



City Hall Council Chamber  
1515 Sixth Street, Coachella, California  
(760) 398-3502 ♦ [www.coachella.org](http://www.coachella.org)

# AGENDA

OF A SPECIAL MEETING  
OF THE

CITY OF COACHELLA

CITY COUNCIL SPECIAL MEETING

THE COUNCIL SITTING AS THE COACHELLA SANITARY DISTRICT,

COACHELLA FIRE PROTECTION DISTRICT, COACHELLA FINANCING AUTHORITY,

COACHELLA EDUCATIONAL AND GOVERNMENTAL ACCESS CABLE CHANNEL CORPORATION,

COACHELLA WATER AUTHORITY, AND SUCCESSOR AGENCY TO THE COACHELLA REDEVELOPMENT AGENCY

AND COACHELLA PARKS AND RECREATION

**October 25, 2023**

8:00 PM – SPECIAL MEETING

<p>In-Person Meeting Location:</p> <p>Coachella City Hall Council Chamber 1515 Sixth Street Coachella, CA</p>	<p><b>If you would like to attend the meeting via Zoom, here is the link:</b></p> <p><a href="https://us02web.zoom.us/j/88457271898?pwd=REdzU1NoQmpVSFhWTDVaZ0VCekYxdz09">https://us02web.zoom.us/j/88457271898?pwd=REdzU1NoQmpVSFhWTDVaZ0VCekYxdz09</a> Or One tap mobile : 16699006833,,88457271898#,,,,*606140# Or Telephone: US: +1 669 900 6833 <b>Webinar ID: 884 5727 1898</b> <b>Passcode: 606140</b></p> <p><b>Spanish:</b> El idioma español está disponible en Zoom seleccionado la opción en la parte de abajo de la pantalla</p>
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- Public comments may be received **either in person, via email, telephonically, or via Zoom** with a limit of **250 words, or three minutes:**
  - **In Real Time:**

If participating in real time via Zoom or phone, during the Public Comment Period, use the “**raise hand**” function on your computer, or when using a phone, participants can raise their hand by pressing \*9 on the keypad.
  - **In Writing:**

Written comments may be submitted to the City Council electronically via email to [cityclerk@coachella.org](mailto:cityclerk@coachella.org). Transmittal **prior to the start** of the meeting is required. All written comments received will be forwarded to the City Council and entered into the record.
  - If you wish, you may leave a message at (760) 262-6240 before 5:30 p.m. on the day of the meeting.
- The **live stream** of the meeting may be **viewed online** by accessing the city's website at [www.coachella.org](http://www.coachella.org), and clicking on the "**Watch Council Meetings**" tab located on the home page, and then clicking on the "live" button.

**CALL TO ORDER: - 8:00 P.M.**

**ROLL CALL:**

**APPROVAL OF AGENDA:**

“At this time the Council/ Board/Corporation/Authority may announce any items being pulled from the Agenda or continued to another date or request the moving of an item on the agenda”

**PLEDGE OF ALLEGIANCE:**

**PROCLAMATIONS/PRESENTATIONS:**

None.

**WRITTEN COMMUNICATIONS:**

None.

**CONSENT CALENDAR:**

(It is recommended that Consent Items be acted upon simultaneously unless separate discussion and/or action is requested by a Council Member or member of the audience.)

None.

**NEW BUSINESS CALENDAR (LEGISLATIVE AND ADMINISTRATIVE):**

1. Adopt Resolution No. 2023-72 Authorizing the City Manager the Execution and Delivery of an Equipment/Purchase Agreement with Respect to the Acquisition, Financing and Purchase of Certain Equipment for the Public Benefit within the Terms Provided Herein; Authorizing the Execution and Delivery of Documents Required in Connection Therewith; and Authorizing the Taking of all Other Actions Necessary to the Consummation of the Transactions Contemplated by this Resolution
  
2. Adopt Resolution No. SD-2023-05 Authorizing the District Manager the Execution and Delivery of a Construction Access, Reimbursement & Lease Agreement with the City of Coachella and Authorizing the Taking of All Other Actions Necessary to the Consummation of the Transactions Contemplated by the this Resolution.

**PUBLIC HEARING CALENDAR (QUASI-JUDICIAL):**

None.

**PUBLIC COMMENTS (NON-AGENDA ITEMS):**

The public may address the City Council/Board/Corporation/ Authority on any item of interest to the public that is not on the agenda but is in the subject matter jurisdiction thereof. Please limit your comments to three (3) minutes.

**REPORTS AND REQUESTS:**

Council Comments/Report of Miscellaneous Committees.

City Manager's Comments.

**ADJOURNMENT:**

*Complete Agenda Packets are available for public inspection at the  
City Clerk's Office at 53-462 Enterprise Way, Coachella, California, and on the  
City's website [www.coachella.org](http://www.coachella.org).*

THIS MEETING IS ACCESSIBLE TO PERSONS WITH DISABILITIES



**STAFF REPORT**  
**10/25/2023**

**TO:** Honorable Mayor and City Council Members

**FROM:** Dr. Gabriel Martin, City Manager  
Zachary Scalzo, City Attorney

**SUBJECT:** Adopt Resolution No. 2023-72 Authorizing the City Manager the Execution and Delivery of an Equipment/Purchase Agreement with Respect to the Acquisition, Financing and Purchase of Certain Equipment for the Public Benefit within the Terms Provided Herein; Authorizing the Execution and Delivery of Documents Required in Connection Therewith; and Authorizing the Taking of all Other Actions Necessary to the Consummation of the Transactions Contemplated by this Resolution

**STAFF RECOMMENDATION:**

It is recommended that the City Council adopt Resolution No. 2023-72 authorizing the City Manager the execution and delivery of an Equipment/Purchase Agreement with respect to the acquisition, financing and purchase of certain equipment for the public benefit within the terms provided herein; authorizing the execution and delivery of documents required in connection therewith; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this resolution.

**BACKGROUND:**

On July 26, 2023, the City Council (“Council”) of the City of Coachella (“City”) adopted Resolution No. 2023-53, approving that certain Contract For Design and Construction of Energy Conservation Measures – Lump Sum (Gov. Code, § 4217, *et seq.*) (Multi-Site Energy Improvement Project) (The “DB Contract”) with Alliance Building Solutions, Inc. (“Alliance”). The DB Contract requires Alliance to design and construct several different types of energy conservation measures within the City (collectively, “Project”), including, the following scope of work that the City agreed to construct on behalf of the Coachella Sanitary District (“District”) at the Treatment Plant: (i) solar photovoltaic panels; and (ii) process improvements (“District Scope”). Additionally, Resolution No. 2023-53 conditioned the City Council’s approval upon the City obtaining financing for the Project and authorized the City Manager to obtain such financing and to negotiate a financing agreement. The City issued a request for proposals from banks in order to obtain the lowest cost of financing the equipment for the project (the “Equipment”) and the most

favorable terms. Banc of America Public Capital Corp (the “Lender” or “Bank”) was selected as the lender.

**DISCUSSION/ANALYSIS:**

The City Council has before it a resolution (the “Resolution”) approving the terms of an equipment lease financing in order to finance the Equipment through financing with the Lender. The Resolution approves, among other actions, the terms of an Equipment Lease/Purchase Agreement (the “ELPA”) between the Lender and the City, whereby the City will lease with the option to purchase the Equipment from the Bank. Pursuant to the Resolution, the ELPA is approved with a maximum principal amount to be financed not to exceed \$15,600,000, and an interest rate not to exceed 4.35%.

The Bank has agreed to lock in the rate of 4.344% for the financing through October 31, 2023. In order to finance what is described as the “process optimization” portion of the District Scope, Alliance will need to provide the City with a description of equipment, values, and energy, O&M and new renewable savings for that portion of the project. The City has asked Alliance for such information on several occasions, but Alliance has not been able to provide that information to the City. If Alliance cannot provide the necessary information regarding the design of the process optimization portion of the District Scope, then the City may move forward with financing the remainder of the project, and finance the process optimization portion at a later date once Alliance has completed design. Currently, staff’s estimate of the process optimization portion of the District Scope is between \$8 million and \$8.5 million.

As required by Government Code Section 5852.1, City staff has obtained certain good faith estimates of the financing terms assuming financing of the entire project, which are attached to the Resolution as Exhibit A.

The Resolution also approves the terms of the Lease Agreement. Since the City and District are separate legal entities, the District must agree to permit the City to design and construct the District Scope at the Treatment Plant and agree to reimburse the City for the cost of the District Scope, plus interest. Although the Sanitary District is obligated to pay lease payments to the City for the lease of its portion of the Equipment, regardless of the receipt of such lease payments the City is obligated to make lease payments to the Lender pursuant to the ELPA.

**ALTERNATIVES:**

1. The City Council may decide not to finance the project.
2. Continue the item and provide staff with direction.
3. Take no action

**FISCAL IMPACT:**

The ELPA has a 20-year term (final lease payment in 2043) with an interest rate of 4.344%, and lease payments (assuming financing of the entire project and including all financing costs) total approximately \$24 million. Additionally, if the City elects to enter into the Measurement and Verification Agreement with Alliance for the term of the financing, the City will pay a total of \$627,438 to Alliance for measurement and verification services of energy savings (a portion of which may be allocated to the Sanitary District). Although the Sanitary District is obligated to make lease payments to the City for its pro-rata share of the project costs, should the Sanitary District fail to make lease payments to the City, the City remains obligated under the ELPA to make payments to the Bank. Further, Alliance has projected certain energy savings, O&M savings, new renewable savings, and Direct Pay Investment Tax Credit (“ITC”) for the Project. There is no guarantee that these savings will be realized in the timing and amounts as projected by Alliance, and regardless of whether any such savings come to fruition, the City remains obligated to make payments to the Bank in the amounts and on the dates described in the ELPA. Should the City fail to make these payments to the Bank, the Bank has the right to retake possession of the Equipment.

Finally, if Alliance is not able to provide the City with the required information to close the financing by October 31, 2023, the Bank is not obligated to offer the 4.344% interest rate that was locked through that date. Interest rates have risen significantly since the Bank provided this rate; and the current estimated interest rate is 4.82%.

