

## KEY GOVERNMENT FINANCE LEASING OPTION



June 13, 2012

Jennifer Cooperman  
City Treasurer  
City of Portland, Oregon  
Public Finance and Treasury Division  
1120 SW Fifth Avenue, Room 1250  
Portland, OR 97204

**LEASE OPTION:** The lease financing will be completed by Key Government Finance, Inc. Payments due under the Lease financing will be made directly to Key Government Finance.

**LESSOR:** Key Government Finance, Inc.

**LESSEE:** City of Portland

**EQUIPMENT:** Parkeon Equipment

Cost per pay station	\$7,150.00
Number of Stations	77
Additional Parts/Supplies	\$29,450.00
<b>TOTAL AMOUNT TO BE LEASED</b>	<b>\$580,000.00</b>

**FINANCING STRUCTURE:** This is a tax-exempt state and municipal government lease with the title to the equipment passing to lessee. This is a net lease under which Lessee pays all costs, including insurance, maintenance and taxes, for the term of the lease. At the end of the lease term the equipment can be purchased for \$1

Amount to be Leased	Interest Rate	Payments	Payment Factor(*)	Pmts / Year	Term	Adv. / Arr.
\$580,000.00	2.39%	\$88,816.75	0.153132	1	7 Years	Advance

(\*) The payment factor expresses the payment as a percentage of the Equipment Cost. To calculate the periodic lease payment for any Equipment Cost, multiply the payment factor by the Equipment Cost.

**RATE INDEX:** The interest rates quoted in this proposal are based on market rates as of June 13, 2012, and shall be subject to index based on the U.S. Treasury Rate index until the date of closing. After the closing date the interest rate on the financing will be fixed for the term of the financing.

**APPROVAL:** The financing contemplated by this proposal is subject to the execution and delivery of all appropriate documents (in form satisfactory to Lessor), including without limitation, to the extent applicable, Lease Agreement, any Schedule, financing statements, legal opinion or other documents or agreements reasonably required by Lessor. This proposal, until credit approved, serves as a quotation, not a commitment by Key Government Finance to provide credit. Final acceptance of this proposal is subject to credit, collateral and essential use review and approval by Lessor.

The interest rate quoted herein assumes that the interest component of the Payments is exempt from federal income tax. Lessor will provide a taxable financing proposal if it is determined that the financing will not qualify for tax-exempt interest rates.

**CONTACT:** Contact your financing representative with any questions - Kendall Hansen - [kendall.hansen@key.com](mailto:kendall.hansen@key.com) (503) 701-8476, Katie Hamilton - [Katie.I.hamilton@key.com](mailto:Katie.I.hamilton@key.com) (720) 980-3811

**NOTES:** Alternative financing options available on request

Contact: Kendall Hansen - Account Executive  
Key Government Finance, Inc.  
1211 SW Fifth Ave, Suite 400  
Portland, OR 97204  
Tel: (503) 790-7624  
[Kendall.Hansen@key.com](mailto:Kendall.Hansen@key.com)

**Key Government Finance, Inc.**  
**Financing Data Sheet for State & Local Government Customers**

185440

Lessee (Full Legal Name)	City of Portland
Federal Tax ID #	
Street Address	1120 SW Fifth Avenue, Room 1250
City, State, and Zip	Portland, OR 97204
Dept. Using the Equipment	Bureau of Transportation

Customer Contact	Jennifer Cooperman	Invoices to be sent to:	
Title	City Treasurer	Contact	Ken Kinoshita
Phone and Fax No.	503-823-6851 503-823-4209	Department	Bureau of Transportation
e-mail address	jennifer.cooperman@portlandoregon.gov	Street Address	1120 SW Fifth Avenue, Room 800
		City, State, and Zip	Portland, OR 97204
Contract Signer	Jennifer Cooperman	Phone and Fax No.	503-823-7140
Title	City Treasurer	e-mail address	
Phone and Fax No.	503-823-6851 503-823-4209	Special Instructions	
e-mail address	jennifer.cooperman@portlandoregon.gov		

