIPMENT UNDER ANY LEASE, NOR A DEALER IN ANY OF SUCH EQUIPMENT, HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY, REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, AS TO ANY MATTER



WHATSOEVER, INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE DESIGN OR CONDITION OF THE EQUIPMENT, THE QUALITY OR CAPACITY OF THE EQUIPMENT, THE WORKMANSHIP IN THE EQUIPMENT, THE COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, PATENT INFRINGEMENT OR LATENT DEFECTS. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Specifically as to any Disclaimer of Warranties by Lessor under this Paragraph 10, Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for any direct, indirect, consequential, incidental or special damages or loss of any classification related to such warranties. Lessor shall have no obligation to install, erect, test, adjust, service or maintain any Equipment under any Lease. Lessee shall look solely to the manufacturer, seller and/or supplier for any and all claims related to any and all of the Equipment. **AS TO LESSOR (NOT AS TO ANY VENDOR/MANUFACTURER/EQUIPMENT SELLER), LESSEE ACQUIRES, PURCHASES AND LEASES THE EQUIPMENT "AS IS, WHERE IS" AND "WITH ALL FAULTS."**

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

11. *Title to Equipment.* During the term of each Lease, title to the Equipment identified therein shall be vested in Lessee, subject to the rights of Lessor under such Lease, unless Lessor terminates such Lease pursuant to Paragraph 25 hereof as provided in such Lease or an Event of Nonappropriation occurs with respect to such Lease, in which event title to the Equipment identified in such Lease (except software Equipment) shall immediately vest in Lessor free and clear of any right, title or interest of Lessee. Lessee, at its expense, will protect and defend Lessee's title to the Equipment identified in each Lease and Lessor's rights and interests therein and will keep the Equipment under each Lease free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. All items of Equipment shall at all times be and remain personal property notwithstanding that any such Equipment may now or hereafter be affixed to realty.

12. *Tax Covenants; Tax Indemnity Payments.* Lessee agrees that it will not take any action that would cause the interest component of Rental Payments under any Lease 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 under any Lease to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes. Lessee agrees to (a) execute and deliver to Lessor with respect to each Lease, upon Lessor's request, a tax certificate and agreement in form and content acceptable to Lessor and Lessee, relating to the establishment and maintenance of the excludability from gross income of the interest component of Rental Payments under such Lease for federal income tax purposes, and (b) complete and file or cause to be filed in a timely manner an information reporting return (either I.R.S. Form 8038-G or I.R.S. Form 8038-GC, as appropriate) in the form attached as *Exhibit A-2* to each Lease with respect to such Lease as required by the Code.

Lessee represents that neither Lessee nor any agency or unit of Lessee has on hand any property, including cash and securities, that is legally required or would otherwise be considered restricted under the Code or any United States Treasury Regulations (no matter where held or the source thereof) to purchase, directly or indirectly, the Equipment under any Lease. Lessee has not established and will not establish any



funds or accounts (no matter where held or the source thereof) which would be construed as "replacement proceeds" or a "sinking fund" under Sections 1.148-1(c)(1) and (c)(2) and any related or replacement provisions of the U.S. Treasury Regulations or the Code for paying Rental Payments, directly or indirectly.

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

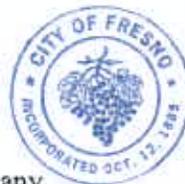
It is Lessor's and Lessee's intention that each Lease not constitute a "true" lease for federal income tax purposes, and therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment under each Lease for federal income tax purposes.

13. *Use of Equipment, Inspection and Reports.* During the term of each Lease, Lessee shall be entitled to quiet enjoyment of the Equipment identified therein and may possess and use the Equipment in accordance with such Lease, provided that Lessee is in compliance in all respects with the terms of such Lease and that such possession and use are in conformity with all applicable laws, any insurance policies and any installation requirements (including environmental specifications) or warranties of the manufacturer, seller and/or supplier with respect to the Equipment identified in such Lease. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment under each Lease. Lessor shall have the right, upon reasonable prior notice to Lessee and during regular business hours, to inspect the Equipment at the premises of Lessee or wherever the Equipment may be located. Lessee shall promptly notify Lessor of any alleged encumbrances on the Equipment identified in any Lease or any accident allegedly resulting from the use or operation thereof or any claim relating thereto.

During the term of each Lease and at Lessor's request, Lessee shall provide Lessor, on or before July 10<sup>th</sup> of any calendar year (commencing with Lessee's current Fiscal Period), with current budgets or other proof of appropriation for the ensuing Fiscal Period and such other information relating to Lessee's ability to continue the term of each Lease for the next succeeding Renewal Term as may be reasonably requested by Lessor. In the event Lessee shall have failed to approve its budget by July 10 of any calendar year and upon proof of such failure by Lessee, Lessor shall grant to Lessee a reasonable extension of time within which Lessee must provide the proof of appropriation described in this Paragraph 13.

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

14. *Security Agreement; Further Assurances.* To secure the performance of all of Lessee's obligations under each Lease, Lessee grants to Lessor, and Lessor shall have and retain, a security interest constituting a first and exclusive lien on the Equipment, except software Equipment, delivered under each



respective Lease, on all attachments, repairs, replacements and modifications thereto or therefor and on any proceeds therefrom. Lessee agrees to execute and deliver such additional documents, including, without limitation, financing statements, certificates of title or certificates of origin (or applications therefor) noting Lessor's interest thereon, opinions of counsel, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment under each Lease or for the confirmation or perfection of each Lease and Lessor's rights under each Lease. Upon the occurrence of an Event of Default or an Event of Nonappropriation under a Lease or if Lessee refuses or is otherwise unwilling to execute and file financing statements to which Lessor is entitled in accordance with such Lease within ten (10) days after Lessor's written request to Lessee therefor, Lessor is authorized to file financing statements signed only by Lessor in accordance with the applicable Uniform Commercial Code or signed by Lessor as Lessee's attorney-in-fact.