**ATTACHMENT(S):**

1. City Resolution No. 2023-72
2. ELPA and Escrow Agreement
3. Lease Agreement with Sanitary District

**RESOLUTION NO. 2023-72**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COACHELLA AUTHORIZING THE CITY MANAGER THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, FINANCING AND PURCHASE OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT WITHIN THE TERMS PROVIDED HEREIN; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION**

**WHEREAS**, the City of Coachella (the “*City*”), a city duly organized and existing under the laws of the State of California (the “*State*”), is authorized by the laws of the State to acquire, finance, and purchase personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

**WHEREAS**, the City desires to acquire, finance, and purchase certain equipment with a cost not to exceed \$15,600,000 constituting personal property necessary for the City to perform essential governmental functions (the “*Equipment*”); and

**WHEREAS**, in order to acquire such Equipment, the City proposes to enter into that certain Equipment Lease/Purchase Agreement (the “*Agreement*”) with Banc of America Public Capital Corp (or one of its affiliates), as lessor, (the “*Lessor*” or “*Bank*”) and related documents, the forms of which have been presented to the City Council at this meeting; and

**WHEREAS**, the Bank has offered to enter into that certain Escrow and Account Control Agreement (the “*Escrow Agreement*,” and, together with the Agreement, the “*Financing Agreements*”), with the City and Wilmington Trust, National Association, as escrow agent, under terms which are beneficial to the City; and

**WHEREAS**, Section 5852.1 of the Government Code of the State of California (“Section 5852.1”) provides that the City must obtain from an underwriter, financial advisor, or private lender and disclose, in a meeting open to the public, prior to authorization of the issuance of the obligation, good faith estimates of (a) the true interest cost of the obligation, (b) the finance charge of the obligation, meaning the sum of all fees and charges paid to third parties, (c) the amount of proceeds of the obligation received less the finance charge described above and any reserves or capitalized interest paid or funded with proceeds of the obligation, and (d) the sum total of all debt service payments on the obligation calculated to the final maturity of the obligation plus the fees and charges paid to third parties not paid with the proceeds of the obligation; and

**WHEREAS**, in accordance with Government Code Section 5852.1, the City has obtained such good faith estimates from its municipal advisor, Urban Futures Inc., and such estimates are disclosed in Exhibit A attached hereto; and

**WHEREAS**, the City, pursuant to Government Code Section 8855, has adopted a debt policy and the Agreement is in compliance with such policy; and

**WHEREAS**, the City Council deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Financing Agreements and the other documentation relating to the acquisition, financing and leasing of the Equipment to be therein described on the terms and conditions therein and herein provided.

**NOW THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the City Council of the City of Coachella as follows:

**Section 1. Findings and Determinations.** It is hereby found and determined that the terms of the Financing Agreements, in the forms presented to the governing body of the City at this meeting, are in the best interests of the City for the acquisition, financing and lease of the Equipment. All payments and other obligations of the City under the Financing Agreements shall be secured by a lien on the Equipment.

**Section 2. Approval of Documents.** The form, terms, and provisions of the Financing Agreements are hereby approved in substantially the forms presented at this meeting, in an amount not to exceed \$15,600,000 and an interest rate not to exceed 4.35%, with such insertions, omissions and changes thereto as shall be approved by the City Manager, Finance Director (including any interim), or either of their designees (each an “*Authorized Officer*”), the execution of such documents being conclusive evidence of such approval. The Authorized Officers are hereby each, acting alone, authorized and directed to execute the Financing Agreements and any related documents and exhibits attached thereto and to deliver the Financing Agreements (including such exhibits) to the respective parties thereto.

**Section 3. Other Actions Authorized.** The officers and employees of the City shall take all action necessary or reasonably required by the parties to the Financing Agreements to carry out, give effect to, and consummate the transactions contemplated thereby. The Authorized Officers are hereby each, acting alone, authorized and directed in the name of the City to do and cause to be done any and all acts and to execute and deliver any documents or agreements necessary to accomplish the delivery of the Financing Agreements, including, without limitation, the execution and delivery of any necessary document, a final acceptance certificate, an escrow agreement, disbursement requests and any tax certificate, and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Financing Agreements. Such actions heretofore taken by such officials and staff are hereby ratified, confirmed, and approved. Should any portion of the project be determined to be not ripe for financing for any reason, an Authorized Officer may proceed to finance the remainder of the project under the authority of this Resolution.

**Section 4. No General Liability.** Nothing contained in this Resolution, the Financing Agreements, any escrow agreement nor any other instrument shall be construed with respect to the City as incurring a pecuniary liability or charge upon or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Financing Agreements, any escrow agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City or any charge upon its or against its taxing power, except to the extent that the payments payable under the Agreement are general obligations of the City, as provided in the Agreement.



**Section 5.** Appointment of Authorized Lessee Representatives. The City Manager and Finance Director (including any interim) are each hereby designated to act as Authorized Officers of the City for purposes of the Financing Agreements, any escrow agreement, and all other related documents until such time as the governing body of the City shall designate any other or different authorized representative for such purposes.

**Section 6.** Appointment of Professionals. The City hereby appoints Best Best & Krieger LLP as Bond Counsel and Urban Futures, Inc. as its Municipal Advisor.

**Section 7.** Approval of Lease Agreement. In connection with the execution of the Financing Agreements, the City and the Coachella Sanitary District (“District”) will enter into that certain Construction Access, Reimbursement & Lease Agreement (the “Reimbursement and Lease Agreement”) whereby the City will sublease certain of the Equipment to the District in exchange for sublease payments. The Reimbursement and Lease Agreement is hereby approved as to form as presented at this meeting, with such changes, additions and revisions deemed necessary by an Authorized Officer. The Authorized Officers are hereby each, acting alone, authorized and directed to execute the Reimbursement and Lease Agreement and any related documents and exhibits attached thereto and to deliver the same to the respective parties thereto. Further, the Authorized Officers are hereby each, acting alone, authorized and directed to execute a waiver of interests related to the Bank’s security interest in the Equipment located on District property and any related documents and exhibits attached thereto and to deliver the same to the respective parties thereto.

**Section 8.** Severability. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

**Section 9.** Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency with respect to this Resolution. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

**Section 10.** Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

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**PASSED, APPROVED and ADOPTED** this 25<sup>th</sup> day of October 2023.

\_\_\_\_\_  
Steven A. Hernandez  
Mayor

**ATTEST:**

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Delia Granados  
Deputy City Clerk

**APPROVED AS TO FORM:**

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Carlos Campos  
City Attorney

STATE OF CALIFORNIA            )  
COUNTY OF RIVERSIDE        ) ss.  
CITY OF COACHELLA            )

**I HEREBY CERTIFY** that the foregoing Resolution No. 2023-72 was duly adopted by the City Council of the City of Coachella at a regular meeting thereof, held on the 25<sup>th</sup> day of October 2023, by the following vote of Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Delia Granados  
Deputy City Clerk

**EXHIBIT A**

**GOOD FAITH ESTIMATES**

The good faith estimates set forth herein are provided with respect to the financing authorized by this Resolution. Such good faith estimates have been provided to the City, based on market interest rates prevailing at the time of preparation of the Estimated Principal Amount, by Urban Futures, Inc., the municipal advisor (the “Municipal Advisor”).

**Principal Amount.** The Municipal Advisor has informed the City that, based on the City’s financing plan and current market conditions, its good faith estimate of the aggregate principal component of the Lease Payments paid under Agreement is \$15,529,458 (the “Estimated Principal Amount”).

**True Interest Cost.** The Municipal Advisor has informed the City that its good faith estimate of the true interest cost of the financing, which means the rate necessary to discount the amounts payable on the respective Lease Payment dates to the principal components of said Lease Payments is 4.344%.

**Finance Charge.** The Municipal Advisor has informed the City that its good faith estimate of the finance charge for the financing, which means the sum of all fees and charges paid to third parties (or costs associated with the financing) (the “Finance Charge”), is \$100,000.

**Amount of Proceeds to be Received.** The Municipal Advisor has informed the City that its good faith estimate of the amount of proceeds, where proceeds is the value of the Equipment being delivered to the City, expected to be received by the City in connection with the financing, less the Finance Charge as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the financing, is \$15,429,458.

**Total Payment Amount.** The Municipal Advisor has informed the City that its good faith estimate of the total payment amount, which means the sum total of all Lease Payments made pursuant to the Agreement, plus the Finance Charge as described above not paid with the proceeds of the financing, calculated to the final term of the Agreement, is \$23,844,482.

The foregoing estimates constitute good faith estimates only. The actual aggregate sum of principal components of the Lease Payments, the true interest cost thereof, the Finance Charge, the amount of proceeds received from the financing, and the total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of financing being different from the date assumed for purposes of such estimates, (b) the actual aggregate sum of the principal components of the Lease Payments being different from the Estimated Principal Amount, (c) the actual amortization of the Lease Payments being different than the amortization assumed for the purposes of such estimates, (d) the actual market interest rates at the time of financing differ from those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the City’s financing plan, or a combination of such factors. The actual date of the financing and the actual aggregate sum of the principal components of the Lease Payments will be determined by the City based on market conditions and other factors. The actual interest rate may depend on

market interest rates at the time of financing. The actual amortization of the Lease Payments may also depend, in part, on market interest rates at the time of financing. Market interest rates are affected by economic and other factors beyond the control of the City.

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

This Equipment Lease/Purchase Agreement (this “*Agreement*”) dated as of October \_\_, 2023, and entered into by and between Banc of America Public Capital Corp, a Kansas corporation (together with its successors, assigns and transferees, and as more particularly defined herein, “*Lessor*”), and City of Coachella, a city existing under the laws of the State of California (“*Lessee*”).

**WITNESSETH:**

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

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

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, and in consideration of the promises 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:

“*ABS Contract*” means [Energy Services Agreement dated as of \_\_\_\_\_, 20\_\_ between Lessee and Alliance Building Solutions, Inc. (“*ABS*”) as amended and modified by that certain Memorandum of Understanding, dated as of October \_\_, 2023 (the “*MOU*”), among the Lessor, the Lessee and ABS, as further supplemented and amended pursuant to the terms thereof and hereof].

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

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

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

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

“Collateral” has the meaning set forth in Section 6.02.

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

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

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

“District” means Coachella Sanitary District.

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

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

“Equipment Schedule” means the Equipment Schedule attached hereto as *Exhibit A* and made a part hereof (including any duly authorized and executed amendments thereto).

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

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

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

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

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

“*Lease Term*” means the Original Term and all Renewal Terms.

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

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

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

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

“*Original Term*” means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at such Commencement Date.

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

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

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

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

“*Related Documents*” means this Agreement and the Escrow Agreement, each as may be amended and supplemented.

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



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

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

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

“*SEC*” means the U.S. Securities and Exchange Commission.

“*Special Counsel*” means Best Best & Krieger LLP.

“*Sublease*” means [\_\_\_\_\_ dated as of \_\_\_\_\_, 20\_\_ between Lessee and the District, as amended and modified by that certain Waiver of Interests, dated as of October \_\_, 2023 (the “*District Waiver of Interests*”), among the Lessor, the Lessee and the District, as further supplemented and amended pursuant to the terms thereof and hereof].

“*State*” means the State of California.

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

“*Vendor*” means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessee arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Equipment, and includes, without limitation, Alliance Building Solutions, Inc. (“*ABS*”).

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment, and includes, without limitation, the ABS Contract.

## ARTICLE II

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

- (a) Lessee is a 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 the Related Documents and the transactions contemplated thereby and to perform all of its obligations thereunder.

(b) Lessee has duly authorized the execution and delivery of the Related Documents 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 the Related Documents.

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

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a city of the State.