<b>1. Equipment Description:</b>
77 Cashless Ticket Vending Machines (CTVMs) and spare parts produced by Parkeon Inc. to be installed at Portland Streetcar station platforms.
<b>2. What is the purpose of the proposed equipment acquisition?</b>
To collect fare revenue from Portland Streetcar patrons to support Portland Streetcar operations
<b>3. Why is the equipment essential?</b>
Fare revenues from the platform locations are projected to generate \$750,000 of the \$1,000,000 in fare revenue budgeted in FY 2012-13. The provision of Ticket Vending Machines at these locations is essential to realizing this annual revenue.
<b>4. Have you issued or do you intend to issue more than \$30 million in tax exempt debt during the current year? YES</b>

<b>5. Is the new equipment replacement, an upgrade or additional to the department?</b>	Additional
<b>6. If replacement or upgrade, what is the age of the existing equipment?</b>	
<b>7. If you're upgrading existing equipment, is the existing equipment paid off?</b>	
Source of funds for proposed payments: _____ Fund Balance: \$ _____ General Fund _____ As of _____ Other (provide detail) _____	Date of most recent Audited Financial Statement:  Fiscal Year End: _____
<b>8. Have funds been appropriated for the payments due on the proposed financing during the current budgetary period?</b>	
<b>9. Will any loan or grant monies be directly used to make the payments?</b>	
If so provide detail.	
<b>10. Have you ever defaulted or non-appropriated on a lease or bond obligation?</b>	
General Liability Insurance Coverage limits in the amount of \$1 Million is required. If applicable, automobile liability coverage of \$3 million required.	
Self Insured? _____	General Liability Coverage Limits: \$ _____
Is the lessee a member of a managed risk pool? _____ If yes please provide the name and coverage amounts below.	

If the lessee has additional commercial insurance coverage please provide coverage limits.

Submitted by (Name):	Jennifer Cooperman	Title:	City Treasurer
Signature:		Date:	

So that we may begin our credit review process, please fax this application, along with your equipment quote (bill of materials) and the signed financing proposal, to (Kendall Hansen (fax) 216-357-6106, or Kendall.Hansen@key.com)

**Please mail the 2 most recent copies of your Audited Annual Financial Statements, plus a copy of this year's budget, to:**

Katie Hamilton, Inside Sales  
Key Government Finance, Inc.  
1000 S. McCaslin Blvd.  
Superior CO 80027

**Please note that we do require the copies of your audited annual financial statements in order to process your request.**

Re: DRAFT TAX-EXEMPT INSTALLMENT PURCHASE AGREEMENT.

Please Note that the attached document set is in **DRAFT** format presented for review purposes only. The document contains blank sections that will need to be populated (by Key Government Finance, Inc.) to align with your specific financing terms.

The document set contains the following general components.

- A. The Master Tax-Exempt Installment Purchase Agreement ("MLA")** (pgs. 1-6) – includes a standard (master) set of terms and conditions that (after approval) can be used in for future projects.
- **Repeat Usage** - The executed master agreement can be used as many times as the parties to the financing wish.
  - **Multiple Financing Structures** – Each financing under the MLA is structured as an independent "Property Schedule" maintaining individual payment terms.
- B. Property Schedule and Exhibits #1-6** – The Property Schedule and attached exhibits will reflect the specific terms of individual projects financed under the MLA. The exhibits to the property schedule include;
- Property description, \$ amount, and repayment terms (Exhibit 1)
  - Attorney letter confirming appropriate action for approval and execution (Exhibit 2)
  - Certificate of signing authority (Exhibit 3)
  - Approval to pay vendor and payment instructions (Exhibit 4 & 5)
  - IRS filing form and compliance with regulations (use of financing proceeds) (Exhibit 6 and 8038G)

Please review the attached document package and feel free to contact our financing representative with any questions.