15. *Risk of Loss.* All risk of loss, damage, theft or destruction to each item of Equipment under each Lease shall be borne by Lessee. No such loss, damage, theft or destruction of the Equipment under any Lease, in whole or in part, shall impair the obligations of Lessee under any Lease (including, but not limited to, the obligation to pay Rental Payments under each such Lease when due), all of which shall continue in full force and effect subject to the terms of the applicable Lease. If (a) the Equipment or any portion thereof under a Lease 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 under a Lease is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the Net Proceeds of any insurance claim or condemnation award to be applied, at Lessor's option, to (i) the prompt repair, restoration, modification or replacement of the Equipment so affected or (ii) the payment in full of the then applicable Prepayment Option Amount. Any balance of Net Proceeds remaining after completion of such work or payment of such Prepayment Option Amount shall be paid promptly to Lessee. If the Net Proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Prepayment Option Amount in full, Lessee shall, at Lessor's direction, either complete the work or pay the then applicable Prepayment Option Amount in full and in either case pay any cost in excess of the amount of Net Proceeds, but only from Legally Available Funds.

16. *Insurance.* If Lessee is not self-insured as hereinafter provided, Lessee, at its expense, shall throughout the term of each Lease keep the Equipment thereunder insured against theft, fire, collision (in the case of vehicles) and such other risks as may be customary for each item of Equipment in an amount equal to the replacement cost value, including liability, under a policy or policies containing a loss payable endorsement in favor of Lessor. The policy required hereby shall provide that they may not be canceled or materially altered without at least thirty (30) days' prior written notice to Lessor. Lessee shall deliver to Lessor a certificate of insurance in evidence of each insurance policy and each renewal thereof. Failure by Lessor to request evidence of such insurance policies or renewals, or otherwise to verify the existence of such insurance, shall not constitute a waiver of the requirements hereof. If Lessee is self-insured with respect to equipment such as the Equipment under a Lease, Lessee shall maintain during the term of such Lease a reasonably sufficient self-insurance program and shall provide evidence thereof to Lessor in the form of a certificate of self insurance certifying coverage for the specified period and terms, exclusions and conditions thereof.

17. *Maintenance and Repairs.* Lessee shall use the Equipment under each Lease in a careful and proper manner, in compliance with all applicable laws and regulations and, at its expense, keep and maintain the Equipment under each Lease in good repair and working order, performing all maintenance and



servicing necessary to maintain the value and utility of the Equipment, including the installation of any software upgrades as necessary to keep software Equipment current, reasonable wear and tear excepted. Without the prior written consent of Lessor, Lessee shall not make any alterations, modifications or attachments to the Equipment under any Lease which cannot be removed without materially damaging the functional capabilities, economic value or utility of such Equipment.

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

19. *Lessor's Performance of Lessee's Obligations.* If Lessee shall fail duly and promptly to perform any of its obligations under a Lease, Lessor may, at its option, perform any act or make any payment that Lessor deems necessary for the maintenance and preservation of the Equipment under such Lease and Lessor's interests therein, including, but not limited to, payments for satisfaction of liens, repairs, taxes, levies and insurance. All expenses incurred by Lessor in performing such acts and all such payments made by Lessor, together with late charges described in Paragraph 20 below as provided in each Lease, and any reasonable attorneys' fees and expenses incurred by Lessor in connection therewith, shall be payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of Lessee. In the Event of Non-appropriation any obligations of Lessee under this Paragraph 19 shall be limited to costs or liability incurred by Lessor to the end of the fiscal period represented by the last Renewal Term or the end of the last Fiscal Period for which Lessee appropriated revenues necessary to pay for Rental Payments under this Agreement, whichever is earlier.

20. *Late Payment.* Unless Lessor shall have failed to timely send an invoice to Lessee, any Rental Payment not received on or before its due date shall bear interest at a rate of 18% per annum or the maximum amount permitted by law, whichever is less, from its due date.

21. (c1) *Independent Capacity.* Lessee is an independent contractor and nothing contained in this Agreement or any Lease shall authorize Lessee or any other person to operate any item of Equipment so as to incur or impose any liability or obligation for or on behalf of Lessor.

22. *No Offset; Unconditional Obligation.* Except as provided in Paragraph 3, or in the Event of Non-appropriation, the obligation of Lessee to make Rental Payments or any other Payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between Lessee and Lessor or between Lessee and an Equipment vendor or manufacturer or any other person, Lessee shall make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make Rental Payments or other payments required hereunder. Lessee's obligation to make Rental Payments shall not be abated through accident, unforeseen



circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment.

23. *Representations and Warranties of Lessee.* Lessee hereby represents and warrants to and agrees with Lessor that:

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

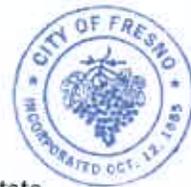
(b) Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Agreement and each Lease and has been duly authorized to execute and deliver this Agreement and each Lease and to carry out its obligations under each Lease. Attached to each Lease as *Exhibit A-3* is a full, true and correct copy or an original of a resolution or other appropriate official action of Lessee's governing body specifically authorizing Lessee to execute and deliver this Agreement and the applicable Lease. Attached to each Lease as *Exhibit A-4* is a full, true and correct copy or an original of an Incumbency Certificate relating to the authority of the officers who have executed and delivered, or will execute and deliver, this Agreement and the applicable Lease on behalf of Lessee. Attached to each Lease as *Exhibit A-5* is a full, true and correct copy or an original of an opinion of Lessee's legal counsel regarding the legal, valid and binding nature of this Agreement and each Lease on Lessee and certain other related matters.