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

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

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within two hundred seventy (270) days after the end of its fiscal year, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or for the following fiscal year when approved but not later than thirty (30) days prior to the end of its current fiscal year. The financial statements described in this subsection (g)(i) shall be accompanied by an unqualified opinion of Lessee's independent auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

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

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

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

(k) Lessee is the fee owner of the real estate where the Equipment is and will be located (the "*Real Property*") and has good and marketable title thereto, or has delivered to Lessor a waiver of interest in the Equipment acceptable to Lessor or its assigns in their respective discretion from any party taking an interest in any such Real Property prior to such interest taking effect and there exists no mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such Real Property except for Permitted Encumbrances (as hereinafter defined). In the event any lien, encumbrance, restriction, asserted encumbrance, claim, dispute or other issue exists or arises with respect to the Lessee's legal title to or valid and marketable, beneficial use and enjoyment of the Real Property or impairs or adversely impacts Lessor's right, title or interest in the Equipment or any of Lessor's rights or remedies under this Agreement with respect to the Equipment (each of the foregoing referred to as a "*Real Property Issue*"), Lessee will take all steps necessary to promptly quiet, resolve and/or eliminate such Real Property Issue to the satisfaction of Lessor and ensure that Lessee and Lessor have adequate access to and use of (including beneficial use and enjoyment of) the Real Property for all purposes of the Equipment contemplated herein and Lessee shall ensure that its fee interest or property rights in the Real Property and Lessor's right, title or interest in the Equipment and rights or remedies under this Agreement with respect to the Equipment remain free and clear of Real Property Issues.

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

(m) Lessee represents to Lessor that it has adopted a debt policy in compliance with SB 1029 and Section 8855 of the Government Code of California *et seq.* and covenants that it shall comply with Section 8855 of the Government Code of California *et seq.* as amended (the “*CDIAC Act*”) throughout the Lease Term, including (i) preparing, submitting and filing the report of the proposed debt issuance relating to this Agreement by the method required by the California Debt and Investment Advisory Commission (“*CDIAC*”), (ii) preparing, submitting and filing the report of final sale (and accompanying documents) relating to this Agreement by the method required by *CDIAC*, (iii) submitting an annual report relating to the report of final sale for this Agreement by the method required by *CDIAC*, and (iv) paying all fees charged by *CDIAC* or the *CDIAC Act* relating to this Agreement, including, but not limited to the fee in an amount equal to one-fortieth of one percent of the Acquisition Amount or as otherwise prescribed by the *CDIAC Act*.

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

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

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

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

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

(s) In connection with the Lessee's compliance with any continuing disclosure undertakings (each, a "*Continuing Disclosure Agreement*") entered into by the Lessee pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "*Rule*"), the Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("*EMMA*"), notice of its incurrence of its obligations under 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 the Escrow Agent in any portion of such EMMA Posting: address, account information and logos of the Lessor or its affiliates and the Escrow Agent; e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lessor or its affiliates and the 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.

(t) Any and all existing and future parts of the Equipment consisting of or relating to electric distribution poles, streetlights and related fixtures are and shall be owned outright by Lessee and not subject to any Liens.

(u) Lessee shall give Lessor prompt notice of any breach or default under the Sublease or the District Waiver of Interests including any default by Lessee or the District.

[(v) TBD: covenants relating to Optimization Equipment and fixture filings or liens for the equipment located at the wastewater system or covenants and indemnities if any related thereto]

### ARTICLE III

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

unless Lessee shall have terminated this Agreement pursuant to Section 3.03 or Section 10.01 of this Agreement. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Payment Schedule.

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03 hereof, to continue the Lease Term through the Original Term and all Renewal Terms and to pay the Rental Payments due hereunder. Lessee affirms that sufficient funds are legally available to pay all Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Scheduled Term can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds or to extend the Lease Term for any Renewal Term is within the sole discretion of the governing body of Lessee.

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

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

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

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

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

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

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

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

(viii) Reserved;

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

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

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

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

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

(xiv) Such other items reasonably required by Lessor.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lessor of any of its obligations under the Related Documents shall be subject to (i) no Material Adverse Change having occurred since the date of this Agreement, (ii) no Event of Default having occurred and then be continuing, and (iii) no Event of Non-appropriation having occurred or being threatened with respect to this Agreement.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Escrow Agent to be held and disbursed pursuant to the Escrow Agreement.

*Section 3.05. Evidence of Filing Form 8038-G.* As soon as it is available, Lessee shall provide to Lessor evidence that it, or its paid preparer, has filed the Form 8038-G for this Agreement with the Internal Revenue Service by delivering to Lessor proof of mailing such Form 8038-G. Notwithstanding anything to the contrary in this Agreement, it shall not be an Event of Default hereunder if Lessee does not provide to Lessor evidence that it (or its paid preparer) filed the Form 8038-G for this Agreement with the Internal Revenue Service.

#### ARTICLE IV

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

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

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

*Section 4.04. Rental Payments to be Unconditional.* Except as provided in Section 3.03 of this Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, disputes with the Lessor or the Vendor of any 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 for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to any Vendor or under any Vendor Agreement, or the failure or inability (for whatever reason) of Lessee to receive (or delay in receipt of) all or any portion of any amounts under the Sublease or any refundable tax credit under Section 6417 of the Internal Revenue Code of 1986, as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), or any substantially similar provision of federal, state, local or foreign tax law (including regulations or other guidance from any taxing authority).

*Section 4.05. Tax Covenants.* Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes. In connection with the foregoing, Lessee hereby agrees that (a) so long as any Rental Payments remain unpaid, moneys on deposit in the Escrow Account shall not be used in a manner that will cause this Agreement to be classified as an “arbitrage bond” within the meaning of Section 148(a) of the Code; and (b) Lessee shall rebate, from funds legally available for the purpose, an amount equal to excess earnings on the Escrow Account to the Federal Government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code.

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

For purposes of this Section, “*Event of Taxability*” means the circumstance of the interest component of any Rental Payment paid or payable pursuant to this Agreement becoming includible for Federal income tax purposes in an owner’s gross income as a consequence of any act, omission or event caused by or within the control of Lessee or the District or relating to the Sublease or the District Waiver of Interests, including but not limited to the matters described in the immediately succeeding sentence. An Event of Taxability shall be presumed to have occurred upon (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment is includable in the gross income of the owner thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment is includable in the gross income of the owner thereof; or (c) receipt by Lessor or Lessee of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on

obligations issued by states and their political subdivisions, selected by Lessor and acceptable to Lessee, to the effect that the interest component of any Rental Payment has become includable in the gross income of the owner thereof for Federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest component of any Rental Payment is deemed includable in the gross income of the owner thereof for Federal income tax purposes.

*Section 4.07. Mandatory Prepayment.* (a) Any funds not applied to Equipment Costs and remaining in the Escrow Account on the earliest of (i) the expiration of the Acquisition Period, (ii) 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 the Escrow Account, or (iii) 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 hereunder in the inverse order of the Rental Payment Dates at a price of 100% of such prepaid Principal Portion plus accrued interest thereon to the prepayment date.

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

## ARTICLE V

*Section 5.01. Acquisition, Delivery, Installation and Acceptance of Equipment.* (a) Lessee shall order the Equipment to be acquired and financed hereunder, cause the Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. Lessee shall conduct such inspection and testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering Disbursement Requests to the Lessor pursuant to the Escrow Agreement for the purpose of effecting disbursements from the Escrow Account to pay (or reimburse) Equipment Costs for the Equipment so acquired and installed. In connection with the execution and delivery by Lessee to Lessor of the final Disbursement Request, Lessee shall deliver to Lessor a "Final Acceptance Certificate" in the form attached hereto as *Exhibit E*.

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

*Section 5.02. Quiet Enjoyment of Equipment.* So long as no Event of Default and no Event of Non-appropriation exists hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

*Section 5.03. Location; Inspection.* Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours, in compliance with Lessee's use and access rules and policies (and with prior notice so long as no Event of Default and no Event of Non-appropriation exists hereunder), to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

*Section 5.04. Use and Maintenance of the Equipment.* Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body, including, without limitation, all anti-money laundering laws and regulations; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights hereunder.

Lessee agrees that it shall (a) maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer; (b) proceed promptly, at its expense, to protect its rights and exercise its remedies under any warranty then in effect with respect to the Equipment; and (c) replace or rebuild any component of the Equipment that becomes permanently unfit for normal use or inoperable during the Lease Term (herein, the "*Inoperable Component*") in order to keep the Equipment as a whole in good repair and working order during the Lease Term. Lessee shall promptly notify Lessor in writing when any component of the Equipment is reasonably expected within forty-five (45) days to become an Inoperable Component. Lessee shall promptly replace or rebuild the Inoperable Component with a similar component of comparable or improved make and model that has at least the equivalent value and utility of the Inoperable Component, a remaining useful life of no less than the remaining Scheduled Term and such replacement or rebuilt component shall be in good operating condition. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for in Sections 3.03 and 12.02(b) of this Agreement.

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

## ARTICLE VI

*Section 6.01. Title to the Equipment.* During the Lease Term, so long as Lessee is not in default under Article XII hereof and an Event of Non-appropriation has not occurred, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof. Lessee shall at all times protect and defend, at its own cost and expense, its title, and Lessor's first priority security interest, in and to the Equipment (and Lessor's other Collateral as defined in Section 6.02 hereof) from and against all claims, Liens and legal processes of its creditors, and keep all Equipment (and such other Collateral) free and clear of all such claims, Liens and processes. Lessee will, at its expense, do any further act and execute, acknowledge, deliver, file, register and record any further documents the Lessor may reasonably request in order to protect Lessor's first priority security interest in the Collateral. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 3.03 or 12.02 of this Agreement, as applicable. Upon payment of all amounts due and owing hereunder by Lessee in accordance with Section 10.01 hereof, Lessor's security interest or other interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the termination of Lessor's security interest in the Equipment.

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

*Section 6.03. Personal Property, No Encumbrances.* Lessee agrees that 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 is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in their respective 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 and such mortgage, pledge, Lien, security interest, charge or other encumbrance to which Lessor has consented shall constitute a “*Permitted Encumbrance*” on the Real Property.

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* Lessee shall keep the Equipment free of all levies, Liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the lease, sale, purchase, operation, use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all sales and other taxes, special assessments, governmental and other charges of any kind that are at any time lawfully assessed or levied against or with respect to the Equipment, the Rental Payments or any part of either thereof, or which become due during the Lease Term, whether assessed against Lessee or Lessor. Lessee shall pay all utility and other charges incurred in the operation, use and maintenance of the Equipment. Lessee shall pay such taxes, assessments or charges as the same may become due; *provided* that, with respect to any such taxes, assessments or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term. Lessor will not claim ownership of the Equipment under this Agreement for the purposes of any tax credits, benefits or deductions with respect to such Equipment. Lessee shall pay the fee charged by the California Debt and Investment Advisory Commission with respect to this Agreement pursuant to Section 8856 (or any successor provision) of the California Government Code.

*Section 7.02. Insurance.* Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Prepayment Price 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 \$5,000,000 per occurrence for bodily injury and property damage coverage (such liability insurance coverage may be in a combination of primary general liability and/or excess liability umbrella coverage), and in all events under clauses (a) and (b) above issued in form and amount satisfactory to Lessor and by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of “A-” or better; and (c) workers’

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

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

*Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a payment and performance bond ("*Surety Bond*") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied in accordance with such Surety Bond to the payment and

performance of the Vendor's obligations in accordance with the related Vendor Agreement and, if for whatever reason such proceeds are not so applied, first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

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

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

## ARTICLE VIII

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

If Lessee elects to replace any item of the Equipment (the "*Replaced Equipment*") pursuant to this Section 8.01, 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 and shall have an expected remaining useful life at least through the Scheduled Term. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, Liens, security interests and

encumbrances, excepting only those Liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment Date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to the damaged Equipment in accordance with Section 10.01(a)(ii) hereof.