Sincerely,

Kendall G. Hansen  
Key Government Finance, Inc.  
16983 Canal Circle  
Lake Oswego, OR 97035  
Tel: (503) 701-8476  
Fax: (216) 357-6106  
Kendall.Hansen@key.com

APPROVED AS TO FORM  
James H. Van Dyke  
CITY ATTORNEY

# Master Tax-Exempt Installment Purchase Agreement

BETWEEN:	«Lessor» (the "Seller") «LessorAddress» «LessorCity», «LessorState» «LessorPostalCode»
AND:	«Lessee» (the "Purchaser") «Address1» «City», «State» «PostalCode» Attention: «LesseeContact» Telephone: «WorkPhone»
DATED:	«MasterDate»

## ARTICLE I

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

"Agent" means any agent for the Registered Owners, if any, to which all or a portion of Seller's right, title and interest in, to and under a Property Schedule and the Property under such Property Schedule may be assigned for the benefit of the Registered Owners of Participation Certificates in such Property Schedule.

"Agreement" means this Master Tax-Exempt Installment Purchase Agreement, including all exhibits and schedules attached hereto.

"Commencement Date" is the date when the term of a Property Schedule and Purchaser's obligation to pay Installment Payments thereunder commences, which date shall be set forth in the Property Schedule.

"Event of Default" is defined in Section 13.01.

"Installment Payments" means the installment payments payable by Purchaser under Article VI of this Agreement and each Property Schedule, as set forth in each Property Schedule.

"Installment Payment Dates" means the dates on which Installment Payments are due under a Property Schedule, as set forth in each Property Schedule.

"Participation Certificates" means certificates evidencing a right to receive a share of Installment Payments payable under a Property Schedule and any other rights set forth herein with respect to the Property under said Property Schedule.

"Property" means, collectively, the property purchased pursuant to this Agreement, and with respect to each Property Schedule, the property described in such Property Schedule, and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article IX.

"Property Schedule" means a Property Schedule in the form attached hereto for Property Schedule 1. Subsequent Property Schedules pursuant to this Agreement shall be numbered consecutively, beginning with Property Schedule 2.

"Purchaser" means the entity described as such in the first paragraph of this Agreement, its permitted successors and assigns.

"Registered Owners" means the registered owners of Participation Certificates in a Property Schedule as shown on the registration books maintained by the Agent.

"Seller" means the entity identified as such in the first paragraph of this Agreement, its successors and assigns.

"State" means the State in which Purchaser is located.

"Term" means, with respect to a Property Schedule, the Term set forth in such Property Schedule, as provided in Section 4.02.

"Vendor" means the manufacturer or contractor of the Property as well as the agents or dealers of the manufacturer or contractor with whom Purchaser arranged for the purchase of the Property.

## ARTICLE II

2.01 Property Schedules Separate Financings. Each Property Schedule executed and delivered under this Agreement shall be treated as a separate financing, distinct from other Property Schedules. Without limiting the foregoing, upon the occurrence of an Event of Default with respect to a Property Schedule, Seller shall have the rights and remedies specified herein with respect to the Property financed and the Installment Payments payable under such Property Schedule, and except as expressly provided in Section 12.02 below, Seller shall have no rights or remedies with respect to Property financed or Installment Payments payable under any other Property Schedules unless an Event of Default has also occurred under such other Property Schedules.

## ARTICLE III

3.01 Covenants of Purchaser. As of the Commencement Date for each Property Schedule executed and delivered hereunder, Purchaser shall be deemed to represent, covenant and warrant for the benefit of Seller, any Agent, and any Registered Owners, as follows:

- (a) Purchaser is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority to enter into this Agreement and the Property Schedule and the transactions contemplated thereby and to perform all of its obligations thereunder.
- (b) Purchaser will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent Purchaser should merge with another entity under the laws of the State, Purchaser agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Purchaser's rights and shall assume Purchaser's obligations hereunder.
- (c) Purchaser has been duly authorized to execute and deliver this Agreement and the Property Schedule by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Property Schedule, and Purchaser has complied with such public bidding requirements as may be applicable to this Agreement and the Property Schedule and the acquisition by Purchaser of the Property thereunder. On or before the Commencement Date for the Property Schedule, Purchaser shall cause to be executed an opinion of counsel in substantially the form attached to the form of the Property Schedule as Exhibit 2.
- (d) During the Term for the Property Schedule, the Property thereunder will perform and will be used by Lessee only for the purpose of performing essential governmental uses and public functions within the permissible scope of Purchaser's authority.
- (e) Purchaser will provide Seller with current financial statements, budgets and proof of appropriation for the ensuing budget year and other financial information relating to the ability of Purchaser to continue this Agreement and the Property Schedule in such form and containing such information as may be requested by Seller.
- (f) Purchaser will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Installment Payments under the Property Schedule and will not use or permit the use of the Property in such a manner as to cause a Property Schedule to be a "private activity bond" under Section 141(a) of the Code. Purchaser covenants and agrees that it will use the proceeds of the Property Schedule as soon as practicable and with all reasonable dispatch for the purpose for which the Property Schedule has been entered into, and that no part of the proceeds of the Property Schedule shall be invested in any securities, obligations or other

investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the Commencement Date of the Property Schedule, would have caused any portion of the Property Schedule to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Property Schedule.

- (g) The execution, delivery and performance of this Agreement and the Property Schedule and compliance with the provisions hereof and thereof by Purchaser does not conflict with or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease or other instrument to which Purchaser is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Purchaser or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of Purchaser or to which it is subject.

#### ARTICLE IV

4.01 Sale of Property. On the Commencement Date of each Property Schedule executed hereunder, Seller will be deemed to sell, transfer and convey to Purchaser, and Purchaser will be deemed to purchase and accept from Seller, the Property described in such Property Schedule, in accordance with this Agreement and such Property Schedule.

4.02 Term. The term of each Property Schedule shall commence on the Commencement Date set forth therein and shall terminate upon payment of the final Installment Payment set forth in such Property Schedule, unless terminated sooner pursuant to this Agreement or the Property Schedule.

4.03 Delivery, Installation and Acceptance of Property. Purchaser shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Property Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. To the extent funds are deposited under an escrow agreement or trust agreement for the acquisition of the Property, such funds shall be disbursed as provided therein. When the Property described in such Property Schedule is delivered, installed and accepted as to Purchaser's specifications, Purchaser shall immediately accept the Property and evidence said acceptance by executing and delivering to Seller the Acceptance Certificate substantially in the form attached to the Property Schedule.

#### ARTICLE V

5.01 Location; Inspection. The Property will be initially located or based at the location specified in the applicable Property Schedule. Seller shall have the right at all reasonable times during business hours to enter into and upon the property of Purchaser for the purpose of inspecting the Property.

#### ARTICLE VI

6.01 Payment of Installment Payments. Purchaser shall promptly pay Installment Payments under each Property Schedule, exclusively from legally available funds, in lawful money of the United States of America, to Seller in such amounts and on such dates as described in the applicable Property Schedule, at Seller's address set forth on the first page of this Agreement, unless Seller instructs Purchaser otherwise. Purchaser shall pay Seller a charge on any delinquent Installment Payments under a Property Schedule in an amount sufficient to cover all additional costs and expenses incurred by Seller and Agent from such delinquent Installment Payment. In addition, Purchaser shall pay a late charge of five cents per dollar or the highest amount permitted by applicable law, whichever is lower, on all delinquent Installment Payments.

6.02 Installment Payments to Constitute a Binding Contractual Obligation of Purchaser. Seller and Purchaser understand and intend that the obligation of Purchaser to pay Installment Payments under this Agreement and each Property Schedule executed and delivered hereunder shall constitute a binding contractual obligation of Purchaser for the full Term of each such Property Schedule. Purchaser covenants to include all such Installment Payments due under the Property Schedules in its annual budget and to make the necessary annual appropriation for all such Installment Payments. Neither this Agreement nor any Property Schedule shall be subject to termination by Purchaser in the event that Purchaser fails to appropriate any Installment Payments.

