

Date: July 6, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor *Daniella Levine Cava*

Subject: Resolution Approving Selection of Banc of America Public Capital Corporation to Provide Capital in an Amount Not to Exceed \$145,000,000; Providing and Approving Terms of Related Commitment Letter; and Authorizing County Mayor and/or County Mayor's Designee to Take All Actions Necessary to Consummate the Lease/Purchase Through Related Agreements

Agenda Item No. 8(D)(1)

Resolution No. R-590-23

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the accompanying Resolution (Resolution) which authorizes the following:

- Selection of Banc of America Public Capital Corporation (BAPCC) to provide capital in an amount not to exceed \$145,000,000 over a two-year period for the lease/purchase and the payment of related financing costs of vehicles and equipment for County departments and/or elected offices (collectively, the "Departments");
- Reimbursement of operating funds that were used to purchase vehicles and equipment per the FY 2020-21 and FY 2021-22;
- Approval of the terms of the BAPCC commitment letter;
- Delegating to the County Mayor and/or the County Mayor's Designee the authority to take all actions necessary to consummate the financing provided that such actions are consistent with the terms of the attached commitment letter; and
- Waiver of Resolution No.: R-130-06, which requires that any contracts of the County with third parties be executed and finalized prior to their placement on an agenda for Board consideration.

Delegation of Authority

The Resolution delegates to the County Mayor or the County Mayor's Designee the authority to finalize negotiations and enter into a master lease agreement in accordance with the terms of the commitment letter, term sheet and form of equipment lease/purchase agreement that is attached to the Resolution.

Scope

The scope of this financing is countywide. If the Resolution is approved by the Board, the County will use the financing proceeds to fund the purchase of approximately 1,145 vehicles and pieces of equipment and pay related finance closing costs.

Fiscal Impact/Funding Source

Proceeds from this master lease agreement are only available to fund purchases authorized by the Board. The amount to be financed to fund the vehicle/equipment purchases and pay related financing costs will not exceed \$145,000,000 over a two-year period. The table below describes the terms and interest rates provided by BAPCC. The master lease will allow the County to access the funds through issuance of multiple leases, and each lease schedule will have repayment periods that reflect the type of asset being financed. The rates associated with those different repayment periods are as follows:

Repayment Term (Years)	Interest Rate
5	3.36%
7	3.34%
10	3.31%
12	3.37%
15	3.49%

The interest rates offered by BAPCC are locked in until August 18, 2023.

BAPCC is providing an upfront escrow structure where they would fund the County’s requested draws to an escrow, and the County can draw from the escrow upon requisition from the County and delivery of the vehicles/equipment. It is currently expected that the first series of the master lease to fund FY 2020-2021 and FY 2021-2022 purchases will be approximately \$45,000,000. One or more subsequent schedules will be issued for a total of up to \$100,000,000. There are no fees associated with the committed but unissued lease amount. Further, there are no up-front bank charges, underwriting fees, or payment processing fees associated with the escrow. Each Department will only be obligated to pay its share of closing expenses.

Lease payments will occur on October 1 and April 1 each year of the financing term with the first payment beginning on April 1, 2024. An annual expenditure appropriation to fund the master lease payments will be included in each Department’s operating budget.

Track Record/Monitoring

If approved, the financing will be managed by the Finance Department, Division of Bond Administration, Arlesa Wood, Director. Budgeting of the master lease payments will be included in the annual resource allocation process managed by the Office of Management and Budget, David Clodfelter, Director.

Background

A majority of the vehicles and equipment being purchased have been approved by the Board pursuant to Resolution Nos. R-1151-21, R-199-22, R-980-22, and R-1115-22. The County’s light vehicle fleet fuel efficiency policy and electrification goal requires that beginning with FY 2021-22, that 10 percent of light fleet purchases shall be battery electric vehicles and to increase that goal by an additional 10 percent or more each year thereafter with the goal of converting the County’s entire light fleet to battery electric vehicles by 2030. The FY 2021-22 purchases met the requirements of the light vehicle fleet fuel efficiency policy and electrification goal and in FY 2022-23 the minimum goal is 20 percent. This initiative has been established to promote net-zero emission initiatives as the County is one of the most vulnerable communities in the world to climate change and sea level rise threats.

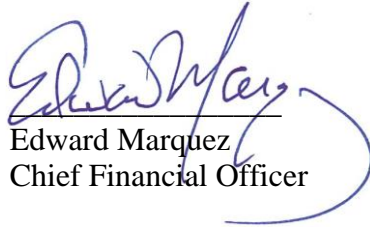
On April 13, 2023, the County’s FA released a competitive solicitation document (Attachment 1) to the banking and financial industry consistent with the County’s objective of financing the vehicles and equipment at the lowest cost of funds based on the current market at the most favorable terms.

On May 2, 2023, the FA received two proposals from major banking institutions. Upon review of the proposals (Attachment 2 provides a comparative summary of the proposals), it was determined that the proposal submitted by BAPCC conformed to the requirements of the solicitation at the lowest cost, with an offer letter and term sheet providing the County the most favorable terms and conditions overall.

Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners
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Proceeds of the lease/purchase financing will be escrowed with TMI Trust, a Florida based trust company, and released as vehicles and equipment are delivered and accepted by the Departments. The Departments will hold title to the vehicles upon delivery, acceptance, and payment to the vehicle vendor. Closing is anticipated to occur on or about July 18, 2023.

Attachments (2)



Edward Marquez
Chief Financial Officer

Attachment 1



April 13, 2023

Memorandum

To: Prospective Financing Providers
From: PFM Financial Advisors, LLC (“PFM”)
Re: Equipment Master Lease – Request for Proposals
Due May 1, 2023 @ 1:00 pm

On behalf of Miami-Dade County (the “County”), PFM is distributing this request for proposals for tax-exempt annual appropriation master lease purchase equipment financing (the “Master Lease”). The County anticipates issuing up to **\$145 million** in total under the Master Lease with an initial borrowing in Fiscal Year 2023 (the “Series 2023 Lease”) to purchase vehicles and equipment, with additional tranches issued for a period of two years after the closing date. The County may ultimately lease less equipment and/or a lesser principal amount, at its discretion. The County will use the proceeds from the Master Lease to finance equipment for various departments including:

- Miami Dade Fire
- Miami Dade Police
- Solid Waste
- Elections
- Parks, Recreation and Open Spaces
- Board of County Commissioners
- Internal Services
- Information Technology
- Corrections & Rehabilitation
- Community Action and Health Services
- Transportation & Public Works
- Judicial Administration

The proceeds will also be used to pay certain expenses related to the issuance of the lease purchase financing. The financing shall be secured by a contractual obligation of the County to make semi-annual payments of interest and principal. The initial draw at closing is expected to be issued in an estimated amount of \$45 million. The exact amounts to be placed in escrow and/or immediately reimbursed will be determined prior to closing.