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

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

## ARTICLE IX

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

*Section 9.02. Vendor Agreements; Warranties.* Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default under this Agreement and so long as no Event of Non-appropriation has occurred, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against a Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation



shall be against the applicable Vendor of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor under this Agreement, including the right to receive full and timely Rental Payments and other payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to any of the Equipment.

## ARTICLE X

### *Section 10.01. Prepayment; Payment in Full.*

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

(i) *Optional Prepayment.* From and after the date specified (if any) in the Payment Schedule (the “*Prepayment Option Commencement Date*”), on any date, upon not less than forty-five (45) days prior written notice, and (A) in the event such prepayment occurs on a Rental Payment Date, the sum of (i) all Rental Payments then due *plus* (ii) the then applicable Prepayment Price which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* (iii) all other amounts then owing hereunder OR, (B) in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of (i) the applicable Prepayment Price shown on the Payment Schedule for the Rental Payment Date immediately preceding the applicable date of such prepayment (or if the date of such prepayment occurs prior to the first Rental Payment Date, the earliest Prepayment Price shown on the Payment Schedule) which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* (ii) accrued interest at the Contract Rate (or the Taxable Rate if then in effect) on the Outstanding Balance as of the Rental Payment Date immediately preceding the applicable date of such prepayment from such Rental Payment Date (or if the date of such prepayment occurs prior to the first Rental Payment Date, the Commencement Date) to the date of such prepayment *plus* (iii) all other amounts then owing hereunder; or

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

Date (or if the date of such prepayment occurs prior to the first Rental Payment Date, the Commencement Date) to the date of such prepayment *plus* (iii) all other amounts then owing hereunder.

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

## ARTICLE XI

*Section 11.01. Assignment by Lessor.* (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Escrow Agreement, and its security interest in the Collateral (collectively, the "*Assigned Rights*"), may be assigned and reassigned by Lessor at any time, in whole or in part, to one or more assignees or sub-assignees without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom Lessor reasonably believes is a "*qualified institutional buyer*" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "*accredited investor*" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing the Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute such Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Assigned Rights (or any interest therein) as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000 and (iii) shall not require Lessee to make Rental Payments, to send notices or otherwise to deal with respect to matters arising hereunder or under the Escrow Agreement with or to more than one Lease Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "*Lease Servicer*") to act on their behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies of Lessor on behalf of such owners upon the occurrence of an Event of Default or an Event of Non-appropriation under this Agreement. Lessor and Lessee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 11.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein).

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective as against Lessee until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company

as trustee or paying agent for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank, trust company or other entity that acts as the Lease Servicer. Notices of assignment provided pursuant to this Section 11.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 11.01(a) hereof. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Lease Servicer last designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of Lessor's security interest in and to the Collateral, or all rights in, to and under the Escrow Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of *Exhibit H* attached hereto within five (5) 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 this Agreement or any portion of the Equipment, the Escrow Agreement, the Escrow Account or any of the other Collateral may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.***

## ARTICLE XII

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

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

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

such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

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

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$1,000,000.00;

(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, liquidation, readjustment, 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 thirty (30) consecutive days; or

(g) Failure by Lessee or the District to observe and perform any covenant, condition or agreement contained in the Sublease or the District Waiver of Interests on its part to be observed or performed.

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

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

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such

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

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

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

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

### ARTICLE XIII

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

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

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

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

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

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

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

*Section 13.08. No Advisory or Fiduciary Relationship.* In connection with all aspects of each transaction contemplated by this Agreement (including in connection with any amendment, waiver or other modification hereof or of any other related document), the Lessee acknowledges and agrees that: (a) (i) the transactions regarding this Agreement provided by the Lessor and any affiliate thereof are arm's-length commercial transactions between the Lessee, on the one hand, and the Lessor and its affiliates, on the other hand, (ii) the Lessee has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Lessee is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and by the other related documents; (b) (i) the Lessor and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Lessee, or any other person and (ii) neither the Lessor nor any of its affiliates has any obligation to the Lessee with respect to the transactions contemplated by this Agreement except those obligations expressly set forth herein and in the other related documents; and (c) the Lessor and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Lessee, and neither the Lessor nor any of its affiliates has any obligation to disclose any of such interests to the Lessee. To the fullest extent permitted by law, the Lessee, hereby waives and releases any claims that it may have against the Lessor or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated by this Agreement.

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

*Section 13.10. Electronic Signatures.* The Related Documents may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe's Portable Document Format ("PDF")). 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 the 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 either party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

*[Remainder of Page Intentionally Left Blank]*

*[Signature Page Follows]*

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

LESSOR:

LESSEE:

BANC OF AMERICA PUBLIC CAPITAL CORP

CITY OF COACHELLA

11333 McCormick Road  
Hunt Valley II  
M/C MD5-031-06-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 541-3057

53990 Enterprise Way  
Coachella, CA 92236  
Attention: Dr. Gabriel Martin, City Manager  
Telephone: (760) 398-3502  
Email: [gmartin@coachella.org](mailto:gmartin@coachella.org)

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

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

(Seal)

ATTEST:

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

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



## LIST OF EXHIBITS

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

**EXHIBIT A**

**EQUIPMENT SCHEDULE**

Location of Equipment:

Equipment Description (Scope of Work):

**EXHIBIT B**

**PAYMENT SCHEDULE**

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST PORTION	PRINCIPAL PORTION	OUTSTANDING BALANCE	PREPAYMENT PRICE (including prepayment premium, if applicable)
---------------------------	-----------------------------	---------------------	----------------------	------------------------	---

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

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

LESSOR:

LESSEE:

BANC OF AMERICA PUBLIC CAPITAL CORP

CITY OF COACHELLA

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

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

EXHIBIT C-1

FORM OF AUTHORIZING RESOLUTION

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF COACHELLA AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT WITHIN THE TERMS PROVIDED HEREIN; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Coachella (the "Lessee"), a city duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of California, is authorized by the laws of the State of California to acquire, finance and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to acquire, finance and lease certain equipment with a cost not to exceed \$ \_\_\_\_\_ constituting personal property necessary for the Lessee to perform essential governmental functions (the "Equipment"); and

WHEREAS, in order to acquire such Equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (the "Agreement") with Banc of America Public Capital Corp (or one of its affiliates), as lessor, (the "Lessor"), the form of which has been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the other documentation relating to the acquisition, financing and leasing of the Equipment to be therein described on the terms and conditions therein and herein provided;

NOW, THEREFORE, Be It And It Is Hereby Resolved by the governing body of the Lessee as follows:

*Section 1. Findings and Determinations.* It is hereby found and determined that the terms of the Agreement, in the form presented to the governing body of Lessee at this meeting, are in the best interests of the Lessee for the acquisition, financing and leasing of the Equipment.

*Section 2. Approval of Documents.* The form, terms and provisions of the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the \_\_\_\_\_ [insert title of officials] of the Lessee or other members of the governing body of the Lessee executing (in writing or electronically) the same, the execution of such documents being conclusive evidence of such approval; and the \_\_\_\_\_ of the Lessee is hereby authorized and directed

to execute (in writing or electronically), and the \_\_\_\_\_ of the Lessee is hereby authorized and directed to attest, the Agreement and any related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the respective parties thereto, and the \_\_\_\_\_ of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

*Section 3. Other Actions Authorized.* The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution (in writing or electronically) and delivery of a Final Acceptance Certificate, an Escrow Agreement, Disbursement Requests and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution (in writing or electronically) and delivery of any closing and other documents required to be delivered in connection with the Agreement.

*Section 4. No General Liability.* Nothing contained in this Resolution, the Agreement, the Escrow Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are limited obligations of the Lessee, subject to annual appropriation, as provided in the Agreement.

*Section 5. Appointment of Authorized Lessee Representatives.* The \_\_\_\_\_ and \_\_\_\_\_ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement and the Escrow Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement or the Escrow Agreement.

*Section 6. Severability.* If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

*Section 7. Repealer.* All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency with respect to this Resolution. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

*Section 8. Effective Date.* This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this \_\_\_\_\_ day of \_\_\_\_\_.

CITY OF COACHELLA, as Lessee

[SEAL]

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

Attest:

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

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

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

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



EXHIBIT C-2

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting City Clerk of the City of Coachella (“Lessee”) certifies as follows:

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

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute, in writing or electronically, and deliver the Equipment Lease/Purchase Agreement dated as of October \_\_, 2023 by and between Lessee and Banc of America Public Capital Corp (“Lessor”), the Escrow and Account Control Agreement dated as of October \_\_, 2023 by and among Lessor, Lessee and Wilmington Trust, National Association, as Escrow Agent, all documents related thereto and delivered in connection therewith, and any future modification(s) or amendments thereof (collectively, the “Operative Agreements”), and the Operative Agreements each are the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

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

Dated: October \_\_, 2023

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

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

**EXHIBIT D**

**FORM OF OPINION OF COUNSEL TO LESSEE  
(TO BE TYPED ON LETTERHEAD OF COUNSEL)**

**[Closing Date]**

Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-031-06-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement,  
dated as of October \_\_, 2023,  
by and between  
Banc of America Public Capital Corp, as Lessor,  
and the City of Coachella, as Lessee

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Ladies and Gentlemen:

As legal counsel to the City of Coachella (“*Lessee*”), I have examined (a) an executed counterpart of that certain Equipment Lease/Purchase Agreement, dated as of October \_\_, 2023, and Exhibits thereto by and between Banc of America Public Capital Corp (“*Lessor*”) and Lessee (the “*Agreement*”), which, among other things, provides for the lease of certain property (the “*Equipment*”) and a certain Escrow and Account Control Agreement dated as of October \_\_, 2023 by and among Lessor, Lessee, and Wilmington Trust, National Association as Escrow Agent (the “*Escrow Agreement*”), (b) an executed counterpart of the ordinances or resolutions of Lessee with respect to authorization of the transaction contemplated by the Agreement, the Escrow Agreement and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Escrow Agreement, and the documents relating thereto are herein collectively referred to as the “*Transaction Documents*”.

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

1. Lessee is a city, duly organized and existing under the laws of the State, and is a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the “*Code*”) and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code.

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

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

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

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

6. The portion of Rental Payments designated as interest is excluded from gross income for Federal income tax purposes under Section 103 of the Code and is exempt from State of California personal income taxes; and such interest is not a specific item of tax preference for purposes of the federal alternative minimum tax.

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

Sincerely,

## EXHIBIT E

## FORM OF FINAL ACCEPTANCE CERTIFICATE

Banc of America Public Capital Corp  
 11333 McCormick Road  
 Mail Code: MD5-031-06-05  
 Hunt Valley, MD 21031  
 Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement,  
 dated as of October \_\_, 2023,  
 by and between  
 Banc of America Public Capital Corp, as Lessor, and  
 the City of Coachella, as Lessee

---

Ladies and Gentlemen:

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

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

7. No Event of Non-appropriation has occurred or been threatened.

Capitalized terms used, but not defined, in this Final Acceptance Certificate shall have the same meanings as when such terms are used in the Agreement.