6.03 Interest Component. A portion of each Installment Payment due under each Property Schedule is paid as, and represents payment of, interest, and each Property Schedule hereunder shall set forth the interest component (or method of computation thereof) of each Installment Payment thereunder during the Term.

6.04 Installment Payments to be Unconditional. THE OBLIGATIONS OF PURCHASER TO PAY THE INSTALLMENT PAYMENTS DUE UNDER THE PROPERTY SCHEDULES AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT PURCHASER'S RIGHTS OR ACTIONS AGAINST ANY VENDOR AS PROVIDED IN SECTION 10.02.

6.05 Defeasance of Installment Payments. Purchaser may at any time irrevocably deposit in escrow with a defeasance escrow agent for the purpose of paying all of the principal component and interest component accruing under a Property Schedule, a sum of cash and non-callable securities consisting of direct obligations of, or obligations the principal of an interest on which are unconditionally guaranteed by, the United States of America or any agency or instrumentality thereof, in such aggregate amount, bearing interest at such rates and maturing on such dates as shall be required to provide funds sufficient for this purpose. Upon such defeasance, all right, title and interest of Seller in the Property under said Property Schedule shall terminate. Purchaser shall cause such investment to comply with the requirements of federal tax law so that the exclusion from gross income of the interest component of Installment Payments under said Property Schedule is not adversely affected.

#### ARTICLE VII

7.01 Title to the Property. Upon acceptance of the Property by Purchaser, title to the Property shall vest in Purchaser, subject to Seller's interests under the applicable Property Schedule and this Agreement.

7.02 Personal Property. The Property is 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 Property or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Seller, Purchaser will, at Purchaser's expense, furnish a waiver of any interest in the Property from any party having an interest in any such real estate or building.

7.03 Security Interest. To secure the performance of all of Purchaser's obligations under this Agreement, Purchaser grants to Seller, for the benefit of Seller and its successors and assigns, a security interest constituting a first lien on the Property, all additions, attachments, alterations and accessions to the Property, all substitutions and replacements for the Property, and on any proceeds of any of the foregoing. Purchaser shall execute any additional documents, including financing statements, affidavits, notices and similar instruments, in form and substance satisfactory to Seller, which Seller deems necessary or appropriate to establish and maintain a security interest in the Property in favor of Seller and its successors and assigns.

7.04 Substitution. Purchaser may substitute for all or any portion of the Property under a Property Schedule personal property of approximately equal or greater market value and with an equal or greater useful life. In the event of any such substitution, Purchaser shall deliver to Seller a certification that the personal property proposed to be substituted has approximately equal or greater market value and an equal or greater useful life as the portion of the Property being substituted for, together with an opinion of counsel acceptable to Seller to the effect that the proposed substitution will not adversely affect the exemption of the interest components of Installment Payments under the Property Schedule from federal income taxation. Purchaser shall be responsible for all costs and expenses of Seller, including counsel fees, for any such substitution. Purchaser shall cause all financing statements, fixture filings, certificates of title, affidavits, notices and similar instruments, to be made or filed in a timely manner to secure and perfect the security interest of Seller in the substituted property.

#### ARTICLE VIII

8.01 Maintenance of Property by Purchaser. Purchaser shall keep and maintain the Property in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Property in conformity with all laws and regulations concerning the Property's ownership, possession, use and maintenance, and shall keep the Property free and clear of all liens and claims, other than those created by this Agreement. Purchaser shall have sole responsibility to maintain and repair the Property. Should Purchaser fail to maintain, preserve and keep the Property in good repair and working order and in accordance with manufacturer's specifications, and if requested by Seller, Purchaser will enter into maintenance contracts for the Property in form approved by Seller and with approved providers.