If you are interested in providing a tax-exempt equipment Master Lease proposal to the County, please submit a proposal describing your qualifications, outlining all anticipated costs and detailing the material terms and conditions of the principal legal documents. Please note that the County’s Special Tax Counsel will provide the tax-exempt opinion. Outlined below are the items of information that should be specifically included in your firm’s response. Provided in a similar format to that shown below, plus supplemental schedules as needed. In order to help facilitate your response, please find in Appendix A to this request a description of the equipment to be financed.

Type of Equipment: Vehicles and equipment (various departments)

Master Lease Size: \$145,000,000

Repayment Term: Given the different useful lives of the equipment to be financed, please provide different interest rate formulas for various repayment terms. We would ask that at a minimum, the proposer provide for 5, 7, 10, 12, and 15-year terms. These terms are from the time of the draw; for example, if the County were to draw on the program in 2025 using the 12-year term rate, the final maturity on that draw would be in 2037.

Amortization: Semi-annual level lease payments

Structure: The Master Lease will allow for upfront-funded escrow draws, with repayment of principal and interest, with such principal and interest payments commencing on either April 1 or October 1 of the appropriate year as appropriate, and with payments continuing semi-annually thereafter until the final term of the individual borrowing is reached.

Closing Date: Expected on or about July 18, 2023.

Term: 5, 7, 10, 12, 15 Years

Annual Interest Rate:

Fixed or Variable interest rate	
(if proposed for first series)	_____
	—
Index and Formula used for future requests	
(with indicative rate as of today)	_____
	—

Prepayment Provisions: Detail optional redemption provisions.

1. Discuss any limitations on the type of projects that can be financed.
2. Provide the maximum duration of the Master Lease. Provide a schedule of terms for each asset class if available.
3. Funding amounts: include funding limits either by draw or total funding.
4. Potential respondents will be provided with lease documents from the County's last completed equipment financing. Please provide any significant changes or deviations you would like to make from the document provided.
5. The financings shall be secured by a contractual obligation of the County to make semi-annual payments of interest and principal.
6. Please provide a not-to-exceed fee for bank counsel for the Master Lease.

Tentative Schedule:

RFP Distributed	April 13, 2023
Deadline for Questions	April 25, 2023
Proposals Due	May 1, 2023 (1:00 p.m. ET)
Board Consideration	July 5, 2023
Closing	July 18, 2023 (estimate)

The County is requesting that proposals be submitted by **May 1, 2023 at 1:00 pm** to the following email addresses: Pete Varona (varonap@pfm.com) and Sergio Masvidal (masvidals@pfm.com). Any inquiries requesting clarifications of this solicitation or additional information shall be submitted to PFM no later than April 25, 2023 in order to provide adequate response time to the proposer requesting the information.

The County will not accept any offer with capital adequacy or other interest rate adjustment language with respect to changes to tax law. The only interest rate adjustment provision the County will consider is one imposed by the IRS and due from the holder which results solely from actions of the County. Included in its written proposal, each Proposer shall agree to the following certifications which will be included, among others, as representations in the financing documents:

- You have an understanding of the County's Self-Insurance Policy with respect to the equipment.

(A description of the Policy is set forth in Note Seven in the County's FY 2021 Annual Comprehensive Financial Report).

- The County shall not deliver any offering document with respect to the financing arrangement.
- You have conducted your own investigation, to the extent you deem satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the County.

(For additional financial information please use the following link <http://www.miamidade.gov/finance/> providing access to historical Annual Comprehensive Financial Reports and Bondholder Reports. While this financing arrangement will not be rated, the County's current underlying credit ratings for their Special Obligation debt secured by eligible Non-Ad Valorem revenues is Aa2 and AA by Moody's and S&P, respectively.)

- No inference should be drawn that you, in the acceptance of any financing documents, are relying on the County Attorney as to any such matters other than the legal opinions which may be rendered by such counsel.

- You have made such independent investigation of the financing risks associated with the financing as you, in the exercise of sound business judgment, consider being appropriate under the circumstances.
- You have knowledge and experience in financial and business matters and can evaluate the merits and risks of participating in the financing with the County and you can bear the economic risk of such participation.
- You are not acting as a broker or other intermediary and are entering into the financing as an investment for your own account and not with a present view to resale or other distribution to the public.
- You are a bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes.

The financing agreement will also include the following language:

- Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee. The rental payments are to be made only from lessee's legally available revenues appropriated on an annual basis, and neither lessee, the state, nor any political subdivision or agency thereof shall be obligated to pay any sums due hereunder from the compelled levy or ad valorem or other taxes except from those legally available revenues appropriated by lessee on an annual basis, and neither the full faith and credit nor the taxing power of lessee, the state of Florida or any political subdivision thereof are pledged for payment of such sums due hereunder.

THE COUNTY WILL ULTIMATELY SELECT THE PROPOSAL THAT IS DEEMED TO BE THE BEST OVERALL VALUE TO THE COUNTY, INCLUDING THE INTEREST RATE, PREPAYMENT TERMS, AND OTHER TERMS AND CONDITIONS. THE COUNTY RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS AND RESERVES THE RIGHT TO WAIVE, IF PERMITTED BY LAW, ANY IRREGULARITY OR INFORMALITY IN ANY PROPOSAL.

Appendix A: Equipment Description

FY 20-21 County Depts. Lease Vehicle Purchases		
Dept	Qty of Units	Total PO Amounts
MDFR	14	\$ 1,431,302.08
Total	14	\$ 1,431,302.08
<i>* All vehicles expected to be delivered in FY23- delivery delay is due to supply chain shortages</i>		
FY 21-22 County Depts. Lease Vehicle Purchases		
Dept	Qty of Units	Total PO Amounts
DTPW	4	\$ 821,677.00
SWM	138	\$ 30,028,250.00
MDFR	37	\$ 12,622,616.66
Total	179	\$ 43,472,543.66
FY 22-23 County Depts. Lease Vehicle Purchases		
Departments	Qty of Units	Sum of FY2022-23
BCC	6	\$ 270,000.00
CAHSD	18	\$ 975,000.00
Corrections and Rehabilitation	14	\$ 448,000.00
Cultural Affairs	1	\$ 50,000.00
DTPW	85	\$ 6,195,000.00
Emergency Management	8	\$ 496,130.00
MDFR	30	\$ 2,199,567.00
MDFR	28	\$ 1,067,000.00
Internal Services	39	\$ 2,045,000.00
ITD	5	\$ 168,500.00
PROS	151	\$ 11,061,000.00
Solid Waste Management	136	\$ 29,994,890.00
Police	406	\$ 10,802,800.00
Grand Total	927	\$ 65,772,887.00
FY 23-24 Fire Heavy Fleet Financing as per Resolution R-980-22		
Departments	Qty of Units	Sum of FY2023-24
Fire Rescue (Heavy Fleet)	25	\$ 15,098,824.00
Total	25	\$ 15,098,824.00



Attachment 2

May 10, 2023

Memorandum

To: Miami-Dade County Finance Department, Division of Bond Administration
From: PFM Financial Advisors LLC
Re: Equipment Lease Proposal Results and Recommendation

The purpose of this memorandum is to summarize the County's request for a master lease and subsequent proposals received, as well as provide PFM Financial Advisors LLC's ("PFM") recommendation for the most attractive proposal. On April 13, 2023, PFM on behalf of Miami-Dade County (the "County") requested proposals from lease financing firms for a master equipment lease that would provide for the leasing of equipment for various departments, with an allowable draw period of two years. The total estimated cost of the equipment to be purchased is approximately \$145 million, including issuance costs. Under the terms of the proposed lease agreement the County would own the equipment at the end of the lease term.