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

LESSEE:

CITY OF COACHELLA

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

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

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

(SEAL)

EXHIBIT F

FORM OF SELF INSURANCE CERTIFICATE

Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-031-06-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement,  
dated as of October \_\_, 2023, (the "Agreement")  
by and between  
Banc of America Public Capital Corp, as Lessor,  
and the City of Coachella, as Lessee

---

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

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

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

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

**[3].** The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources:

\_\_\_\_\_. Amounts payable for claims from such sources are limited as follows: \_\_\_\_\_

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

LESSEE:

CITY OF COACHELLA

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

**EXHIBIT G**

**RESERVED**



EXHIBIT H

FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

Dated \_\_\_\_\_

Banc of America Public Capital Corp (“Assignor”) hereby gives notice that it has assigned and sold to \_\_\_\_\_ (“Assignee”) all of Assignor’s right, title and interest in, to and under the Equipment Lease/Purchase Agreement dated as of October \_\_, 2023 (the “Agreement”), by and between Assignor and the City of Coachella (“Lessee”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor’s right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Escrow and Account Control Agreement dated as of October \_\_, 2023 (the “Escrow Agreement”) by and among Lessee, Assignor and Wilmington Trust, National Association, as Escrow Agent, together with the Escrow Account and other Collateral (collectively, the “Assigned Property”). Each capitalized term used but not defined herein has the meaning set forth in the Agreement.

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

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

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

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

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

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

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

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

ACKNOWLEDGED AND AGREED:

LESSEE: CITY OF COACHELLA

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

ASSIGNOR: BANC OF AMERICA PUBLIC CAPITAL CORP

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

**EXHIBIT I**

**ESCROW AND ACCOUNT CONTROL AGREEMENT**

See Item #4 in Transcript

**CONSTRUCTION ACCESS, REIMBURSEMENT & LEASE AGREEMENT  
BETWEEN  
THE CITY OF COACHELLA  
AND  
THE COACHELLA SANITARY DISTRICT  
FOR THE INSTALLATION OF ENERGY CONSERVATION MEASURES  
& OTHER PROCESS IMPROVEMENTS**

This CONSTRUCTION ACCESS, REIMBURSEMENT & LEASE AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”) by and between City of Coachella (“**City**”) and the Coachella Sanitary District (“**District**”). City and District are sometimes referred to herein individually as “**Party**” and collectively as “**Parties.**”

**RECITALS**

A. City entered into a design-build contract with Alliance Building Solutions, Inc. (“**Contractor**”), dated \_\_\_\_\_, 2023 attached hereto as **Attachment C** and incorporated herein by references (“**Design-Build Contract**”), which includes the installation of certain energy conservations measures (“**Project**”), including the following at District’s Wastewater Treatment Plant located at 87075 Avenue 54, Coachella, California (“**Treatment Plant**”): (i) solar photovoltaic panels and associated work and accessories to generate solar power, and (ii) certain process improvements, as each are described in sections \_\_\_ and \_\_\_ in Exhibit A to the Design-Build Contract (collectively, “**Improvements**”).

B. To finance the design and construction of the Project, City entered into that certain Equipment Lease/Purchase Agreement (Escrow Account) with Banc of America Public Capital Corp (together with its successors and assigns, “**Lender**”) dated October\_\_\_\_, 2023 attached hereto as **Exhibit D** and incorporated herein by reference (as supplemented and amended, “**Financing Lease**”).

C. City is constructing the Improvements on behalf of District, and to facilitate the construction of the Improvements at the Treatment Plant, City requires: (i) a license to enter upon and construct the Improvements at the Treatment Plant; (ii) an agreement by District to reimburse City in a manner consistent with the terms of the Financing Lease; and (iii) a lease agreement whereby City leases to District the equipment constituting the Improvements, subject to Lender’s first priority lien and security interest, identified in the equipment schedule attached hereto as **Exhibit B** and incorporated herein by reference and the Equipment as defined in the Financing Lease (collectively, “**Equipment**”) for a term and on conditions consistent with the Financing Lease.

D. To facilitate the design and construction of the Improvements, District desires to: (i) grant City the License (as defined below) to permit City to enter upon the Treatment Plant to design and construct the Improvements; (ii) agree to reimburse City in installment payments that reflect District’s pro-rata share for the design and construction of the Project which consists of the

*Agreement & License – Construction & Lease of Equipment  
City of Coachella & Coachella Sanitary District*

Improvements based on the reimbursement schedule attached hereto as **Attachment A (“Payment Schedule”)**; and (iii) after construction, to sublease the Equipment from City.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by the Parties as follows:

**TERMS**

1. **Incorporation of Recitals.** The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

2. **Term.** This Agreement shall be effective as of the Effective Date, and shall continue in effect until District makes the final Sublease Payment (as defined below) to City as reflected in the Payment Schedule , or City’s full performance, and expiration of, the Financing Lease, whichever occurs last (“**Term**”).

3. **General Agreement to Cooperate.** The Parties agree to mutually cooperate to ensure that the Improvements are successfully installed at the Treatment Plant, and thereafter to ensure that the Improvements are maintained in good working order and consistent with the requirements of the Financing Lease.

4. **Construction & Maintenance of Improvements**

4.1 **Grant of the License.**

(a) **Grant of License.** District hereby grants, through the duration of the Term, to City and its agents, employees and contractors, including, without limitation, Contractor and its agents, employees and subcontractors, and Lender, and its agents, employees, and subcontractors, the temporary right to enter onto the Treatment Plant and take any related and necessary action to construct and maintain the Improvements, and for any reason that Lender may need access to the Improvements as set forth in the Financing Lease, and for no other purpose (“**License**”). The following conditions apply to this License:

(i) City shall be solely responsible for the design, construction, and maintenance of the Improvements and shall only be compensated as set forth in the “**District’s Obligation to Reimburse**” section below; and

(ii) City shall provide District reasonable notice of its intended construction activities and its schedule of activities, and shall make all reasonable efforts not to interfere with or impede the normal operations of the Treatment Plant; and

(iii) City shall ensure that, after completion of the Project as such completion is defined in the Design-Build Contract, that the portions of the Treatment Plant that City accessed during construction, will be restored to the same or similar condition as of the Effective Date, ordinary wear and tear excepted.

(b) Liens. City shall not permit to be placed against the Treatment Plant, or any part thereof, any design professionals', mechanics', materialmen's contractors' or subcontractors' liens in any way related to City's actions upon the Treatment Plant. City agrees to hold District harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which might be filed against the Treatment Plant.

(c) Compliance with Laws/Permits. City shall, in all activities undertaken pursuant to this License, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, and policies. Without limiting the generality of the foregoing, City, at its sole cost and expense, shall obtain any all permits required by any law, regulation or ordinance for any activities City desires to conduct or have conducted pursuant to this License. District shall reasonably cooperate with City to obtain all such permits.

(d) Inspection. District and its representatives, employees, agents or independent contractors may enter and inspect the Treatment Plant or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify City's compliance with the terms and conditions of this License.

(a) Not Real Property Interest. It is expressly understood that this License is not exclusive and does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Treatment Plant to City.

4.2 City's Obligations for Design, Construction, & Maintenance.

(a) City shall be responsible for designing, constructing, and maintaining the Improvements by managing and administering Contractor's work under the Design-Build Contract. City shall be responsible for obtaining all applicable environmental and/or other clearances and permits and/or approvals necessary to complete the Improvements, subject to District's reasonable cooperation to obtain all such permits and/or approvals.

(b) City, upon District's reasonable request, shall furnish to District all cost information, including any and all invoices and payments, related to the design, construction, and maintenance of the Improvements.

(c) City shall provide District a reasonable opportunity to review and approve all design documents generated for the Improvements prior to approving such documents as set forth in the Design-Build Contract, and District's approval(s) shall not be unreasonably withheld, conditioned, or delayed.

(d) City shall require Contractor to obtain all required permits and approvals for all work related to the Improvements.

(e) City, upon District's reasonable request, shall provide District with as-built record drawings for the Improvements after acceptance of Improvements by City.

(f) After City’s acceptance of the Improvements, City shall maintain all equipment in good working order and consistent with all requirements of the Financing Lease until the expiration or termination of the Financing Lease, or until title in the Equipment vests with District as set forth below, whichever occurs last.

5. **Sublease of Equipment.**

5.1 **Acknowledgement of Financing Lease.** District has reviewed the Financing Lease and recognizes that City is financing the Improvements by leasing, as lessee, the Equipment from Lender, as lessor, and further acknowledges that Lender has a first priority security interest in the Equipment until City fully performs and repays all rental payments in full under the Financing Lease. No obligation in this Agreement shall be construed in a manner that causes a breach of the Financing Lease, and if such a non-conflicting interpretation is not possible, the Parties agree that the provisions herein shall be reformed such that there shall be no breach of the Financing Lease. Further, District acknowledges that if City defaults under the Financing Lease or an Event of Non-appropriation (as defined in the Financing Lease) occurs, the Lender has the ability to repossess the Equipment or the City is required to return the Equipment to the Lender. Upon such a repossession and return of the Equipment in strict accordance with the terms of the Financing Lease, District’s obligation to make Sublease Payments shall immediately cease and this Agreement shall terminate.

5.2 **Sublease.** City agrees to lease to District, and District agrees to lease from City, in accordance with the terms and conditions herein, and consistent with the terms of the Financing Lease, the Equipment, together with, to the extent applicable, any related accessories, attachments, firmware and software for the Term. Lessee shall have no right, title or interest in the Equipment during the Term of this Agreement.

5.3 **Binding Nature of Financing Lease.** District acknowledges and agrees that this Agreement and the Parties’ performance of their obligations hereunder must be consistent with the terms of the Financing Lease. District expressly agrees not to take any action that will cause City to be in breach of the Financing Lease.

5.4 **Use of Equipment.** All Equipment which is leased by City to District shall be used by District consistent with its intended use in the normal course of operating the Treatment Plant, consistent with the terms of the Financing Lease, and shall only be used for public purposes, and shall not be used by any private party for any private purpose. District hereby covenants that, with respect to the Equipment, it will not take any action, or fail to take any action, that would affect the tax-exempt statute of the Financing Lease.

5.5 **Possession/Title.** During the Term, District shall have only have possession of the Equipment and title to the Equipment shall remain with City at all times. District covenants to keep the Equipment free from levy, legal process, tax and other claims, liens, and encumbrances. At the expiration of the Term, and if City has fully complied with all obligations under the Financing Lease, and District is not in breach or default of this Agreement and paid all Sublease Payments (as defined below) to City, then title to all Equipment shall vest with District and this

Agreement shall terminate. City shall cooperate with District to execute any documents necessary to affect such title transfer.

5.6 Encumbrances or Liens; Notice. District shall not pledge, encumber, create a security interest in, or permit any lien to become effective on any leased Equipment. If any of these events takes place, District shall be deemed to be in default under the Agreement. District shall promptly notify City in writing of any liens or other encumbrances on the Equipment of which District has knowledge. The District will promptly pay or satisfy any obligation from which any lien, claim or encumbrance arises, and will otherwise keep the Equipment and all title and interest free of any liens, claims or encumbrances.

5.7 Removal. During the Term, City shall be responsible for all costs related to the proper removal of any Equipment, at the City’s sole cost and expense. After title in the Equipment has vested with District, District shall be responsible for all costs related to the proper removal of any Equipment, at the District’s sole cost and expense.