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

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

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

(f) The payment of the Rental Payments or any portion thereof under each Lease is not (under the terms of such Lease or any underlying arrangement) directly or indirectly (i) secured by



any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property or (ii) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. No Equipment under any Lease will be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Purchase Price for the Equipment under any Lease will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into a contract with a private third party for the used or operation of the Equipment that would result in the related Lease being treated as a "private activity bond" within the meaning of Section 141(b) of the Code, or would violate Lessee's tax covenants set forth in Paragraph 12 hereof.

(g) The entering into and performance of this Agreement and each Lease will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment under any Lease pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in each Lease with respect to the granting of security interests in and to the Equipment therein described.

(h) Reserved.

(i) The useful life of the Equipment identified in each Lease will not be less than the stated full term of the applicable Lease, including all contemplated Renewal Terms.

(j) Lessee has entered into, or will enter into, each Lease for the purpose of purchasing, acquiring and leasing the Equipment identified therein and not for the purpose of refinancing any outstanding obligation of Lessee more than 90 days in advance of its payment or prepayment date. No portion of the Purchase Price for the Equipment under any Lease will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the execution and delivery of the applicable Lease.

(k) Lessee has made sufficient appropriations to pay all Rental Payments due during the Initial Term under each Lease.

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

24. *Events of Default.* Subject to the provisions of Paragraph 3, each of the following events constitutes an "Event of Default" with respect to a Lease:

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



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

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

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

(e) Lessee's actual or attempted sale, lease or encumbrance of any of the Equipment under such Lease or the making of any levy, seizure or attachment thereof or thereon.

25. *Repossession and Lessor's Other Rights Upon Event of Default or Event of Nonappropriation.* Immediately upon the occurrence of an Event of Default under a Lease or immediately after the expiration of the Initial Term or any Renewal Term during which an Event of Nonappropriation occurs, Lessor may terminate the affected Lease or Lessee's rights thereunder and in any such event repossess the Equipment (except software Equipment) thereunder, which Lessee hereby agrees, at its expense, to surrender promptly to Lessor at such location in the continental United States as Lessor shall direct. Such right of repossession and other rights as specifically provided in this Paragraph 25 shall constitute the sole remedies for Lessee's failure to make payments or otherwise perform its obligations when required under a Lease. If Lessor is entitled to repossess the Equipment under a Lease, Lessee shall permit Lessor or its agents to enter the premises where the affected Equipment is then located. In the event of any such repossession, Lessee shall execute and deliver such documents as may reasonably be required to transfer title to and possession of the Equipment under the affected Lease to Lessor, free and clear of all liens and security interests to which such Equipment may have become subject. Upon the occurrence of an Event of Default, Lessor shall have the right, by written notice to Lessee, to declare due all Rental Payments and other amounts payable by Lessee under that Lease to the end of the then current Fiscal Period, provided, in no event shall Lessee's liability exceed funds allocated and available in said Fiscal Period.

Any termination of a Lease at Lessor's option as described in this Paragraph 25 and as provided in the applicable Lease shall take effect at the end of the Initial Term or the Renewal Term then in effect under such Lease, unless Lessor at its option elects to terminate such Lease on an earlier date.

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

If Lessor terminates a Lease as described in this Paragraph 25 and as provided in the applicable Lease, or if an Event of Nonappropriation occurs under a Lease and Lessee continues to use the Equipment after the Initial Term or any Renewal Term under such Lease during which the Event of Default or the Event of Nonappropriation occurs, or if Lessee otherwise refuses to pay Rental Payments due during a Renewal



Term under a Lease for which Lessee's governing body has appropriated sufficient Legally Available Funds to pay such Rental Payments, Lessor shall be entitled to bring such action at law or in equity to recover damages attributable to such holdover period for the Equipment subject to such Lease that Lessee continues to use or to the remainder of such Renewal Term under such Lease for which such appropriations have been made.

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

If Lessor exercises its option and terminates a Lease as described in this Paragraph 25, then Lessor shall have the right to notify, in writing, and require the vendor of the software Equipment to terminate the respective software license(s) granted to Lessee as provided in the Termination Rights Agreement between such vendor and Lessee. Lessor shall concurrently notify Lessee of its exercise of this right. Upon termination of the software license, Lessee shall immediately cease using the respective software Equipment and return same directly to the vendor.

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

No waiver of or delay or omission in the exercise of any right or remedy as described herein and as provided in each Lease or otherwise available to Lessor shall impair, affect or be construed as a waiver of its rights thereafter to exercise the same. Any single or partial exercise by Lessor of any right hereunder or with respect to any Lease shall not preclude any other or further exercise of any right as described herein and as provided in each Lease. The exercise of any right or remedy herein provided with respect to a Lease shall not relieve Lessee of any other obligations under any other Lease or the Equipment identified therein.

26. *No Sale, Assignment or Other Disposition by Lessee.* Lessee agrees not to (a) sell, assign, transfer, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Agreement, any Lease or the Equipment under any Lease, (b) remove the Equipment from its Equipment Location identified in the applicable Lease, with the understanding that the "Equipment Location" is a base location for rolling stock, shall remain at a Lessee location within the City of Fresno, or (c) enter into any contract or agreement, with respect to the use and operation of any of the Equipment, under any Lease that would result in the related Lease being treated as a "private activity bond" within the meaning of Section 141(b) of the Code. Lessee shall at all times remain liable for the performance of the covenants and conditions on its part to be performed, notwithstanding any assigning, transferring or other conveyance that may be made with such consent. Lessee shall at all times comply with Paragraph 12 of this Master Lease regarding tax covenants.