8.02 Liens, Taxes, Other Governmental Charges and Utility Charges. Purchaser shall keep the Property free of all levies, liens and encumbrances, except for the interest of Seller under this Agreement. The parties to this Agreement contemplate that the Property will be exempt from all property taxes. Nevertheless, if the use, possession or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, Purchaser shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Purchaser shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. Purchaser shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Purchaser shall be obligated to pay only such installments as accrue during the then current fiscal year of the Term for such Property.

8.03 Insurance. At its own expense, Purchaser shall maintain (a) casualty insurance insuring the Property 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 Seller in an amount equal to at least the outstanding principal component of Installment Payments, and (b) liability insurance that protects Seller from liability in all events in an amount reasonably acceptable to Seller, and (c) worker's compensation insurance covering all employees working on, in, near or about the Property; provided that Purchaser may self-insure against all such risks. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. All such insurance shall be with insurers that are authorized to issue such insurance in the State. All such liability insurance shall name Seller as an additional insured. All such casualty insurance shall contain a provision making any losses payable to Seller and Purchaser as their respective interests may appear. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Seller and Purchaser at least thirty (30) days in advance of such cancellation or modification. Such changes shall not become effective without Seller's prior written consent. Purchaser shall furnish to Seller, on or before the Commencement Date for each Property Schedule, and thereafter at Seller's request, certificates evidencing such coverage, or, if and to the extent that Purchaser self-insures, a written description of its self-insurance program together with a certification from Purchaser's risk manager or insurance agent or consultant to the effect that Purchaser's self-insurance program provides adequate coverage against the risks listed above.

8.04 Advances. In the event Purchaser shall fail to either maintain the insurance required by this Agreement or keep the Property in good repair and working order, Seller may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof or maintain and repair the Property and pay the cost thereof. All amounts so advanced by Seller shall be due and payable on the next Installment Payment Date and Purchaser covenants and agrees to pay such amounts so advanced by Seller with interest thereon from the date such amounts are advanced until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

#### ARTICLE IX

9.01 Damage or Destruction. If (a) the Property under a Property Schedule 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 Property under a Property Schedule 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, Seller and Purchaser will cause the Net Proceeds (as hereinafter defined) of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, unless Purchaser shall have exercised its right to defease the Property Schedule as provided herein, or unless Purchaser shall have exercised its option to prepay the Installment Payments due under the Property Schedule, if the Property Schedule so provides. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Purchaser. For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

9.02 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 9.01, Purchaser shall (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if Purchaser shall make any payments pursuant to this Section, Purchaser shall not be entitled to any reimbursement therefor from Seller nor shall Purchaser be entitled to any diminution of the amounts payable under Section 6.02, or (b) defease the Property Schedule pursuant to Section 6.07, or (c) exercise its option to prepay the Installment Payments due under the Property Schedule in accordance with the optional prepayment provisions of the Property Schedule, if any. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after such defeasance or purchase may be retained by Purchaser.

#### ARTICLE X

10.01 Disclaimer of Warranties. SELLER MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND SELLER HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS SOLD TO PURCHASER "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY PURCHASER. Purchaser acknowledges that it has made (or will make) the selection of the Property from the Vendor based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Seller. Purchaser understands and agrees that (a) neither the Vendor nor any sales representative or other agent of Vendor, is (i) an agent of Seller, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall Seller be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Property Schedules, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Property Schedules.

10.02 Vendor's Warranties. Seller hereby irrevocably assigns to Purchaser all rights that Seller may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Vendor. Purchaser's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Property, and not against Seller, nor shall such matter have any effect whatsoever on the rights and obligations of Seller with respect to this Agreement, including the right to receive full and timely payments hereunder. Purchaser expressly acknowledges that Seller makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendor of the Property.

10.03 Use of the Property. Purchaser will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Property Schedule. Purchaser shall provide all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, Purchaser agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property; provided that Purchaser may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Seller, adversely affect the interest of Seller in and to the Property or its interest or rights under this Agreement. Purchaser shall promptly notify Seller in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Property Schedule or the Property thereunder.