6. **District’s Obligation to Reimburse.**

6.1 Obligation to Reimburse City for Lease Payments & Amount of Lease Payments. As of the Effective Date, District will reimburse City for the Improvements by paying sublease payments to City in an amount equal to its pro-rata share of the lease payments City shall pay to Lender under the Financing Lease, inclusive of interest (“**Sublease Payment(s)**”). The “pro-rata share” shall be equal to the percentage of the Contract Price (as defined in the Design-Build Contract) allocated for the Improvements in the Schedule of Values (as defined in the Design-Build Contract). The amount of each Lease Payment is set forth in the attached Payment Schedule.

6.2 Timing & Duration of Lease Payments. District shall pay each Sublease Payment to City within thirty (30) days of City’s payment of its lease payments to Lender as set forth in the Financing Lease. District shall pay such Sublease Payments to City until all Sublease Payments as reflected in the Payment Schedule have been paid.

6.3 Agreement to Adjust Payment Schedule. If City and Lender adjust the lease payments and the lease payment schedule in the Financing Lease, then: (i) the Parties shall amend the Payment Schedule accordingly to adjust the Payment Schedule consistent with the adjusted terms of the Financing Lease; or (ii) the Payment Schedule shall be deemed equitably adjusted such that the monthly Sublease Payments shall be proportional to District’s pro-rata share.

6.4 Subordinate Pledge of Net Revenues. All of the Net Revenues are hereby irrevocably pledged, charged and assigned, on a subordinate basis to the Bonds and Parity Obligations currently outstanding and issued in the future, to the punctual payment of the Sublease Payments. The District shall fix, prescribe, revise and collect, or cause to be fixed, prescribed, revised and collected, rates, fees and charges for the services and improvements furnished by the Wastewater System during each Fiscal Year which are sufficient to yield Net Revenues for the Wastewater System, which are sufficient to pay the Sublease Payments coming due and payable in such Fiscal Year. Defined terms in this Section 6.4 shall have the same meaning ascribed to them in that certain Indenture of Trust, dated as of October 1, 2015, by and between the District



and MUFG Union Bank, N.A., related to the District’s Wastewater Revenue Refunding Bonds, Series 2015A, unless otherwise defined herein.

7. **Default & Remedies**

7.1 Any of the following shall constitute an event of default hereunder:

(a) Failure by District to pay any Sublease Payment within thirty (30) days of when due as specified herein; and

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

(c) An Event of Default (as that term is defined in the Financing Lease) by the City under the Financing Lease or the City’s failure to observe or perform any material covenant, condition, or agreement contained in the Financing Lease on its part to be observed or performed.

7.2 Whenever any event of default occurs hereunder, City shall have the right, at its sole option without further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to District, City may declare all Sublease Payments payable hereunder to be immediately due and payable;

(b) City may enter the premises where the Equipment is located and retake possession of such Equipment or require District at District’s expense to promptly return any or all of such Equipment to the possession of City; and/or

(c) City may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement.

8. **Time is of the Essence.** Each Party warrants that it shall make its best efforts to perform all obligations assigned to it related to the Improvements in such a manner as to allow the Improvements to progress as scheduled.

9. **Dispute Resolution.** Unless otherwise specified herein, the Parties shall submit any unresolved dispute to each Party’s designated representative for negotiation. The Parties agree to undertake good faith attempts to resolve said dispute, claim, or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after

conducting the first negotiating session, either Party may, but is not required to, request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.

10. **Legal Action.** If a matter is not resolved within thirty (30) calendar days after the first negotiating session between the Parties, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity.

11. **Indemnification.** Each Party shall indemnify, defend and hold the other Party, its officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or omissions or willful misconduct of the indemnifying Party, its officials, officers, employees, agents, consultants or contractors in the performance of the indemnifying Party’s obligations under this Agreement, including the payment of all reasonable attorneys’ fees.

12. **Force Majeure.** The failure of performance by either Party (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other Party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the Parties); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement between the Parties.

13. **Written Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY:  
City of Coachella  
53990 Enterprise Way  
Coachella, CA 92236  
Attn: City Manager

DISTRICT:  
Coachella Sanitary District  
53462 Enterprise Way  
Coachella, CA 92236  
Attn: Utilities Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

14. **Amendments.** This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing with the prior written consent of the Lender.
15. **Assignment of Agreement.** Neither Party may assign or transfer its respective rights or obligations under this Agreement without the express written consent of the other Party and the Lender. Any purported assignment or transfer by one Party without the express written consent of the other Party and the Lender shall be null and void and of no force or effect.
16. **Waiver.** No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. The provisions of this Agreement may not waived without the prior written consent of the Lender.
17. **Governing Law and Venue.** This Agreement will be governed by the laws of California. Venue for any action arising out of this Agreement shall be in the federal or state courts, as applicable, located in the County of Riverside, California, and each Party hereby submits to the jurisdiction of such courts.
18. **Successors and Assigns.** This Agreement and each of its provisions will be binding on and will inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.
19. **Severability.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.
20. **Survival.** All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, shall survive any such expiration or termination.
21. **Third Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
22. **Entire Agreement / Execution in Counterparts.** This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings. This Agreement may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date first herein above written.

**CITY OF COACHELLA**

**COACHELLA SANITARY DISTRICT**

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

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

Name: Dr. Gabriel Martin

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

Title: City Manager

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

ATTEST:

ATTEST:

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

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

City Clerk

[INSERT TITLE]



**STAFF REPORT**  
**10/25/2023**

**TO:** Board of Directors for the Coachella Sanitary District

**FROM:** Dr. Gabriel Martin, District Manager  
Zachery Scalzo, City Attorney

**SUBJECT:** Adopt Resolution No. SD-2023-05 Authorizing the District Manager the Execution and Delivery of a Construction Access, Reimbursement & Lease Agreement with the City of Coachella and Authorizing the Taking of All Other Actions Necessary to the Consummation of the Transactions Contemplated by the this Resolution.

**STAFF RECOMMENDATION:**

Staff recommends that the Board of Directors (“Board”) for the Coachella Sanitary District (“District”) adopt Resolution No. SD-2023-05 authorizing the District Manager the execution and delivery of a construction access, reimbursement & lease agreement with the City of Coachella and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by the this resolution to allow the City to construct certain improvements at the District’s Wastewater Treatment Plant (“Treatment Plant”), with a maximum principal amount to be financed not to exceed **\$11,000,000** and an interest rate not to exceed 4.35%.

**BACKGROUND:**

On July 26, 2023, the City Council (“Council”) of the City of Coachella (“City”) adopted Resolution No. 2023-53, in which the Council made required findings pursuant to Government Code section 4217, and approved a design-build contract (“DB Contract”) with Alliance Buildings Solutions, Inc. (“Alliance”) in the amount of **\$15,429,458** (“Project Cost”). The DB Contract requires Alliance to design and construct several different types of energy conservation measures within the City (collectively, “Project”), including, the following scope of work that the City agreed to construct on behalf of the Coachella Sanitary District (“District”) at the Treatment Plant: (i) solar photovoltaic panels; and (ii) process optimization (“District Scope”). Staff estimates that the District Scope accounts for approximately \$10 million to \$11 million of the Project Cost. Additionally, Resolution No. 2023-53 conditioned the Council’s approval upon the City obtaining financing for the Project and authorized the City Manager to obtain such financing and to negotiate a financing agreement.

At the City Council’s meeting today, October 25, 2023, the City authorized the City Manager to enter into an Equipment Lease/Purchase Agreement (the “ELPA”) with Banc of America Public Capital Corp (“Bank”) to obtain financing from the Bank in an amount not to exceed the Project Cost and financing costs. If the City and the Bank close the financing for the **total** Project Cost, the City will lease the equipment installed in the Project in the amount of the Project Cost and financing costs, plus interest. The ELPA has a 20-year term (final lease payment in 2043) with an interest rate of 4.344%, and lease payments (assuming financing of the entire project and including all financings costs) total approximately \$24 million. The ELPA provides that, if the City defaults or fails to make any such payment, the Bank may repossess any equipment that is subject to the ELPA.

Since the City and District are separate legal entities, the District must agree to permit the City to design and construct the District Scope at the Treatment Plant and agree to reimburse the City for the cost of the District Scope, plus financing costs and interest. Additionally, to obtain financing, the City is required to enter into the Lease Agreement with the District to sublease the equipment constituting the District Scope to the District and bind the District to provisions of the ELPA granting the Bank a security interest in, and the right to repossess, such equipment.

**DISCUSSION/ANALYSIS:**

Government Code section 4217.10, et seq. permitted the City to enter into agreements to finance, design, and construct energy conservation facilities and/or energy conservation measures without any competitive solicitation or bidding process.

Government Code section 4217.12 (“Section 4217.12”) permitted the City to enter directly into an energy services contract to design and construct energy conservation facilities, if the City Council found at a regularly scheduled public hearing noticed at least two weeks in advance, that “the anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those purchases.”

Government Code section 4217.13 (“Section 4217.13”) permitted the City to enter directly into a facility financing contract to finance the design and construction of energy conservation facilities, if the City Council found, at a regularly schedule public hearing noticed at least two weeks in advance, that “funds for the repayment of the financing or the cost of design, construction, and operation of the energy conservation facility, or both, as required by the contract, are projected to be available from revenues resulting from sales of electricity or thermal energy from the facility or from funding that otherwise would have been used for purchase of electrical, thermal, or other energy required by the public agency in the absence of the energy conservation facility, or both.”

Through Resolution No. 2023-53, the City made all the findings required by Section 4217.12 and 4217.13. The Council further authorized the City Manager to enter into an “energy services contract” under Section 4217.12—the DB Contract—if the City secured and entered into a financing agreement for the Project Cost. The ELPA approved by the City Council today is that

financing agreement and is an approved “facility financing” contract pursuant to Section 4217.13.

The Lease Agreement is required by the City because the City must have access to the Treatment Plant for design, construction, and maintenance of the financed equipment. The Lease Agreement binds the District to do the following through the term of the ELPA (Original Term of November 2043, which term can be extended to Renewal Terms or terminated early through prepayment): (i) grant a license to the City to enter the Treatment Plant so that it can design, construct, and maintain the District Scope; (ii) agree to lease the equipment constituting the District Scope from the City and allow the Bank to repossess the equipment if the City is in breach of the ELPA due to the District not complying with the terms of the Lease Agreement; and (iii) to make installment payments to the City in an amount equal to the proportional cost of the District Scope within 30 days of the City making each bi-annual lease payment to the Bank.

District’s legal counsel has reviewed and approved the Lease Agreement as to its form.

**ALTERNATIVES:**

1. Not agree to the financing and separately procure the District Scope.
2. Continue the item and provide staff with direction.
3. Take no action.

**FISCAL IMPACT:**

In order to estimate the fiscal impact to the District of the District Scope and to finalize the lease payments in the Lease Agreement, Alliance will need to provide the City with a description of equipment; scheduled values; energy, O&M, and new renewable savings; and estimated Direct Pay Investment Tax Credit for the District Scope. The City has asked Alliance for such information on several occasions, particularly regarding the process optimization piece of the Project, but Alliance has not been able to provide that information to the City. If Alliance cannot provide the necessary information regarding the design of the process optimization portion of the District Scope, then the District may move forward with financing the solar photovoltaic panels portion of the District Scope at this time and finance the process optimization portion at a later date once Alliance has completed design.