27. *Assignment by Lessor.*

(a) Lessor may, at any time and from time to time without Lessee's consent, assign, transfer or otherwise convey all or any part of its interest in the Equipment under any Lease or in any Lease, including



Lessor's rights to receive the Rental Payments or any part thereof under any Lease (in which event Lessee agrees to make all Rental Payments under the affected Lease thereafter to the assignee designated by Lessor), to terminate any Lease or Lessee's rights under any Lease, to receive tax indemnity payments as provided in each Lease and to repossess the Equipment and exercise Lessor's other rights and remedies under each Lease; *provided, however*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Paragraph 27 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance with respect to a Lease that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust, interests in which are offered and sold in a private placement or limited offering only to investors whom Lessor reasonably believes are qualified institutional buyers or accredited investors within the meaning of the applicable federal securities law; *provided, however*, that in any event, Lessee shall not be required to make Rental Payments under any Lease, to send notices or to otherwise deal with respect to matters arising under any Lease with or to more than one individual or entity with respect to each Lease. No assignment, transfer or conveyance permitted by this Paragraph 27 with respect to a Lease shall be effective until Lessee shall have received a written notice of assignment (in substantially the form attached as *Exhibit A-6* to each Lease) that discloses the name and address of each such assignee; *provided, however*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under any Lease, it shall thereafter be sufficient that a copy of the agency or trust agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency or trust agreement is no longer in effect. During the term of this Agreement, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments with respect to each Lease in form necessary to comply with Section 149 of the Code. Lessee agrees, if so requested, to acknowledge each such assignment in writing within 15 days after request therefor, but such acknowledgment shall in no way be deemed necessary to make any assignment effective. Lessee further agrees that any moneys or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

(b)(c2) If Lessor assigns the right to collect Rental Payments to anyone other than the Lessor, then Lessee shall not be obligated to make any Rental Payments to any Lease assignee until Lessor notifies City Controller in writing of Lessor's assignment of any Lease, and the name and address of assignee for purposes of notice and payments.

(c) Notwithstanding anything to the contrary in this Paragraph 27 or this Agreement, Lessor hereby acknowledges that Lessee, its counsel and its advisors bear no responsibility for the accuracy or completeness of information (if any) with respect to the Agreement and any Lease or the Lessee, including, without limiting the generality of the foregoing, any information contained in any disclosure document related to the purchase by the purchasers of all or any part of Lessor's interests in the Equipment under any Lease or all or any part of Lessor's interest in any Lease.

(d) Lessor covenants and agrees to undertake all responsibility for compliance with State and Federal securities laws. The Lessor acknowledges and agrees that the Lessee has made no undertaking to provide nor has it approved any disclosure or other information for use in connection with the sale of Lease Interests. The Lessor represents and warrants that the sale of Lease Interests is exempt from Rule 15c2-12,



and acknowledges and agrees that the Lessee has made no undertaking to provide any continuing or other disclosure following the execution and delivery of a Lease.

(e) Lessor acknowledges and agrees that the sale or assignment of any Lease is subject to the restrictions contained in California Government Code Sections 5950-5955.

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

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

30. *Notices.* All notices, reports and other documents provided for in this Agreement or under any Lease shall be deemed to have been given or made when delivered (including by facsimile transmission) or three days after being mailed by certified mail, postage prepaid, addressed to Lessor or Lessee at their respective mailing addresses set forth above or at such other addresses as either of the parties hereto may designate in writing to the other from time to time for such purpose.

31. *Amendments.* This Agreement and each Lease (including the Exhibits attached thereto) constitute the entire agreement between Lessor and Lessee with respect to the Equipment therein described and the subject matter hereof and thereof. No term or provision of this Agreement or any Lease may be changed, waived, amended or terminated except by a written agreement signed by both Lessor and Lessee, except that Lessor may insert in any Schedule the serial number and additional description details of any item of Equipment after delivery thereof.

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

33. *Parties; Survival of Certain Obligations and Indemnities.* (a) The provisions of this Agreement and each Lease shall be binding upon, and (subject to the limitations of Paragraph 26 hereof) shall inure to the benefit of, the respective assignees and successors of Lessor and Lessee.

(b) The indemnities, assumptions of liabilities and obligations of Lessee provided for in Paragraph 12 of this Agreement and incorporated into each Lease shall continue in full force and effect notwithstanding the expiration or termination of the term of this Agreement or any applicable Lease, until the later of 4 years after the expiration or termination of the term of this Agreement or any applicable Lease.

34. *Counterparts.* This Agreement and each Lease may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the



same instrument; *provided, however*, that only one counterpart shall constitute the original for each Lease for purposes of the sale or transfer of a Lease as chattel paper as provided in such Lease.

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

36. *Recycling Program.* In the event Lessor maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Lessor at its sole cost and expense shall:

- (i) Promptly establish and maintain a viable and ongoing recycling program, approved by Lessee's Solid Waste Management Division, for each office and facility. Literature describing Lessee recycling programs is available from Lessee's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Promptly contact Lessee's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of Lessee's Solid Waste Management Division the establishment of the recycling program in Paragraph (i) above and the ongoing maintenance thereof.

LESSOR AND LESSEE EACH HEREBY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT.



IN WITNESS WHEREOF, Lessor and Lessee have each caused this Master Equipment Lease-Purchase Agreement to be duly executed and delivered as of the date first above written.

Lessee:

Lessor:

CITY OF FRESNO

DE LAGE LANDEN PUBLIC FINANCE LLC

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

By: Susan Vekomy

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

Printed Name: Susan Vekomy

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

Title: manager



**EXHIBIT A**

**Lease Schedule**

MASTER EQUIPMENT LEASE-PURCHASE

AGREEMENT NO.: \_\_\_\_\_

DATE OF MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT: \_\_\_\_\_

LEASE SCHEDULE NO.: \_\_\_\_\_

DATE OF COMMENCEMENT OF INITIAL TERM: \_\_\_\_\_

NOTIFICATION DATE: \_\_\_\_\_

LESSEE: CITY OF FRESNO

1. DESCRIPTION OF THE EQUIPMENT:

SUPPLIER	QUANTITY	DESCRIPTION OF UNITS OF EQUIPMENT	SERIAL NUMBERS <sup>1</sup> (IF AVAILABLE)

together with all accessories, attachments, substitutions and accessions.