PFM circulated the request for equipment lease to a total of over 50 firms, composed primarily of financial institutions and vehicle lease providers. On May 1, 2023, two proposals were received from the following firms:

- Banc of America Public Capital Corp ("Bank of America")
- TD Equipment Finance, Inc. ("TD")

After the conclusion of the proposal submission timeline, we received feedback from several potential leasing companies on their decision not to submit a bid. The majority of the feedback suggested that firms were tightening lending at this time and did not feel that they could provide a competitive bid compared to recent market transactions. Of the proposals received, both provided for an upfront escrow structure, where the lending institution would fund and control the escrow at the outset and distribute funding upon requisition from the County and delivery of the equipment. The County would then have the ability to draw down from this escrow over a period of up to 24 months. In the escrow structure, the index and formula used to calculate the interest rate would be established in the lease agreement, and before the County would make a draw, the interest rate would be calculated at then-current market rates using the fixed index. PFM's recommendation is primarily based on the best financial terms (rate quoted); however, we also reviewed other terms to ensure that no onerous or non-standard provisions were included. Upon review of all of the proposals for both financial impact as well as bank terms, we found that all of the proposals included language customary for this type of transaction.

As noted in the attached summary matrix, Bank of America provided the lowest fixed rates on the master lease for all presented terms. TD provided rates for the 5- and 7-year terms, with other terms available for later draws depending on a formula. For comparison below, all rates presented assume an October 1, 2023 first payment, though Bank of America has offered lower rates for an April 1, 2024 first payment. See table below for a detailed comparison:

Bank / Term	Bank of America Interest Rate (%)	TD Interest Rate (%)
5 year	3.4969	3.76
7 year	3.4063	3.64
10 year	3.3389	
12 year	3.3895	
15 year	3.4948	



Both proposals fixed the rates for the first draw through closing, with an index to be used for future draws, similar to the County's previous lease programs.

PFM's recommendation is for the County to engage Bank of America for the master equipment lease program. The rates proposed by Bank of America were better in each term length displayed and have the benefit of using documents that the County has already utilized multiple times and is comfortable with. Please feel free to contact us with any questions or comments.



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: July 6, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(D)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(D)(1)
7-6-23

RESOLUTION NO. _____ R-590-23

RESOLUTION APPROVING SELECTION OF BANC OF AMERICA PUBLIC CAPITAL CORPORATION TO PROVIDE CAPITAL IN AN AMOUNT NOT TO EXCEED \$145,000,000.00 FOR LEASE/PURCHASE OF VEHICLES AND EQUIPMENT TO BE UTILIZED BY MULTIPLE MIAMI-DADE COUNTY DEPARTMENTS AND TO PAY FINANCING COSTS; APPROVING TERMS OF RELATED COMMITMENT LETTER; WAIVING PROVISIONS OF RESOLUTION NO. R-130-06, AS AMENDED; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO TAKE ALL ACTIONS NECESSARY TO CONSUMMATE THE LEASE/PURCHASE, INCLUDING ENTERING INTO RELATED AGREEMENTS AND DOCUMENTS WITH TERMS CONSISTENT WITH THOSE SET FORTH IN THE COMMITMENT LETTER

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying County Mayor’s memorandum, a copy of which is incorporated herein by reference (the “County Mayor’s Memorandum”); and

WHEREAS, the County wishes to obtain the lowest cost of capital with the most favorable terms to the County to finance the cost of the lease/purchase and reimbursement of budgeted vehicles and for various departments and agencies (“Departments”) as identified in the County Mayor’s Memorandum and to pay related financing costs (the “Lease Purchase”); and

WHEREAS, a majority of the vehicles and/or equipment that are the subject of the Lease Purchase were approved by the Board pursuant to Resolution Nos. R-1151-21, R-199-22, R-980-22, and R-1115-22; and

WHEREAS, pursuant to a request for proposals disseminated on April 13, 2023 (the “Request for Proposals”), a copy of which is attached to the County Mayor’s Memorandum, Public Financing Management, which is serving as financial advisor to the County (the “Financial Advisor”), solicited proposals for the Lease Purchase on behalf of the County; and

WHEREAS, the County and Financial Advisor identified Banc of America Public Capital Corporation (“Lease Provider”) as the successful respondent to the Request for Proposals; and

WHEREAS, based upon the recommendations of the County Mayor and/or the County Mayor’s designee as well as the Financial Advisor, as set forth in the County Mayor’s Memorandum, this Board wishes to approve the terms of a commitment letter between the County and the Lease Provider (the “Commitment Letter”), a copy of which is attached as Exhibit A to this Resolution; and

WHEREAS, this Board wishes to authorize the County Mayor and/or County Mayor’s designee to enter into any related agreements and certificates and to do all things that may be necessary to effectuate the Lease Purchase, provided the terms of such agreements and certificates are consistent with or better than the terms set forth in the Commitment Letter,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The forgoing recitals are incorporated in this resolution and are approved.

Section 2. The Lease Purchase in the amount not to exceed \$145,000,000.00 is approved. The County Mayor and/or County Mayor’s designee is authorized and directed to enter into and execute a commitment letter between the County and the Lease Provider (the “Commitment Letter”), a copy of which is attached hereto as Exhibit A and made part hereof, and to take all actions necessary to effectuate the Lease Purchase, including entering into any and all

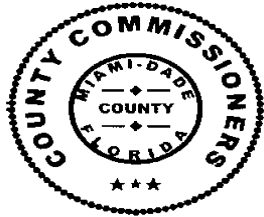
agreements, certificates or other instruments or documents required by the Commitment Letter after consultation with the County Attorney’s Office, provided the terms of such agreements, certificates and instruments are consistent with the Commitment Letter approved by this Board.

Section 3. Resolution No. R-130-06 requiring that any contracts of the County with third parties be executed and finalized prior to their placement on the committee agenda is waived at the request of the County Mayor for the reasons set forth in the County Mayor’s Memorandum.

The foregoing resolution was offered by Commissioner **Danielle Cohen Higgins** , who moved its adoption. The motion was seconded by Commissioner **Juan Carlos Bermudez** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	absent
Roberto J. Gonzalez	aye	Keon Hardemon	absent
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	absent
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 6th day of July, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

JUAN FERNANDEZ-BARQUIN, CLERK

Basia Pruna

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink that reads "JRA".