While still working on the equipment list for the process optimization portion of the District Scope, Alliance has provided preliminary scheduled values. Based on an assumption of \$8.065 million of project cost for process optimization at the Treatment Plant, \$50,000 of allocated financing costs, and an interest rate of 4.344% over a 20-year term, the District would make total lease payments to the City of \$12.974 million. Alliance has estimated energy savings and O&M savings from Year 0 through Year 20 of the project to total \$12.729 million. Therefore, the energy and O&M savings generated from the process optimization project from Year 0 through Year 20 are projected to be lower than the costs of the project. After the Lease Agreement expires in 20 years, Alliance projects that the project will generate additional energy savings from Years 21 through 25. Alliance also includes an estimated Capital Cost Avoidance of \$1.16 million in its cash flows.

The District has outstanding debt secured by Net Revenues of the Wastewater System (including the 2005B USDA Loan, the 2005 State Water Resources Control Board Loan, the 2011 USDA Loan, and the 2015A Wastewater Revenue Bonds) under which the District is obligated to set rates and charges on an annual basis to meet certain debt service coverage requirements. Under the Lease Agreement, the District is pledging Wastewater System Net Revenues on a subordinate basis to outstanding debt. However, if Net Revenues of the Wastewater System do not meet the debt service coverage requirements or do not cover the lease payments that the District is obligated to make to the City under the Lease Agreement, the District will need to raise rates to comply with all its debt obligations. As currently estimated, the cost of the process optimization project exceeds the energy and O&M savings by approximately \$250,000. Additionally, if the City elects to enter into the Measurement and Verification Agreement with Alliance for the term of the financing, the City will pay a total of \$627,438 to Alliance for measurement and verification services of energy savings, a portion of which may be allocated to the District.

There is no guarantee that energy and O&M savings will be realized in the timing and amounts projected by Alliance; and regardless of whether any such savings come to fruition, the District remains obligated to make lease payments to the City in the amounts and on the dates described in the Lease Agreement. Should the District fail to make these payments, and the City does not step in to make the payments on behalf of the District, the Bank has the right to retake possession of the financed equipment.

**ATTACHMENT(S):**

1. District Resolution No. SD-2023-05
2. Lease Agreement



**RESOLUTION NO. SD-2023-05**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE COACHELLA SANITARY DISTRICT AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSTRUCTION ACCESS, REIMBURSEMENT & LEASE AGREEMENT WITH THE CITY OF COACHELLA AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION**

**WHEREAS**, the Coachella Sanitary District (the “District”), duly organized and existing under the laws of the State of California, is authorized by the laws of the State to acquire, lease, and purchase personal property for the benefit of the District and its inhabitants and to enter into contracts with respect thereto; and

**WHEREAS**, the City of Coachella (the “City”) is acquiring and financing the purchase of certain equipment constituting personal property, a portion of which is necessary for the District to perform essential governmental functions (the “Equipment”); and

**WHEREAS**, in order to acquire such Equipment, the City is proposing to enter into that certain Equipment Lease/Purchase Agreement (the “Financing Agreement”) with Banc of America Public Capital Corp (or one of its affiliates), as lessor, (the “Lessor” or “Bank”) and related documents; and

**WHEREAS**, the City has proposed to sublease certain of the Equipment to the District pursuant to the terms of that certain Construction Access, Reimbursement & Lease Agreement (the “Lease Agreement”), by and between the District and the City, the form of which has been presented at this meeting and is attached hereto as Exhibit A; and

**WHEREAS**, pursuant to the terms of the Lease Agreement, the District is obligated to make sublease payments to the City for the Equipment, and has covenanted to set rates, fees and charges in an amount sufficient to pay the sublease payments coming due each year; and

**WHEREAS**, the District is aware that the Lender has the ability to repossess and remove any of the Equipment, including Equipment related to the District’s Wastewater System, pursuant to the Financing Lease and Lease Agreement; and

**WHEREAS**, the District, pursuant to Government Code Section 8855, has adopted a debt policy and the Lease Agreement is in compliance with such policy; and

**WHEREAS**, the Board of Directors deems it for the benefit of the District and for the efficient and effective administration thereof to enter into the Lease Agreement and the other documentation relating to the leasing of the Equipment to be therein described on the terms and conditions therein and herein provided.

**NOW THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the Board of Directors of the Coachella Sanitary District as follows:

**Section 1.** Findings and Determinations. It is hereby found and determined that the terms of the Lease Agreement, in the form presented at this meeting, are in the best interests of the District for the lease of the Equipment. All payments and other obligations of the District under the Lease Agreement shall be secured by a subordinate pledge of Net Revenues (as defined therein).

**Section 2.** Approval of Documents. The form, terms, and provisions of the Lease Agreement are hereby approved in substantially the form presented at this meeting, in an amount not to exceed \$11,000,000 and an interest rate not to exceed 4.35%, with such insertions, omissions and changes thereto as shall be approved by the District Manager or Director of Public Works (including any interim), or either of their designees (each an “Authorized Officer”), the execution of such documents being conclusive evidence of such approval. The Authorized Officers are hereby each, acting alone, authorized and directed to execute the Lease Agreement and any related documents and exhibits and to deliver the Lease Agreement (including such exhibits) to the respective parties thereto. Further, the Authorized Officers are hereby each, acting alone, authorized and directed to execute a waiver of interests related to the Bank’s security interest in the Equipment located on District property and any related documents and exhibits attached thereto and to deliver the same to the respective parties thereto.

**Section 3.** Other Actions Authorized. The officers and employees of the District shall take all action necessary or reasonably required by the parties to the Lease Agreement to carry out, give effect to, and consummate the transactions contemplated thereby. The Authorized Officers are hereby each, acting alone, authorized and directed in the name of the District to do and cause to be done any and all acts and to execute and deliver any documents or agreements necessary to accomplish the delivery of the Lease Agreement, including, without limitation, the execution and delivery of any necessary document, a final acceptance certificate, disbursement requests and any tax certificate, and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Lease Agreement. Such actions heretofore taken by such officials and staff are hereby ratified, confirmed, and approved.

**Section 4.** Appointment of Authorized Lessee Representatives. The District Manager and the Director of Public Works (including any interim) are each hereby designated to act as Authorized Officers of the District for purposes of the Lease Agreement and all other related documents until such time as the Board shall designate any other or different authorized representative for such purposes.

**Section 5.** Appointment of Professionals. The District hereby appoints Best Best & Krieger LLP as Bond Counsel and Urban Futures, Inc. as its Municipal Advisor.

**Section 6.** Severability. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

**Section 7.** Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency with respect to this

Resolution. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

**Section 8.** Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

\*\*\*\*\*

**PASSED, APPROVED and ADOPTED** this 25<sup>th</sup> day of October 2023.

\_\_\_\_\_  
Steven A. Hernandez  
Mayor

**ATTEST:**

\_\_\_\_\_  
Delia Granados  
Deputy City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Carlos Campos  
City Attorney

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF COACHELLA )

**I HEREBY CERTIFY** that the foregoing Resolution No. SD-2023-05 was duly adopted by the City Council of the City of Coachella at a regular meeting thereof, held on the 25<sup>th</sup> day of October 2023, by the following vote of Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

SD-2023-05

\_\_\_\_\_  
Delia Granados  
Deputy City Clerk

**EXHIBIT A**  
**FORM OF AGREEMENT**

**CONSTRUCTION ACCESS, REIMBURSEMENT & LEASE AGREEMENT  
BETWEEN  
THE CITY OF COACHELLA  
AND  
THE COACHELLA SANITARY DISTRICT  
FOR THE INSTALLATION OF ENERGY CONSERVATION MEASURES  
& OTHER PROCESS IMPROVEMENTS**

This CONSTRUCTION ACCESS, REIMBURSEMENT & LEASE AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”) by and between City of Coachella (“**City**”) and the Coachella Sanitary District (“**District**”). City and District are sometimes referred to herein individually as “**Party**” and collectively as “**Parties.**”

**RECITALS**

A. City entered into a design-build contract with Alliance Building Solutions, Inc. (“**Contractor**”), dated \_\_\_\_\_, 2023 attached hereto as **Attachment C** and incorporated herein by references (“**Design-Build Contract**”), which includes the installation of certain energy conservations measures (“**Project**”), including the following at District’s Wastewater Treatment Plant located at 87075 Avenue 54, Coachella, California (“**Treatment Plant**”): (i) solar photovoltaic panels and associated work and accessories to generate solar power, and (ii) certain process improvements, as each are described in sections \_\_\_ and \_\_\_ in Exhibit A to the Design-Build Contract (collectively, “**Improvements**”).

B. To finance the design and construction of the Project, City entered into that certain Equipment Lease/Purchase Agreement (Escrow Account) with Banc of America Public Capital Corp (together with its successors and assigns, “**Lender**”) dated October\_\_\_\_, 2023 attached hereto as **Exhibit D** and incorporated herein by reference (as supplemented and amended, “**Financing Lease**”).

C. City is constructing the Improvements on behalf of District, and to facilitate the construction of the Improvements at the Treatment Plant, City requires: (i) a license to enter upon and construct the Improvements at the Treatment Plant; (ii) an agreement by District to reimburse City in a manner consistent with the terms of the Financing Lease; and (iii) a lease agreement whereby City leases to District the equipment constituting the Improvements, subject to Lender’s first priority lien and security interest, identified in the equipment schedule attached hereto as **Exhibit B** and incorporated herein by reference and the Equipment as defined in the Financing Lease (collectively, “**Equipment**”) for a term and on conditions consistent with the Financing Lease.

D. To facilitate the design and construction of the Improvements, District desires to: (i) grant City the License (as defined below) to permit City to enter upon the Treatment Plant to design and construct the Improvements; (ii) agree to reimburse City in installment payments that reflect District’s pro-rata share for the design and construction of the Project which consists of the

*Agreement & License – Construction & Lease of Equipment  
City of Coachella & Coachella Sanitary District*

Improvements based on the reimbursement schedule attached hereto as **Attachment A (“Payment Schedule”)**; and (iii) after construction, to sublease the Equipment from City.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by the Parties as follows:

**TERMS**

1. **Incorporation of Recitals.** The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

2. **Term.** This Agreement shall be effective as of the Effective Date, and shall continue in effect until District makes the final Sublease Payment (as defined below) to City as reflected in the Payment Schedule , or City’s full performance, and expiration of, the Financing Lease, whichever occurs last (“**Term**”).

3. **General Agreement to Cooperate.** The Parties agree to mutually cooperate to ensure that the Improvements are successfully installed at the Treatment Plant, and thereafter to ensure that the Improvements are maintained in good working order and consistent with the requirements of the Financing Lease.