2. EQUIPMENT LOCATION: \_\_\_\_\_

3. The Rental Payments shall be made for the Equipment as follows:

<sup>1</sup> As provided in Paragraph 31 of the Master Lease Purchase Agreement, Lessee authorizes Lessor to insert serial numbers and additional description details of Equipment when determined by Lessor.



DATE DUE	PRINCIPAL COMPONENT	INTEREST COMPONENT	TOTAL RENTAL PAYMENT DUE	PREPAYMENT OPTION AMOUNT <sup>2</sup>

4. For purposes of this Lease, "State" means the State of California.

5. Lessee's current Fiscal Period extends from **July 1, 20\_\_** to **June 30, 20\_\_**.

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

7. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in such Master Lease Purchase Agreement (particularly Paragraph 23 thereof) are true and correct as though made on the date of execution of this Lease Schedule

Lessee:  
City of Fresno

Lessor:

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

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

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

<sup>2</sup> Assumes all Rental Payments and Additional Payments due on and prior to that date have been paid.



**EXHIBIT A-1**

**Acceptance Certificate**

LESSEE: CITY OF FRESNO

MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT NO. ....

LEASE SCHEDULE NO. ....

THE UNDERSIGNED ACKNOWLEDGES AND REPRESENTS THAT:

1. The Equipment identified in the above-referenced Lease Schedule is delivered, installed, available for use and is placed in service as of the Acceptance Date indicated below.
2. Such Equipment is in good operating condition and repair and is accepted as satisfactory in all respects for the purpose of the applicable Lease.
- 3.

ACCEPTANCE DATE: X.....

AUTHORIZED SIGNATURE: X.....

PRINTED NAME: X.....

TITLE: X.....



**EXHIBIT A-2**

**(To Lease Schedule No. \_\_)**  
**[Attach I.R.S. Form 8038-G or 8038-GC, as Appropriate]**



**EXHIBIT A-3**

**(TO LEASE SCHEDULE NO.   )**

**[ATTACH FORM OF AUTHORIZING RESOLUTION]**



**EXHIBIT A-4**

**(TO LEASE SCHEDULE NO. \_\_\_)  
INCUMBENCY CERTIFICATE OF LESSEE**

The undersigned, the duly authorized representative of the named Lessee under that certain Master Lease Purchase Agreement dated \_\_\_\_\_ (the "*Agreement*"), with \_\_\_\_\_, as Lessor, hereby certifies as follows in accordance with the requirements of the Agreement, which is incorporated by reference into the above-referenced Lease Schedule. Capitalized terms used herein have the same meaning as in the Agreement.

I hold the position noted under my signature, and I have all authority necessary to execute and deliver this Certificate. The following officers of the Lessee are duly elected or appointed, and the signatures above the respective name and title are true and correct and, where required, have been filed with the appropriate officials of the State.

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

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

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

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

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

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

IN WITNESS WHEREOF, I have executed and delivered this certificate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Lessee: CITY OF FRESNO

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

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

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



**EXHIBIT A-5**

[Attach Opinion of Lessee's Counsel]



**EXHIBIT A-6  
(To Lease Schedule No. \_\_\_)**

**NOTICE AND ACKNOWLEDGMENT OF SALE OF  
RENTAL PAYMENTS AND ASSIGNMENT OF LEASE**

\_\_\_\_\_ ("*Lessor*") and CITY OF FRESNO ("*Lessee*") have entered into a Master Equipment Lease-Purchase Agreement No. \_\_\_\_\_ dated \_\_\_\_\_, and Lease Schedule No. \_\_\_\_\_ dated \_\_\_\_\_ (collectively the "*Lease*"), under which Lessee has, or will have prior to its execution hereof, leased equipment (the "*Equipment*") described in such Lease Schedule.

Lessee is hereby notified that Lessor has assigned to the assignee named below ("*Assignee*") all of Lessor's right, title and interest in and to the Lease, the leased Equipment and the Rental Payments, all as permitted by the Lease.

Lessee is hereby directed to pay any and all Rental Payments and other amounts due with respect to which Lessor's Assignee renders an invoice, at the address set out immediately below or as otherwise directed in said invoice:

"Assignee" \_\_\_\_\_  
\_\_\_\_\_

By signing this Notice and Acknowledgment, Lessee agrees that it will pay all amounts due under the Lease as directed in the invoice without any set-off or deduction whatsoever notwithstanding any defect in, damage to or requisition of any of the Equipment leased under the Lease, any other similar or dissimilar event, or any defense, set-off, counterclaim or recoupment arising out of any claim of Lessee against Lessor or Assignee.

Lessee further acknowledges and agrees that Assignee has not assumed any of Lessor's obligations or duties under the Lease or made any warranties whatsoever as to the Lease or the Equipment. Lessee agrees that no change may be made to the Lease without the prior written consent of Assignee.

By signing this Notice and Acknowledgment, Lessee warrants that its representations and warranties under the Lease are true and correct on the date hereof.

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

Lessee: CITY OF FRESNO

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

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

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



**EXHIBIT A-7**  
TERMINATION RIGHTS AGREEMENT

This Termination Rights Agreement ("TRA") is made and entered into as of \_\_\_\_\_, ("Agreement Effective Date") by and between \_\_\_\_\_ ("Vendor") and the City of Fresno ("Licensee").