Juliette R. Antoine

Exhibit A

Charles T. Maguire
Senior Vice President

Government Finance Group
1111 E. Main Street, 18th FL. VA2-300-18-02
Richmond, VA 23219
T 804.489.5044 F 804.262.8344 M 804.432.9572
Charles.maguire@BofA.com

April 28, 2023

Miami-Dade County

c/o:

Sergio Masvidal

PFM, Inc.

masvidals@pfm.com

Pedro Verona

PFM, Inc.

varonap@pfm.com

Re: Equipment Master Lease RFP dated April 13, 2023

Dear Sergio and Pete,

Banc of America Public Capital Corp ("BAPCC") is pleased to submit to you the Master Lease proposal (the "Proposed Transaction") described in the attached Summary of Terms and Conditions (the "Term Sheet").

This letter and the Term Sheet (collectively, the "Proposal" or "Proposal Letter") include only a brief description of the principal terms of the Proposed Transaction, and are intended for discussion purposes only. This Proposal Letter is not intended to and does not create any binding legal obligation on the part of either party. BAPCC will not be obligated to provide any financing until the satisfactory completion and execution of acceptable documentation and completion of our Covid questionnaire. The terms and conditions of this Proposal Letter shall be superseded by and shall no longer be effective upon the execution and delivery of final legal documentation with respect to this Proposed Transaction.

This Proposal must be accepted on or before **May 9, 2023** for BAPCC to proceed with its consideration of the Proposed Transaction. To accept this proposal, please sign the enclosed copy of this letter and return it, by no later than May 9th to:

Banc of America Public Capital Corp
1111 E. Main Street, 18th Floor
Richmond, VA 23832
P – 804-489-5044

We appreciate this opportunity to present Banc of America Public Capital Corp.

Very truly yours,

Charles T. Maguire

Charles T. Maguire

Senior Vice President

"Bank of America" is the marketing name used by certain Global Banking and Global Markets businesses of Bank of America Corporation. Lending, leasing, equipment finance and other commercial banking activities, and trading in certain financial instruments are performed globally by banking affiliates of Bank of America Corporation, including Bank of America, N.A., Member FDIC. Banc of America Public Capital Corp, a wholly-owned subsidiary of Bank of America, National Association, is not a municipal advisor and is not subject to the fiduciary duty established in Section 15B(c)(1) of the Securities Exchange Act of 1934, as amended, with respect to any municipal financial product or issuance of municipal securities. The information provided in this document is not intended to be and should not be construed as "advice" with the meaning Section 15B of the Securities Exchange Act of 1934 and the municipal advisor rules of the SEC. © 2020 Bank of America Corporation. All rights reserved.

The undersigned, by its authorized representative below, accepts the above proposal, agrees to furnish BAPCC, its successors and assigns, any information relating to the business or financial condition of Miami-Dade County or its affiliates, and authorizes BAPCC, Bank of America, N.A. and their affiliates to disclose to, discuss with and distribute such information (and any information they may already have) to any other affiliates or proposed assignees or successors of BAPCC.

Miami-Dade County, FL

By: _____

Title: _____

Date: _____

This proposal is submitted in response to your Equipment Master Lease – Request for Proposals, dated April 13, 2023. The contents of this proposal and any subsequent discussions between us, including any and all information, recommendations, opinions, indicative pricing, quotations and analysis with respect to any municipal financial product or issuance of municipal securities, are provided to you in reliance upon the exemption provided for responses to requests for proposals or qualifications under the municipal advisor rules (the “Rules”) of the Securities and Exchange Commission (240 CFR 15Ba1-1 et seq.).

The Staff of the SEC’s Office of Municipal Securities has issued guidance which provides that, in order for a request for proposals to be consistent with this exemption, it must (a) identify a particular objective, (b) be open for not more than a reasonable period of time (up to six months being generally considered as reasonable), and (c) involve a competitive process (such as by being provided to at least three reasonably competitive market participants) or by being publicly posted to your official website. In submitting this proposal, we have relied upon your compliance with this guidance.

In submitting this proposal, we are not undertaking to act as a “municipal advisor” to you or any other person within the meaning of the Rules. In connection with this proposal and the transactions described herein, we are not subject to, and we hereby disclaim, any fiduciary duty to you or to any other person. We understand that you will consult with and rely on the advice of your own municipal, financial, tax, legal and other advisors as and to the extent you deem necessary in connection with your evaluation of this proposal and the transactions described herein.

The transaction described in this document is an arm’s length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, (“BAPCC”) in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.

SUMMARY OF TERMS AND CONDITIONS

- Date:** April 28, 2023
- Lessee:** Miami-Dade County, Florida
- Lessor:** Banc of America Public Capital Corp (“BAPCC”) or its designee/assignee
- Equipment:** Essential use assets as outlined in RFP or otherwise subject to Lessor’s approval.
- Structure:** The Schedules under the Master Lease will be intended as a NON BANK QUALIFIED TAX-EXEMPT secured transactions; all tax benefits will remain with Lessee; all expenses, including (but not limited to) insurance, maintenance, and taxes, will be for the account of Lessee.
- Term:** 5, 7, 10, 12 and 15 years.
- Utilization:** Master lease will be valid for 24 months, and is subject to credit and pricing review on commencement anniversary date(s) for the remaining utilization term. Any changes are at the sole discretion of BAPCC and continuation will be subject to Lessee’s consent.

Maximum Funding:

To provide the most cost-effective financing by avoiding internal allocation of unused capital charges on our cost-of-funds, we are proposing an annual funding commitment to meet the annual needs of the County. The first funding would be \$45 million of the \$145 million request, with the remaining annual lines based on the County’s anticipated yearly needs. Any annual amount can be increased to the full request.

<u>Rate:</u>	Oct 1, 2023	April 1, 2024
	<u>First Payment</u>	<u>First Payment</u>
5 years:	3.4969%,	3.3604%
7 years:	3.4063%	3.3366%
10 years:	3.3389%	3.3096%
12 years:	3.3895%	3.3742%
15 years:	3.4948%	3.4948%

Index: *The current rates are locked* until August 18, 2023, *and will be honored so long as the transaction is funded* before such date. After August 18, 2023, the rate will be based on below index plus rate lock premium if requested.

In order to lock the rate, the County must notify (email is fine) BAPCC of acceptance of the rates within 5 business days from the issuance of this proposal.

Note: Indicative rates will be held for 8 days from the date of the Index Rate, after which time they will be readjusted based on the Index Formula.

The transaction described in this document is an arm’s length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, (“BAPCC”) in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.