4. **Construction & Maintenance of Improvements**

4.1 **Grant of the License.**

(a) **Grant of License.** District hereby grants, through the duration of the Term, to City and its agents, employees and contractors, including, without limitation, Contractor and its agents, employees and subcontractors, and Lender, and its agents, employees, and subcontractors, the temporary right to enter onto the Treatment Plant and take any related and necessary action to construct and maintain the Improvements, and for any reason that Lender may need access to the Improvements as set forth in the Financing Lease, and for no other purpose (“**License**”). The following conditions apply to this License:

(i) City shall be solely responsible for the design, construction, and maintenance of the Improvements and shall only be compensated as set forth in the “**District’s Obligation to Reimburse**” section below; and

(ii) City shall provide District reasonable notice of its intended construction activities and its schedule of activities, and shall make all reasonable efforts not to interfere with or impede the normal operations of the Treatment Plant; and

(iii) City shall ensure that, after completion of the Project as such completion is defined in the Design-Build Contract, that the portions of the Treatment Plant that City accessed during construction, will be restored to the same or similar condition as of the Effective Date, ordinary wear and tear excepted.

(b) Liens. City shall not permit to be placed against the Treatment Plant, or any part thereof, any design professionals', mechanics', materialmen's contractors' or subcontractors' liens in any way related to City's actions upon the Treatment Plant. City agrees to hold District harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which might be filed against the Treatment Plant.

(c) Compliance with Laws/Permits. City shall, in all activities undertaken pursuant to this License, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, and policies. Without limiting the generality of the foregoing, City, at its sole cost and expense, shall obtain any all permits required by any law, regulation or ordinance for any activities City desires to conduct or have conducted pursuant to this License. District shall reasonably cooperate with City to obtain all such permits.

(d) Inspection. District and its representatives, employees, agents or independent contractors may enter and inspect the Treatment Plant or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify City's compliance with the terms and conditions of this License.

(a) Not Real Property Interest. It is expressly understood that this License is not exclusive and does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Treatment Plant to City.

#### 4.2 City's Obligations for Design, Construction, & Maintenance.

(a) City shall be responsible for designing, constructing, and maintaining the Improvements by managing and administering Contractor's work under the Design-Build Contract. City shall be responsible for obtaining all applicable environmental and/or other clearances and permits and/or approvals necessary to complete the Improvements, subject to District's reasonable cooperation to obtain all such permits and/or approvals.

(b) City, upon District's reasonable request, shall furnish to District all cost information, including any and all invoices and payments, related to the design, construction, and maintenance of the Improvements.

(c) City shall provide District a reasonable opportunity to review and approve all design documents generated for the Improvements prior to approving such documents as set forth in the Design-Build Contract, and District's approval(s) shall not be unreasonably withheld, conditioned, or delayed.

(d) City shall require Contractor to obtain all required permits and approvals for all work related to the Improvements.

(e) City, upon District's reasonable request, shall provide District with as-built record drawings for the Improvements after acceptance of Improvements by City.



(f) After City’s acceptance of the Improvements, City shall maintain all equipment in good working order and consistent with all requirements of the Financing Lease until the expiration or termination of the Financing Lease, or until title in the Equipment vests with District as set forth below, whichever occurs last.

5. **Sublease of Equipment.**

5.1 **Acknowledgement of Financing Lease.** District has reviewed the Financing Lease and recognizes that City is financing the Improvements by leasing, as lessee, the Equipment from Lender, as lessor, and further acknowledges that Lender has a first priority security interest in the Equipment until City fully performs and repays all rental payments in full under the Financing Lease. No obligation in this Agreement shall be construed in a manner that causes a breach of the Financing Lease, and if such a non-conflicting interpretation is not possible, the Parties agree that the provisions herein shall be reformed such that there shall be no breach of the Financing Lease. Further, District acknowledges that if City defaults under the Financing Lease or an Event of Non-appropriation (as defined in the Financing Lease) occurs, the Lender has the ability to repossess the Equipment or the City is required to return the Equipment to the Lender. Upon such a repossession and return of the Equipment in strict accordance with the terms of the Financing Lease, District’s obligation to make Sublease Payments shall immediately cease and this Agreement shall terminate.

5.2 **Sublease.** City agrees to lease to District, and District agrees to lease from City, in accordance with the terms and conditions herein, and consistent with the terms of the Financing Lease, the Equipment, together with, to the extent applicable, any related accessories, attachments, firmware and software for the Term. Lessee shall have no right, title or interest in the Equipment during the Term of this Agreement.

5.3 **Binding Nature of Financing Lease.** District acknowledges and agrees that this Agreement and the Parties’ performance of their obligations hereunder must be consistent with the terms of the Financing Lease. District expressly agrees not to take any action that will cause City to be in breach of the Financing Lease.

5.4 **Use of Equipment.** All Equipment which is leased by City to District shall be used by District consistent with its intended use in the normal course of operating the Treatment Plant, consistent with the terms of the Financing Lease, and shall only be used for public purposes, and shall not be used by any private party for any private purpose. District hereby covenants that, with respect to the Equipment, it will not take any action, or fail to take any action, that would affect the tax-exempt statute of the Financing Lease.

5.5 **Possession/Title.** During the Term, District shall have only have possession of the Equipment and title to the Equipment shall remain with City at all times. District covenants to keep the Equipment free from levy, legal process, tax and other claims, liens, and encumbrances. At the expiration of the Term, and if City has fully complied with all obligations under the Financing Lease, and District is not in breach or default of this Agreement and paid all Sublease Payments (as defined below) to City, then title to all Equipment shall vest with District and this

Agreement shall terminate. City shall cooperate with District to execute any documents necessary to affect such title transfer.

5.6 Encumbrances or Liens; Notice. District shall not pledge, encumber, create a security interest in, or permit any lien to become effective on any leased Equipment. If any of these events takes place, District shall be deemed to be in default under the Agreement. District shall promptly notify City in writing of any liens or other encumbrances on the Equipment of which District has knowledge. The District will promptly pay or satisfy any obligation from which any lien, claim or encumbrance arises, and will otherwise keep the Equipment and all title and interest free of any liens, claims or encumbrances.

5.7 Removal. During the Term, City shall be responsible for all costs related to the proper removal of any Equipment, at the City's sole cost and expense. After title in the Equipment has vested with District, District shall be responsible for all costs related to the proper removal of any Equipment, at the District's sole cost and expense.

## 6. District's Obligation to Reimburse.

6.1 Obligation to Reimburse City for Lease Payments & Amount of Lease Payments. As of the Effective Date, District will reimburse City for the Improvements by paying sublease payments to City in an amount equal to its pro-rata share of the lease payments City shall pay to Lender under the Financing Lease, inclusive of interest ("**Sublease Payment(s)**"). The "pro-rata share" shall be equal to the percentage of the Contract Price (as defined in the Design-Build Contract) allocated for the Improvements in the Schedule of Values (as defined in the Design-Build Contract). The amount of each Lease Payment is set forth in the attached Payment Schedule.

6.2 Timing & Duration of Lease Payments. District shall pay each Sublease Payment to City within thirty (30) days of City's payment of its lease payments to Lender as set forth in the Financing Lease. District shall pay such Sublease Payments to City until all Sublease Payments as reflected in the Payment Schedule have been paid.

6.3 Agreement to Adjust Payment Schedule. If City and Lender adjust the lease payments and the lease payment schedule in the Financing Lease, then: (i) the Parties shall amend the Payment Schedule accordingly to adjust the Payment Schedule consistent with the adjusted terms of the Financing Lease; or (ii) the Payment Schedule shall be deemed equitably adjusted such that the monthly Sublease Payments shall be proportional to District's pro-rata share.

6.4 Subordinate Pledge of Net Revenues. All of the Net Revenues are hereby irrevocably pledged, charged and assigned, on a subordinate basis to the Bonds and Parity Obligations currently outstanding and issued in the future, to the punctual payment of the Sublease Payments. The District shall fix, prescribe, revise and collect, or cause to be fixed, prescribed, revised and collected, rates, fees and charges for the services and improvements furnished by the Wastewater System during each Fiscal Year which are sufficient to yield Net Revenues for the Wastewater System, which are sufficient to pay the Sublease Payments coming due and payable in such Fiscal Year. Defined terms in this Section 6.4 shall have the same meaning ascribed to them in that certain Indenture of Trust, dated as of October 1, 2015, by and between the District

and MUFG Union Bank, N.A., related to the District's Wastewater Revenue Refunding Bonds, Series 2015A, unless otherwise defined herein.

## 7. **Default & Remedies**

7.1 Any of the following shall constitute an event of default hereunder:

(a) Failure by District to pay any Sublease Payment within thirty (30) days of when due as specified herein; and

(b) Failure by District to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to District by City, unless City 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, City will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by District within the applicable period and diligently pursued until the default is corrected; and

(c) An Event of Default (as that term is defined in the Financing Lease) by the City under the Financing Lease or the City's failure to observe or perform any material covenant, condition, or agreement contained in the Financing Lease on its part to be observed or performed.

7.2 Whenever any event of default occurs hereunder, City shall have the right, at its sole option without further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to District, City may declare all Sublease Payments payable hereunder to be immediately due and payable;

(b) City may enter the premises where the Equipment is located and retake possession of such Equipment or require District at District's expense to promptly return any or all of such Equipment to the possession of City; and/or

(c) City may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement.

8. **Time is of the Essence.** Each Party warrants that it shall make its best efforts to perform all obligations assigned to it related to the Improvements in such a manner as to allow the Improvements to progress as scheduled.

9. **Dispute Resolution.** Unless otherwise specified herein, the Parties shall submit any unresolved dispute to each Party's designated representative for negotiation. The Parties agree to undertake good faith attempts to resolve said dispute, claim, or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after

conducting the first negotiating session, either Party may, but is not required to, request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.

10. **Legal Action.** If a matter is not resolved within thirty (30) calendar days after the first negotiating session between the Parties, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity.

11. **Indemnification.** Each Party shall indemnify, defend and hold the other Party, its officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or omissions or willful misconduct of the indemnifying Party, its officials, officers, employees, agents, consultants or contractors in the performance of the indemnifying Party’s obligations under this Agreement, including the payment of all reasonable attorneys’ fees.

12. **Force Majeure.** The failure of performance by either Party (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other Party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the Parties); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement between the Parties.

13. **Written Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY:  
City of Coachella  
53990 Enterprise Way  
Coachella, CA 92236  
Attn: City Manager

DISTRICT:  
Coachella Sanitary District  
53462 Enterprise Way  
Coachella, CA 92236  
Attn: Utilities Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

14. **Amendments.** This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing with the prior written consent of the Lender.
15. **Assignment of Agreement.** Neither Party may assign or transfer its respective rights or obligations under this Agreement without the express written consent of the other Party and the Lender. Any purported assignment or transfer by one Party without the express written consent of the other Party and the Lender shall be null and void and of no force or effect.
16. **Waiver.** No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. The provisions of this Agreement may not waived without the prior written consent of the Lender.
17. **Governing Law and Venue.** This Agreement will be governed by the laws of California. Venue for any action arising out of this Agreement shall be in the federal or state courts, as applicable, located in the County of Riverside, California, and each Party hereby submits to the jurisdiction of such courts.
18. **Successors and Assigns.** This Agreement and each of its provisions will be binding on and will inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.
19. **Severability.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.
20. **Survival.** All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, shall survive any such expiration or termination.
21. **Third Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
22. **Entire Agreement / Execution in Counterparts.** This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings. This Agreement may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first herein above written.

**CITY OF COACHELLA**

**COACHELLA SANITARY DISTRICT**

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

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

Name: Dr. Gabriel Martin

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

Title: City Manager

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

ATTEST:

ATTEST:

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

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

City Clerk

[INSERT TITLE]