**WITNESSETH:**

That, for and in consideration of the mutual promises herein contained, to induce \_\_\_\_\_ and its successors and assigns ("Lessor") to enter into a financing agreement entitled "Lease Schedule No. \_\_\_", dated \_\_\_\_\_, with Licensee ("Lease"), and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties to this TRA, intending to be legally bound, agree to the following:

1. For purposes herein, the following certain definitions have the following meaning: (i) "License Agreement" means \_\_\_\_\_ between the parties, dated as of \_\_\_\_\_; (ii) "Order Schedule" means \_\_\_\_\_, dated \_\_\_\_\_, to the License Agreement; (iii) "Licensed Software" means the license for the software products described in a Schedule to the Lease which has been terminated by Lessor, including the related services and all other materials listed in the Schedule to the Lease and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to the related license and other rights granted in the License Agreement to the extent they apply to the Licensed Software.

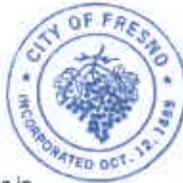
2. Licensee hereby acknowledges that Lessor, in accordance with the terms of the Lease, may require Vendor, and Vendor shall be entitled upon receipt of written notice from Lessor, to: (i) terminate the License Agreement and/or Order Schedule to the extent applicable to the Licensed Software; (ii) revoke all Licensed Software under the License Agreement and/or Order Schedule; and (iii) permanently suspend all support, consulting or other services contemplated under the License Agreement and/or Order Schedule to the extent applicable to the Licensed Software. Upon such termination, Licensee will immediately cease using the Licensed Software and return the Licensed Software directly to the Vendor in accordance with Paragraph 25 of the Master Lease Purchase Agreement referenced in the Lease. Vendor hereby agrees that within three (3) business days of receipt of a written termination request from Lessor, Vendor will revoke all Licensed Software. Vendor will concurrently notify Lessor of its actions. Effective as of the date of revocation, Vendor shall not re-sell or re-license the same or similar products and services (those providing materially the same business functions) to Licensee for a period of one (1) year. Vendor agrees that any revocation or termination by Vendor hereunder shall not constitute a breach or default by Licensee under the terms and conditions of the License Agreement and/or Order Schedule.

3. All of Vendor's rights under this TRA may be granted or assigned by Vendor to Lessor, and may be directly enforced against Licensee by Lessor or Vendor. Vendor hereby agrees that, upon written request from Lessor, Vendor will assign its termination rights pursuant to this TRA. No such grant or assignment will cause Lessor to be responsible for any performance due from Vendor under the License Agreement and/or Order Schedule, and Lessor will not be deemed to have assumed any such responsibility as a result of any grant or assignment of rights from Vendor.

4. In the event of any termination of the License Agreement pursuant to the exercise of the termination rights specified herein, it is understood and agreed that no refunds shall be due or payable by Vendor to Licensee or Lessor.

5. In the event of any conflicts or inconsistencies between the provisions of this TRA and the License Agreement and/or any addenda thereto, the provisions of this TRA shall prevail. The remainder of the License Agreement shall remain in full force and effect, unamended.

6. This TRA, together with the License Agreement and Order Schedule, shall constitute the complete and entire agreement of Vendor with respect to this matter. Lessor must consent in writing prior to any changes or amendments to the License Agreement, the Order Schedule,



or this TRA. No modification, amendment or revision of this TRA, License Agreement or Order Schedule shall be deemed effective unless in writing by an authorized representative of Vendor.

7. This TRA shall expire upon the first to occur of (i) the revocation of the Licensed Software; (ii) the termination of the License Agreement and/or Order Schedule; and (iii) Vendor's receipt of a termination statement, signed by Lessor, in accordance with Paragraph 6 of the Master Lease Purchase Agreement referenced in the Lease.

**City of Fresno**

**[Software Vendor]**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title



## EXHIBIT B

### ESCROW AGREEMENT

\_\_\_\_\_, a \_\_\_\_\_ corporation duly qualified to transact business in the State of California (the "Lessor"), and City of Fresno, municipal corporation and charter city, duly organized and existing under the laws of the State of California (the "Lessee"), hereby deliver to \_\_\_\_\_, a \_\_\_\_\_ banking corporation, as escrow agent (the "Escrow Agent"), the sum of \$ \_\_\_\_\_, RECEIPT OF WHICH THE ESCROW AGENT HEREBY ACKNOWLEDGES, for deposit into the Escrow Fund (as hereinafter defined), to be held and disposed of by the Escrow Agent upon the terms and conditions hereinafter set forth to which the undersigned hereby agrees as follows:

1. The Escrow Agent hereby acknowledges receipt of a true and correct copy of an executed Lease Schedule No. \_\_\_\_\_ dated as of \_\_\_\_\_, 200\_\_, to Master Lease Purchase Agreement dated as of \_\_\_\_\_, 2008 (the "Lease"), whereby the Lessor leases to the Lessee, and the Lessee leases from the Lessor, the equipment and other property described in the Lease (the "Equipment"). From and after the Escrow Agent's receipt of a written notice from the Lessor that the Lessor has assigned its right, title and interest in the Lease to an assignee, and of any further assignments, all references to the "Lessor" herein shall mean and refer to such assignee or assignees.

2.(a) There is hereby created and established with the Escrow Agent a special escrow fund designated the \_\_\_\_\_ (\_\_\_\_\_ Project) Escrow Fund (the "Escrow Fund") to be held by the Escrow Agent in the name of the Lessee separate and apart from all other funds of the Lessor, the Lessee or the Escrow Agent.

(b) The moneys and investments held in the Escrow Fund are irrevocably held in trust for the benefit of the Lessee and the Lessor, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either the Lessee or the Lessor. The Lessor, the Lessee and the Escrow Agent intend that the Escrow Fund constitute an escrow account in which the Lessee has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein for the disbursement of funds by the Escrow Agent therefrom. However, if the parties' intention that the Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in full is not respected in any legal proceeding, the parties hereto intend that the Lessor have a security interest in the Escrow Fund, and such security interest is hereby granted by the Lessee to secure payment of all sums due to the Lessor under the Lease. For such purpose, the Escrow Agent hereby agrees to act as agent for the Lessor in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to the Escrow Fund, the Lessor's interest therein.