Oct 1, 2023 First Payment Index:

Tax Exempt USD Bloomberg Short-Term Bank Yield (BSBY) Swaps Index (as of 4/28/23):

Lease Term	Payment Mode	Avg Life Index Term	Swap Index Rate*	xPercentage of Index Rate	=Tax Exempt Adjusted Index Rate	+Fixed Spread	=Tax Exempt Rate
5YR	Semi-Annual Arrears	3YR	3.9264%	79.0%	3.1019%	0.3950%	3.4969%
7YR	Semi-Annual Arrears	4YR	3.5409%	79.0%	2.7973%	0.6090%	3.4063%
10YR	Semi-Annual Arrears	5YR	3.6322%	79.0%	2.8694%	0.4695%	3.3389%
12YR	Semi-Annual Arrears	6YR	3.5713%	79.0%	2.8213%	0.5682%	3.3895%
15YR	Semi-Annual Arrears	8YR	3.5105%	79.0%	2.7733%	0.7215%	3.4948%

*The actual Tax-Exempt Interest Rate for future Schedules will be calculated in accordance with the formula in the above pricing grid and will be based on the then current Swap Index Rate published on the applicable Refinitiv Swaps Index screen page (or such other commercially available source providing such quotations as may be selected by Lender from time to time) on the date pricing is set (no more than 8 business days prior to funding), which the current Swap Index Rate shall not be less than zero (0%). Rates are converted from Act/360 to 30/360 convention.

April 1, 2024 First Payment Index:

Tax Exempt USD Bloomberg Short-Term Bank Yield (BSBY) Swaps Index (as of 4/28/23):

Lease Term	Payment Mode	Avg Life Index Term	Swap Index Rate*	xPercentage of Index Rate	=Tax Exempt Adjusted Index Rate	+Fixed Spread	=Tax Exempt Rate
5YR	Semi-Annual Arrears	3YR	3.9264%	79.0%	3.1019%	0.2585%	3.3604%
7YR	Semi-Annual Arrears	4YR	3.5409%	79.0%	2.7973%	0.5393%	3.3366%
10YR	Semi-Annual Arrears	6YR	3.5713%	79.0%	2.8213%	0.4883%	3.3096%
12YR	Semi-Annual Arrears	7YR	3.5409%	79.0%	2.7973%	0.5769%	3.3742%
15YR	Semi-Annual Arrears	9YR	3.5105%	79.0%	2.7733%	0.6215%	3.3948%

*The actual Tax-Exempt Interest Rate for future Schedules will be calculated in accordance with the formula in the above pricing grid and will be based on the then current Swap Index Rate published on the applicable Refinitiv Swaps Index screen page (or such other commercially available source providing such quotations as may be selected by Lender from time to time) on the date pricing is set (no more than 8 business days prior to funding), which the current Swap Index Rate shall not be less than zero (0%). Rates are converted from Act/360 to 30/360 convention.

Payments:

Payments will be in accordance with the amortization schedule in Excel Spreadsheets attached with Proposal response. Please note if alternative payment frequencies or changes to the principal amounts due on each payment date are requested, this may be accommodated but any changes to the average life may also impact the rate quoted herein.

Governmental

Entity Lease:

The Base Rent installments are calculated on the assumptions, and Lessee will represent, that Lessee is a state or political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code (the "Code"), that this transaction will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code. Lessee shall provide Lessor with such evidence as Lessor may request to substantiate and maintain such tax status.

Lessee will indemnify Lessor only as to the actions or omissions of the Lessee, on an after-tax basis, against any loss of Federal income tax exemption of the interest portion of the rentals and against any penalties and interest imposed by the Internal Revenue Service on Lessor in connection therewith on a lump-sum basis.

Expenses:

Lessee and Lessor will each be responsible for its own expenses incurred in connection with the preparation, negotiation and closing of the lease documentation. There are no other fees or costs associated with this transaction.

Prepayment

Option:

Lessee can prepay all but not less than all of the outstanding balance on any payment date for 102% of the principal for the first ½ term, then at par thereafter.

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Escrow

Account: *Lessee may direct that proceeds be deposited*, subject to compliance with applicable regulations under the Internal Revenue Code, including, but not limited to, arbitration regulations, the proceeds of the Lease in an escrow acceptable to Lessor, and disbursements made therefrom to pay for the Project upon the execution and delivery of an acceptance certificate (and related documents) by Lessee and approved by Lessor.

Documents: Lease documents in form and substance satisfactory to Lessor and its local counsel must be executed and delivered. If Lessor requests, Lessee will also furnish duly executed landlord and mortgage waivers and supporting information. Lessee will also provide board resolutions, incumbency certificates and other documentation required by Lessor. It is expected that the 2021 Master Equipment Lease/Purchase Agreement will form the substantive basis of the final Agreement.

Non-Appropriation

Termination: Lessee affirms that funds are available for the current fiscal year and reasonably believes that sufficient funds can be obtained to make all rental payments during each subsequent fiscal year. Lessee will regularly budget for and otherwise use its best efforts to obtain funds for the continuation of the rentals in this transaction.

Private

Placement: The proposed transaction is a private placement that will not require (i) any additional public ongoing disclosure requirements, (ii) any additional public offering document generation requirements, or (iii) any underwriting or related fees.

Market

Disruption: Notwithstanding anything contained herein to the contrary, in the event any material change shall occur in the financial markets after the date of this Proposal Letter, including but not limited to any governmental action or other event which materially adversely affects the extension of credit by banks, leasing companies or other lending institutions, the Lessor may modify the indicative pricing described above.

SEC

Disclosure: Lessee acknowledges and agrees that, if, in connection with its efforts to comply with the requirements of SEC Rule 15c2-12(b)(5) of the Securities and Exchange Act of 1934, Lessee decides to file any documentation related to the proposed transaction to EMMA (the "*Disclosed Documents*"), such Disclosed Documents shall be filed with redactions to ensure that there is no confidential information of Lessor included in the posted documents (i.e. account information, names of signatories).

USA Patriot Act

Compliance: The Lessee acknowledges that pursuant to the requirements of the USA Patriot Act, as amended from time to time (including as amended by the USA Freedom Act of 2015) (the "Patriot Act"), the Lessor is required to obtain, verify and record information that identifies the Lessee, which information includes the name and address of the Lessee and other information that will allow the Lessor to identify the Lessee in accordance with the Patriot Act.

The transaction described in this document is an arm's length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, ("BAPCC") in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

This MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT (the “*Agreement*”) dated as of June 15, 2021, and entered into between BANC OF AMERICA PUBLIC CAPITAL CORP, a Kansas corporation (as more particularly defined herein, “*Lessor*”), and MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (“*Lessee*”).

WITNESSETH:

WHEREAS, Lessee desires to lease and acquire from Lessor certain Equipment described in each Schedule (as each such term is defined herein), subject to the terms and conditions hereof and for the purposes set forth in each Lease; and

WHEREAS, the relationship between the parties shall be a continuing one and items of equipment and other personal property may be financed pursuant to one or more Leases entered into from time to time in accordance with this Agreement by execution and delivery of additional Schedules by the parties hereto, subject to the terms and conditions provided herein; and

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

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

ARTICLE I

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

“*Acquisition Amount*” means, with respect to each Lease, the amount specified in the related Schedule and represented by Lessee to be sufficient, together with other funds (if any) that are legally available for the purpose, to acquire and install the Equipment listed in such Lease.