10.04 Modifications. Subject to the provisions of this Section, Purchaser shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Property. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Property and shall be subject to the provisions of this Agreement. Such alterations, additions, modifications and improvements shall not in any way damage the Property, substantially alter its nature or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, on completion of any alterations, additions, modifications or improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Property immediately prior to the making of such alterations, additions, modifications and improvements. Purchaser shall, at its own expense, make such alterations, additions, modifications and improvements to the Property as may be required from time to time by applicable law or by any governmental authority.

#### ARTICLE XI

11.01 Option to Prepay. Purchaser shall have the option to prepay the Installment Payments due under a Property Schedule, but only if the Property Schedule so provides, and on the terms set forth in the Property Schedule.

#### ARTICLE XII

12.01 Assignment by Seller. Seller's right, title and interest in, to and under each Property Schedule and the Property under such Property Schedule may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Seller and, to the extent of their interest, by any Registered Owner, without the necessity of obtaining the consent of Purchaser; provided that (a) any assignment, other than an assignment to or by a Registered Owner, shall not be effective until Purchaser has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee, and (b) any assignment to or by a Registered Owner shall not be effective until it is registered on the registration books kept by the Agent. Purchaser shall retain all such notices as a register of all assignees (other than Registered Owners) and shall make all payments to the assignee or assignees designated in such register or, in the case of Registered Owners, to the Agent. In the event that Seller's interest in a Property Schedule and the Property thereunder is assigned to the Agent, Participation Certificates in that Property Schedule may be executed and delivered by the Agent to Registered Owners. Purchaser agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Seller or any assignee to protect its interests in this Agreement and the Property Schedules.

12.02 Property Schedules Separate Financings. Assignees of the Seller's rights in one Property Schedule shall have no rights in any other Property Schedule unless such rights have been separately assigned. Seller may collectively assign two or more Property Schedules with the same Commencement Date to the Agent for the purpose of causing the execution and delivery of Participation Certificates in the Property Schedules with the same Commencement Date. Such assignment shall occur on such Commencement Date and upon such assignment all Property Schedules so assigned shall be treated as a single financing and a single Property Schedule with respect to rights and remedies upon the occurrence of an Event of Default under this Agreement. Registered Owners rights with respect to the Property Schedules shall be determined as provided in the escrow agreement or trust agreement relating to such Participation Certificates.

12.03 Assignment and Subleasing by Purchaser. NONE OF PURCHASER'S RIGHT, TITLE AND INTEREST IN, TO AND UNDER THIS AGREEMENT AND IN THE PROPERTY MAY BE ASSIGNED, TRANSFERRED, LEASED OR ENCUMBERED BY PURCHASER FOR ANY REASON, WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER.

12.04 Release and Indemnification Covenants. To the extent permitted by applicable law, Purchaser shall indemnify, protect, hold harmless, save and keep harmless Seller from and against any and all liability, obligation, loss, claim and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest (collectively, "Losses") arising out of or resulting from the entering into this Agreement, any Property Schedules hereunder, the ownership of any item of the Property, the loss of federal tax exemption of the interest on any of the Property Schedules, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Property or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Property resulting in damage to property or injury to or death to any person; provided, however, that Purchaser shall not be required to indemnify Seller for Losses arising out of or resulting from Seller's own willful or negligent conduct, or for Losses arising out of or resulting from Seller's preparation of disclosure material relating to Participation Certificates (other than disclosure material provided to Seller by Purchaser). The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement, or the applicable Property Schedule, or the termination of the Term for such Property Schedule for any reason.