3.(a) The Escrow Agent shall disburse funds from the Escrow Fund to the manufacturer, seller or supplier of items of Equipment (the "Vendor") within three business days after receipt of a completed payment request form from the Lessee, substantially in the form attached as *Exhibit B-1* hereto (the "Payment Request Form"), executed by the \_\_\_\_\_ of the Lessee or his or her designee, and approved for payment by the Lessor. Each Payment Request Form shall have attached thereto such bills, receipts, invoices or other documents acceptable to the Lessee and the Lessor evidencing the amount and purposes for which the disbursement is requested. The Lessee agrees to submit to the Lessor each Payment Request Form for approval for payment by the Lessor and such other documents and certificates as the Lessor may reasonably request to evidence the proper expenditure of the moneys in the Escrow Fund for the



purpose of paying costs to acquire the Equipment to be leased pursuant to the Lease. The Lessee is responsible for making any and all payments required that exceed \$ \_\_\_\_\_ due to Equipment modifications and change orders authorized or ordered by the Lessee. The Escrow Agent assumes no responsibility for the expenditure of moneys paid out of the Escrow Fund pursuant to a Payment Request Form properly signed, approved by the Lessor and delivered to the Escrow Agent as provided herein.

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

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

4.(a) To the extent permitted by law, and with such collateral or security as required by law, any moneys held as part of the Escrow Fund shall be promptly invested and reinvested by the Escrow Agent upon the written direction of the Lessee (so long as an Event of Default under the Lease has not occurred and is continuing or an Event of Nonappropriation under the Lease has not occurred) or the written direction of the Lessor (if an Event of Default under the Lease has occurred and is continuing or an Event of Nonappropriation under the Lease has occurred) in any of the following investments: (i) direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America, the guarantee of which constitutes the full faith and credit obligation of the United States of America ("*United States Government Obligations*"); (ii) bonds, debentures, participation certificates or notes issued by, or obligations the prompt payment of principal and interest for which is guaranteed by, any of the following: Bank for Cooperatives, Federal Financing Bank, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal National Mortgage Association, Export-Import Bank of the United States, Student Loan Marketing Association, Farmers Home Administration, Federal Home Loan Mortgage Corporation or Government National Mortgage Association, or any other agency or corporation that has been or may hereafter be created by or pursuant to an Act of Congress of the United States as an agency or instrumentality thereof; or (iii) certificates of deposit, time deposits, bank repurchase agreements or any other interest-bearing banking arrangements with any banking



institution (including the Escrow Agent or any bank with which the Escrow Agent is affiliated) that is fully insured by the Federal Deposit Insurance Corporation, or any successor thereto, *provided* that such certificates of deposit or time deposits, bank repurchase agreements or other interest-bearing banking arrangements, if not fully insured by the Federal Deposit Insurance Corporation, or such successor, are either (A) issued by national or state banks having capital and surplus of at least \$100,000,000 and a rating of "A" or better by any nationally recognized securities rating organization or (B) fully secured by United States Government Obligations.

(b) No investment shall be made in a security maturing later than the date on which the Lessee reasonably anticipates needing such funds for the payment of the costs to acquire the Equipment from the Escrow Fund. The Lessee shall notify the Escrow Agent from time to time as to the dates on which funds are needed for disbursement from the Escrow Fund and the estimated amount of each such disbursement, and the Escrow Agent may rely upon such information in connection with the investment or reinvestment of funds. Until further notice from the Lessee to the Escrow Agent, the schedule of disbursements attached as *Exhibit B-2* hereto (the "*Escrow Fund Draw Schedule*") shall constitute such notice from the Lessee upon which the Escrow Agent may rely for such purposes.

(c) So long as an Event of Default under the Lease has not occurred and is not continuing or an Event of Nonappropriation under the Lease has not occurred, earnings and income realized from the investment and reinvestment of moneys in the Escrow Fund shall be applied as directed by the Lessee either to (i) payment of costs to acquire Equipment or (ii) payment of the interest component of Rental Payments. After the occurrence of an Event of Default under the Lease and so long as it continues or after the occurrence of an Event of Nonappropriation under the Lease, earnings and income realized from the investment and reinvestment of moneys in the Escrow Fund shall be applied as directed by the Lessor to the payment or prepayment of the principal and interest component of Rental Payments.

(d) All investments shall be held for the benefit of the Lessor and the Lessee as herein provided, shall be disbursed to pay costs to acquire the Equipment to be leased pursuant to the Lease (but only upon satisfaction of the conditions contained herein for disbursement of such funds), shall be registered in the name of the Escrow Agent only, solely and specifically for purposes of the escrow hereunder, and shall be held by the Escrow Agent.

5. For purposes of this Escrow Agreement:

(a) The Escrow Agent shall not incur any liability in acting upon any Payment Request Form delivered hereunder and believed by the Escrow Agent to be genuine and to be signed and approved by the proper parties.

(b) The Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of the Escrow Agent's duties hereunder and shall not be held to any liability for acting in accordance with advice so received.

(c) Subject to the security interest granted to the Lessor pursuant to Paragraph 14 of the Lease and in Paragraph 2 of this Escrow Agreement, the Escrow Agent shall have a first lien on the moneys held by it hereunder for its compensation and for any costs, liability or expense or counsel fees it may incur.

6. In the event of any disagreement between the undersigned or any of them, and/or any other person, resulting in adverse claims and demands being made in connection with or for any moneys involved herein or affected hereby, the Escrow Agent shall be entitled at its option to refuse to comply with any such



claim or demand, so long as such disagreement shall continue, and in so refusing the Escrow Agent may refrain from making any delivery or other disposition of any moneys involved herein or affected hereby and in so doing the Escrow Agent shall not be or become liable to the undersigned or any of them or to any person or party for its failure or refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to continue so to refrain and refuse so to act until:

(a) the rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the moneys involved herein or affected hereby; or

(b) all differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing signed by all of the persons interested.