“*Acquisition Period*” means, with respect to each Lease for which an Escrow Account is established, that period identified in the related Schedule during which the Acquisition Amount attributable to such Lease may be expended on Equipment Costs pursuant to the related Escrow Agreement.

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

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code in this Agreement and a Lease shall be deemed to include the relevant United

States Treasury Regulations proposed or in effect thereunder.

“*Commencement Date*” means, for each Lease, the date when Lessee’s obligation to pay rent commences under such Lease, which date shall be the earlier of (a) the date on which the Equipment listed in such Lease is accepted by Lessee in the manner described in Section 5.01, or (b) the date on which the Acquisition Amount is deposited in an Escrow Account for the purpose of acquiring and installing the Equipment listed in such Lease.

“*Contract Rate*” means, with respect to each Lease, the rate identified as such in the related Schedule.

“*Disbursement Request*” means, with respect to each Lease for which an Escrow Account is established, the disbursement request attached to the applicable Escrow Agreement as Schedule 1 and made a part thereof.

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

“*Equipment Costs*” means, with respect to each Lease, the total cost of the Equipment, including related costs such as freight, installation and taxes, capitalizable costs, and costs of issuance incurred in connection with the acquisition and/or financing of the Equipment, as set forth in more detail in the related Schedule.

“*Escrow Account*” means the account established and held by the Escrow Agent pursuant to the Escrow Agreement, if any.

“*Escrow Agent*” means, with respect to each Lease for which an Escrow Account is established, the Escrow Agent identified in the Escrow Agreement, and its successors and assigns.

“*Escrow Agreement*” means, with respect to each Lease for which an Escrow Account is established, an Escrow Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which an Escrow Account is established and administered.

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

“*Lease*” means a Schedule and the terms and provisions of this Agreement which are incorporated by reference into such Schedule.

“*Lease Proceeds*” means, with respect to each Lease for which an Escrow Account is established, the total amount of money to be paid by Lessor to the Escrow Agent for deposit and application in accordance with such Lease and the related Escrow Agreement.

“*Lease Term*” means, with respect to each Lease, the Original Term and all Renewal Terms provided in the related Schedule, and with respect to this Agreement, the period from the date hereof until this Agreement is terminated in accordance with Section 13.08.

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

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

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

“*Original Term*” means, with respect to each Lease, the period from the Commencement Date identified in the related Schedule until the end of the fiscal year of Lessee in effect at such Commencement Date.

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

“*Payment Schedule*” means, with respect to each Lease, the Payment Schedule attached to and made a part of the related Schedule and substantially in the form of *Exhibit B* attached to this Agreement.

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

“*Related Documents*” means, with respect to each Lease, the Lease, this Agreement and, if applicable, the related Escrow Agreement, each as may be amended and supplemented.

“*Renewal Terms*” means, with respect to each Lease, the consecutive renewal terms of such Lease specified in the related Schedule, the first of which commences immediately after the end of the Original Term and each having a duration of one year and a term coextensive with each successive Lessee’s fiscal year.

“*Rental Payment Date*” means, with respect to each Lease, each date on which Lessee is required to make a Rental Payment under such Lease as specified in the related Payment Schedule.

“*Rental Payments*” means, with respect to each Lease, the basic rental payments payable by Lessee on the Rental Payment Dates and in the amounts as specified in the related Payment Schedule, consisting of a principal component and an interest component.

“*Schedule*” means each separately numbered Schedule of Property, substantially in the form of *Exhibit A* hereto, together with the related Payment Schedule and any Riders attached to such Schedule of Property.

“*State*” means the State of Florida.

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

“*Termination Value*” means the amount provided in the Payment Schedule.

“*Vendor*” means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessee arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Equipment pursuant to the applicable Lease.

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

ARTICLE II

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

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

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

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

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

(e) During the Lease Term under each Lease, the Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee

consistent with the permissible scope of Lessee's authority. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid under a Lease.

(g) Lessee has kept, and throughout each Lease Term of each Lease shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 270 days of its fiscal year end, provided if such audited financial statements are not available, unaudited financial statements shall be provided to Lessor within 270 of Lessee's fiscal year end, with audited financial statements to be provided to Lessor as soon as practicable after acceptance of the Lessee's audited financial statements from the auditors of Lessee, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) its annual budget for any prior or current fiscal year or the following fiscal year. The financial statements described in subsection (g) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

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

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

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

(k) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which

would constitute, or with the giving of notice or the lapse of time or both would constitute, an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(1) In connection with the Lessee's compliance with any continuing disclosure undertakings (each, a "*Continuing Disclosure Agreement*") entered into by the Lessee pursuant to U.S. Securities and Exchange Commission Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "*Rule*"), the Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("*EMMA*"), notice of its incurrence of its obligations under the Related Documents and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with the Related Documents, in each case including posting a full copy thereof or a description of the material terms thereof (each such posting, an "*EMMA Posting*"). Except to the extent required by applicable law, including the Rule, the Lessee shall not file or submit or permit the filing or submission of any EMMA Posting that includes the following unredacted confidential information about the Lessor or its affiliates and any Escrow Agent in any portion of such EMMA Posting: address and account information of the Lessor or its affiliates and any Escrow Agent; e-mail addresses telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lessor or its affiliates and any Escrow Agent; and the form of Disbursement Request that is attached to the Escrow Agreement.

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

ARTICLE III

Section 3.01. Lease of Equipment. Subject to the terms of this Agreement, Lessor agrees to provide the funds specified in each Lease to be provided by it for Lessee to acquire the Equipment described in the related Schedule. Upon the execution and delivery of each Lease, Lessor leases, sells and transfers to Lessee, and Lessee acquires, purchases and leases from Lessor, the Equipment as set forth in such Lease and in accordance with the terms thereof. The Lease Term for each Lease may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term as set forth in such Lease. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue such Lease for the next Renewal Term unless Lessee shall have terminated this Agreement pursuant to Section 3.03 or Section 10.01. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the applicable Lease. Each Schedule signed and delivered by Lessor and Lessee pursuant to this Agreement shall constitute a separate and independent lease and installment purchase of the Equipment therein described.

Section 3.02. Continuation of Lease Term. Lessee intends, subject to Section 3.03, to continue the Lease Term of each Lease through the Original Term and all Renewal Terms. Lessee

affirms that sufficient funds are available for the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due under each Lease, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law, to have such portion of the budget or appropriation request approved and to exhaust all available reviews and appeals in the event such portion of the budget or appropriation request is not approved.

Section 3.03. Nonappropriation. Lessee is obligated only to pay such Rental Payments as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments under any Lease following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term for such Lease or Leases. Lessee agrees to deliver notice to Lessor of termination of a Lease promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term of such Lease. If a Lease is terminated in accordance with this Section, Lessee agrees to cease use of the Equipment and peaceably remove and deliver at Lessee's expense the Equipment to Lessor at the location(s) to be specified by Lessor.

Section 3.04. Conditions to Lessor's Performance.

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

- (i) A fully completed Schedule, executed by Lessee;
- (ii) If an Escrow Account is to be established with respect to such Lease, an Escrow Agreement in form acceptable to Lessor, executed by Lessee and the Escrow Agent;
- (iii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form satisfactory to Lessor, authorizing the lease/purchase of the Equipment, as well as reimbursement to the Lessee for any funds advanced to pay for the Equipment, and authorizing the County Mayor or the County Mayor's designee to enter into this Agreement and any related agreements and certificates to effectuate the lease/purchase of the Equipment;
- (iv) A Certificate executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C-2, completed to the satisfaction of Lessor;
- (v) An opinion of counsel to Lessee in a form satisfactory to Lessor;

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

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

(viii) A copy of the Form 8038-G with respect to the Lease then being entered into, fully completed and executed by Lessee;

(ix) Unless waived by Lessor, an opinion of special tax counsel to the Lessee, in form and substance acceptable to Lessor, to the effect (1) Lessee is a political subdivision of the State within the meaning of Section 103(c) of the Code and the obligations of the Lessee under the Lease constitute an obligation within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code and (2) the interest component of the Rental Payments made by the Lessee pursuant to the Lease and received by the Lessor is excluded from gross income for federal income tax purposes under Section 103 of the Code, and the interest component of the Rental Payments made by the Lessee pursuant to the Lease and received by the Lessor is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes;

(x) In the event that Lessee is to be reimbursed for expenditures that it has paid more than sixty days prior to the Commencement Date for the Lease then being entered into, evidence of the adoption of a reimbursement resolution or other official action covering the reimbursement of from tax exempt proceeds of expenditures incurred not more than 60 days prior to the date of such resolution;

(xi) If any items of Equipment are motor vehicles, properly completed certificates of title or certificates of origin (or applications therefor) for such vehicles;

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

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

(xiv) Such other items, if any, as are set forth in the related Schedule or are reasonably required by Lessor.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lessor of any of its obligations pursuant to any Lease and the related Escrow Agreement shall be subject to: (i) no Material Adverse Change in the financial condition of Lessee having occurred since the date of this Agreement; (ii) no Event of Default shall have occurred and then be continuing under any Lease then in effect, (iii) no event of non-appropriation under any Lease then in effect shall be threatened and (iv) no Lease shall have been terminated as the result of the occurrence of an Event of Default or an event of non-appropriation.

(c) Subject to satisfaction of the foregoing, (i) Lessor will pay the Acquisition Amount for Equipment described in a Schedule to the Vendor or reimburse Lessee for its prior expenditures with respect to such Equipment (subject to satisfaction of Section 3.04(a)(ix) hereof), upon receipt of the documents described in Sections 5.01(a) and (b); or (ii) if an Escrow Account is being established with respect to the related Lease, Lessor will deposit the Acquisition Amount for the Equipment described in the applicable Schedule with the Escrow Agent as provided in the related Escrow Agreement.

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

(e) Lessee will cooperate with Lessor in Lessor's review of any proposed Lease. Lessee will provide Lessor with any documentation or information Lessor may reasonably request in connection with Lessor's review of any proposed Lease.

(f) In the event of any conflict in terms between a Schedule and this Agreement, the terms of the Schedule shall control in the interpretation of the Lease created thereby.

Section 3.05. Substitution. Lessee reserves the right to substitute Equipment of the same quantity and general type with the approximate equal value, utility and remaining useful life as the Equipment so replaced. So long as the Lease related to such Equipment is in effect, such Substitution is subject to Lessor's prior written consent, which consent shall not be unreasonably withheld, and shall be reflected in an amendment to the Equipment Schedule.

ARTICLE IV

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

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

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

PAYMENTS ARE TO BE MADE ONLY FROM LESSEE'S LEGALLY AVAILABLE REVENUES APPROPRIATED ON AN ANNUAL BASIS, AND NEITHER LESSEE, THE STATE, NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE UNDER A LEASE FROM THE COMPELLED LEVY OF AD VALOREM OR OTHER TAXES EXCEPT FROM THOSE LEGALLY AVAILABLE REVENUES APPROPRIATED BY LESSEE ON AN ANNUAL BASIS, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF LESSEE, THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF ARE PLEDGED FOR PAYMENT OF SUCH SUMS DUE UNDER A LEASE.

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

Section 4.05. Tax Covenants.

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

(b) In the event that Lessee does not spend sufficient moneys in an Escrow Account within six (6) months after the date the deposit is made pursuant to Section 3.04(c), Lessee will, if required by Section 148(f) of the Code to pay rebate: (i) establish a Rebate Account and deposit the Rebate Amount (as defined in Section 1.148-3(b) of the Federal Income Tax Regulations) not less frequently than once per year after the Commencement Date; and (ii) rebate to the United States, not less frequently than once every five (5) years after the Commencement Date, an amount equal to at least 90% of the Rebate Amount and within 60 days after payment of all Rental Payments or the Termination Value for the related Lease as provided in Section 10.01 hereof, 100% of the Rebate Amount, as required by the Code and any regulations promulgated thereunder. Lessee shall determine the Rebate Amount, if any, at least every year and upon payment of all Rental Payments or the Termination Value for the related Lease and shall maintain such determination, together with any supporting documentation required to calculate the Rebate Amount, until six (6) years after the date of the final payment of the Rental Payments or the Termination Value for the related Lease.

Section 4.06. Event of Taxability. Upon the occurrence of an Event of Taxability with respect to a Lease, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate applicable to such Lease retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner

or owners thereof for federal income tax purposes, and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate in the related Lease.

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

Section 4.07. Mandatory Prepayment. . If the Acquisition Amount for a Lease is deposited into an Escrow Account, any funds not applied to Equipment Costs and remaining in such Escrow Account on the earlier of (a) the expiration of the applicable Acquisition Period, (b) the date on which Lessee delivers to the Lessor the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from such Escrow Account or (c) a termination of the Escrow Account as provided in the Escrow Agreement shall be applied by Lessor on each successive Rental Payment Date thereafter to pay all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the applicable unpaid Principal Portion of Rental Payments owing under the related Lease in the inverse order of the Rental Payment Dates.

ARTICLE V

Section 5.01. Delivery, Installation and Acceptance of Equipment.

(a) With respect to each Lease, Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in the Schedule and in accordance with the Vendor Agreement. When all of the Equipment listed in a Lease under the Vendor Agreement has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor an “Acceptance Certificate” in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor copies of invoices and proof of payment of such invoices, relating to each item of Equipment accepted by Lessee.

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

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

Section 5.04. Use and Maintenance of the Equipment. Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects

with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; including, without limitation, all anti-money laundering laws and regulations *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest (including the reversionary interest) of Lessor in and to the Equipment or its interest or rights under the related Lease.