7.(a) The fees for the usual services of the Escrow Agent under the terms of this Escrow Agreement are set forth in the schedule attached hereto as *Exhibit B-3*. In addition, the Escrow Agent shall be entitled to reimbursement for all out-of-pocket expenses reasonably incurred hereunder (including, without limitation, fees of counsel). A statement of the fees and out-of-pocket expenses owed to the Escrow Agent by the Lessee shall be mailed periodically to the Lessee at the mailing address set forth in the Lease.

(b) In the event that the fees charged and due the Escrow Agent remain unpaid for a period of one year, the Escrow Agent shall have the right, and is hereby authorized, in its sole and absolute discretion, and without liability to any person, to terminate all duties hereunder upon thirty (30) days written notice to the Lessee and the Lessor at their respective addresses.

(c) All fees and out-of-pocket expenses charged by the Escrow Agent shall be paid by the Lessee within thirty (30) days after receipt of the statement therefor as provided in subparagraph (a) of this Paragraph, but only from Legally Available Funds (as such term is defined in the Lease).

8. Within fifteen (15) days after the Escrow Agent's receipt of a written request from the Lessee or the Lessor for such information, the Escrow Agent shall provide to the requesting party a written summary of the receipts, disbursements and status of moneys and investments in the Escrow Fund.

9. All notices and other communications provided for hereunder shall be in writing and, if to the Lessee, mailed or delivered to it, addressed to it at **City of Fresno, 2600 Fresno Street, Fresno, CA 93721, Attention: City Controller**; if to the Lessor, mailed or delivered to it, addressed to it at \_\_\_\_\_; and if to the Escrow Agent, mailed or delivered to it at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, Attention: \_\_\_\_\_, or as to any party at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this Paragraph. All such notices and other communications, when mailed shall be effective when within three days after being deposited in the mails, addressed as aforesaid or upon delivery if delivered by courier, except that directions to the Escrow Agent shall be effective only upon actual receipt by the Escrow Agent.

10. This Escrow Agreement may be modified or amended only with the written consent of all parties hereto.

11. This Escrow Agreement shall terminate on the earlier of \_\_\_\_\_, or when all transfers required to be made by the Escrow Agent under the provisions hereof shall have been made.

12. If any one or more of the covenants or agreements provided in this Escrow Agreement on the



part of the Lessor, the Lessee or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

13. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

14. This Escrow Agreement shall be construed and enforced in accordance with the laws of the State of **California**.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

CITY OF FRESNO,  
\_\_\_\_\_ as Lessee

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

\_\_\_\_\_ as Lessor

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

\_\_\_\_\_, as Escrow Agent

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



**ACKNOWLEDGEMENT AND ACCEPTANCE OF AGENT**

\_\_\_\_\_ hereby acknowledges and accepts its  
appointment as Agent hereunder, as of this \_\_\_\_\_ day of \_\_\_\_\_,  
200\_\_.

\_\_\_\_\_, as Agent

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

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

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



**EXHIBIT B-1**

**PAYMENT REQUEST FORM No. \_\_\_\_\_**

LESSEE: CITY OF FRESNO

DATE: \_\_\_\_\_

ESCROW AGREEMENT ("AGREEMENT") DATED AS OF: \_\_\_\_\_

THE UNDERSIGNED ACKNOWLEDGES AND REPRESENTS THAT:

IN ACCORDANCE WITH PARAGRAPH 3 OF THE AGREEMENT, THE LESSEE HEREBY AUTHORIZES AND REQUESTS A DISBURSEMENT FROM THE ESCROW FUND TO PAY THE AMOUNTS TO THE PAYEES IDENTIFIED HEREIN FOR CERTAIN EQUIPMENT COSTS.

THE LESSEE HEREBY REPRESENTS AND WARRANTS FOR ALL PURPOSES THAT:

1. Pursuant to the invoice attached hereto, the amount to be disbursed is \$ \_\_\_\_\_.
2. PAYMENT IS TO BE MADE TO: PAYEE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. The amount to be disbursed constitutes the Purchase Price, or portion thereof, of the Equipment cost, said amount is required to be disbursed pursuant to a purchase contract entered into therefor by and on behalf of the Lessee, or was necessarily or reasonably incurred, and said amount is not being paid in advance of time, if any, fixed for any payment.
4. The Equipment relating to such Purchase Price, or portion thereof, has been delivered and accepted or the materials have been furnished for which disbursement is required.
5. No amount set forth in this Payment Request Form was included in any Payment Request Form previously submitted.
6. Acquisition and installation of the applicable portion of the Equipment for which payment is being requested has been completed in accordance with plans and specifications approved by the Lessee and in accordance with the terms and conditions of the purchase contract. Said applicable portion of the Equipment is suitable and sufficient for the expected uses thereof, but this statement is made without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being.
7. If the amount to be disbursed constitutes final payment for all of the Equipment, there is attached hereto an original of the Acceptance Certificate, *Exhibit A-1* to the Lease (as such term is defined in the Agreement), executed by an authorized officer of Lessee.



8. Each disbursement hereby requested has been incurred and is a proper charge against the Escrow Fund. No amount hereby requested to be disbursed will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the date of execution and delivery of the Lease.

APPROVED FOR PAYMENT:

LESSEE:

LESSOR:

CITY OF FRESNO

By: \_\_\_\_\_, as Agent

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**EXHIBIT B-2**

**ESCROW FUND DRAW SCHEDULE**

ANTICIPATED PAYMENT DATE

PAYMENT AMOUNT

TOTAL:



**EXHIBIT B-3**

**[ATTACH ESCROW AGENT FEE SCHEDULE]**