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

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

ARTICLE VI

Section 6.01. Title to the Equipment. During the Lease Term under each Lease, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment under the related Lease shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions of the applicable Lease. For each item of Equipment constituting a motor vehicle, Lessee shall provide a copy of the title thereto to Lessor immediately upon Lessee's receipt thereof. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment from and against all claims, liens and legal processes of its creditors, and keep all Equipment free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default under a Lease or upon termination of a Lease pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 12.02. Upon purchase of the Equipment by Lessee pursuant to Section 10.01, Lessor's interest in the Equipment under such Lease shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's interest in the Equipment under such Lease.

Section 6.02. Personal Property. Lessee agrees that the Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien,

security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment under a Lease is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; provided, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment under such Lease acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment under each Lease free of all levies, liens, and encumbrances except those created by such Lease. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due; *provided* that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term under the affected Lease.

Section 7.02. Insurance. Lessee shall, during the Lease Term under each Lease, maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Termination Value of the Equipment or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount satisfactory to Lessor; and (c) worker's compensation coverage as required by the laws of the State; *provided* that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in a form acceptable to Lessor.

Section 7.03. Risk of Loss. Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment under any Lease from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under any Lease. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith

(including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any Lease or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment under any Lease, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any Lease or any material misrepresentation provided by Lessee under or in connection with this Agreement or any Lease. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

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

ARTICLE VIII

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

If Lessee elects to replace any item of the Equipment (the "*Replaced Equipment*") pursuant to this Section, the replacement equipment (the "*Replacement Equipment*") shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement and the related Lease. Lessee shall

complete the documentation of Replacement Equipment on or before the next Rental Payment Date after the occurrence of a casualty event, or be required to exercise its option to purchase the damaged equipment in accordance with Section 10.01(c).

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

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

ARTICLE IX

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

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

ARTICLE X

Section 10.01. Purchase Option. Lessee shall have the option to purchase the Equipment under a Lease, at the following times and upon the following terms:

(a) With respect to all, but not less than all of the Equipment, from and after the date specified in the applicable Schedule (the "*Purchase Option Commencement Date*"), on any Rental Payment Date specified in the t Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the portion of the Rental Payment then due as set forth in the Payment Schedule plus the optional prepayment amount and any applicable prepayment premium as set forth in the Payment Schedule, together with all other amounts then due hereunder; or

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

(c) Upon the expiration of the Lease Term under a Lease, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder, and the payment of \$1.00 to Lessor.

After payment of the applicable Termination Value and all other amounts owing under a Lease, Lessor's interests in and to such Equipment will be terminated and Lessee will own the Equipment free and clear of Lessor's interest in the Equipment under such Lease.

ARTICLE XI

Section 11.01. Assignment by Lessor.

(a) Lessor's right, title and interest in and to the Rental Payments and any other amounts payable by Lessee under any and all of the Leases and the Escrow Agreement relating to any Lease, its interest in the Equipment and Escrow Account, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor (which assignees or subassignees shall be Miami-Dade County Registered Vendors or shall agree to become a Miami-Dade County Registered Vendor as soon as practicable), without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 11.01 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust; *provided* such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has

sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933; *provided further*, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under a Lease, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term under each Lease, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. Assignments in part may include, without limitation, assignment of all of Lessor’s rights to the Equipment listed in a particular Lease, all rights in, to and under the Lease related to such Equipment and all rights in, to and under the Escrow Agreement. The option granted in this Section may be separately exercised from time to time with respect to the Equipment listed in each Lease, but such option does not permit the assignment of less than all of Lessor’s interests in the Equipment listed in a single Lease.

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

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

ARTICLE XII

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

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under any Lease within 10 days after the date when due as specified herein or (ii) maintain insurance as required under such Lease (including Section 7.02 incorporated herein);

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

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

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$25,000,000.00;

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

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

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

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

(b) With or without terminating the Lease Term under such Lease, Lessor may request that Lessee at Lessee's expense promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify. In such event, Lessor shall use its best efforts to sell or lease such Equipment or, for the account of Lessee, sublease such Equipment. If Lessee returns the Equipment and Lessor sells, leases or otherwise disposes of any or all of the Equipment, Lessor shall apply the proceeds of such sale, lease or other disposition as described in Section 12.04. Lessee shall not be liable for any deficiency after sale, lease or other disposition of the Equipment. If Lessee elects not to return the Equipment, Lessor is entitled to payment of unpaid Rental Payments through the date of Lessor's request to return the Equipment plus the then applicable Prepayment Price, as set forth in the applicable Schedule for such Equipment. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or the Equipment;

(c) Lessor may terminate the Escrow Agreement relating to such Lease and apply any proceeds in the Escrow Account to the Rental Payments due hereunder; and

(d) Subject to the next sentence, Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights hereunder or the Escrow Agreement. The parties to this Agreement acknowledge that: (i) this Agreement is not intended to create a mortgage of or a security interest in the Equipment as proscribed by *Nohrr v. Brevard County Educational Facilities Authority*, 247 So. 2d 304 (Fla. 1971), and (ii) Lessor may not exercise any foreclosure-type remedies if an Event of Default occurs, *State v. Brevard County*, 539 So. 2d 461 (Fla. 1989), notwithstanding any provisions to the contrary in this Agreement.

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

Section 12.04. Application of Proceeds. Any net proceeds from the exercise of any remedy under this Agreement shall be applied in the following order (after deducting amounts to pay all of Lessor's costs, charges and expenses incurred in taking, holding, repairing, selling, leasing or otherwise disposing of Equipment):

(a) If such remedy is exercised solely with respect to a single Lease, Equipment listed in such Lease or rights thereunder, then to amounts due pursuant to such Lease and other amounts related to such Lease or such Equipment.

(b) If such remedy is exercised with respect to more than one Lease, Equipment listed in more than one Lease or rights under more than one Lease, then to amounts due pursuant to such Leases pro rata.

(c) Any remainder to Lessee.

ARTICLE XIII

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

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

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

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

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

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

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

Section 13.08. Public Records. All documents, papers, letters or other material made or received in conjunction with this Agreement shall be subject to the public records provisions of Chapter 119, Florida Statutes.

Section 13.09. Electronic Signatures. This Agreement and any other Related Documents, certificates or instruments relating to any Lease may be executed and delivered by facsimile signature or other electronic or digital means (such as Adobe's Portable Document Format ("PDF"), including, without limitation, PDF documents signed with DocuSign's eSignature product). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of this Agreement and any other Related Documents and the related

signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of any party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

Section 13.10. Entire Agreement. The parties agree that this Agreement and each Lease hereunder constitutes the final and entire agreement between the parties superseding all conflicting terms or provisions of any prior proposals, term sheets, solicitation documents, requests for proposals, award notices, approval letters or any other agreements or understandings between the parties.

[Remainder of page intentionally left blank; signature page follows]