### ARTICLE XIII

13.01 Events of Default Defined. Any of the following shall constitute an "Event of Default" under a Property Schedule:

- (a) Failure by Purchaser to pay any Installment Payment under the Property Schedule or other payment required to be paid with respect thereto at the time specified therein;
- (b) Failure by Purchaser to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Property Schedule, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Purchaser by Seller, unless Seller 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, Seller will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Purchaser within the applicable period and diligently pursued until the default is corrected;
- (c) Any statement, representation or warranty made by Purchaser in or pursuant to the Property Schedule 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) Purchaser shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Purchaser, or of all or a substantial part of the assets of Purchaser, (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 Purchaser in any bankruptcy, reorganization or insolvency proceeding; or
- (e) 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 of Purchaser or of all or a substantial part of the assets of Purchaser, 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 60 consecutive days.

The foregoing provisions of Section 13.01 are subject to the following limitation: if by reason of force majeure Purchaser is unable in whole or in part to perform its agreements under this Agreement and the Property Schedule (other than the obligations on the part of Purchaser contained in Article VI hereof) Purchaser shall not be in default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Purchaser.

13.02 Remedies on Default. Whenever any Event of Default exists with respect to a Property Schedule, Seller 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) Without terminating the Property Schedule, and by written notice to Purchaser, Seller may declare all Installment Payments and other amounts payable by Purchaser thereunder to the end of the then-current budget year of Purchaser to be due, including without limitation delinquent Installment Payments under the Property Schedule from prior budget years, and such amounts shall thereafter bear interest at the rate of 12% per annum or the maximum rate permitted by applicable law, whichever is less;
- (b) Seller may terminate the Property Schedule by written notice to Purchaser and may accelerate the principal component of all outstanding Installment Payments, in which case Purchaser shall pay to Seller a sum sufficient to defease the Property Schedule under Section 6.05, together with interest on such sum from the date of acceleration until so paid at the rate of 12% per annum or the maximum rate permitted by applicable law, whichever is less, and to pay all other sums due under the Property Schedule;
- (c) Seller may enter the premises where the Property subject to the Property Schedule is located and retake possession of the Property, or require Purchaser, at Purchaser's expense, to promptly return any or all of the Property to the possession of Seller at such place within the United States as Seller shall specify, and Seller may thereafter dispose of the Property in accordance with Article 9 of the Uniform Commercial Code in effect in the State, continuing to hold Purchaser liable for all costs and expenses incurred by Seller in exercising its remedies hereunder, including, without limitation, all costs and expenses of taking possession, removing, storing and reconditioning the Property, and including, without limitation, all brokerage and attorneys fees;
- (d) By written notice to the Agent, if any, Seller may instruct the Agent to apply all sums held by the Agent in any accounts relating to the Property Schedule under the applicable escrow or trust agreement as provided in the applicable escrow or trust agreement.
- (e) By written notice to any escrow agent (other than the Agent) who is holding proceeds of the Property Schedule, Seller may instruct such escrow agent to release all such proceeds and any earnings thereon to Seller, such sums to be credited to payment of Purchaser's obligations under the Property Schedule;
- (f) Seller may take any action at law or in equity that may appear necessary or desirable to enforce or to protect any of its rights under the Property Schedule and this Agreement.

13.03 No Remedy Exclusive. No remedy herein conferred upon or reserved to Seller is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement 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 Seller to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article.

13.04 Costs and Attorney Fees. Upon the occurrence of an Event of Default by Purchaser in the performance of any term of this Agreement, Purchaser agrees to pay to Seller or reimburse Seller for, in addition to all other amounts due hereunder, all of Seller's costs of collection, including reasonable attorney fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Purchaser, shall be secured by this Agreement until paid and shall bear interest at the rate of 12% per annum or the maximum amount permitted by law, whichever is less. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

#### ARTICLE XIV

14.01 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, 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), to any assignee (other than a Registered Owner) at its address as it appears on the registration books maintained by Purchaser and to any Registered Owner at its address as it appears on the registration books maintained by the Agent.

14.02 Certification as to Arbitrage. Unless a separate Certificate as to Arbitrage is delivered on the Commencement Date, Purchaser shall be deemed to make the following representations and covenants as of the Commencement Date for each Property Schedule:

- (a) The estimated total costs, including taxes, freight, installation, cost of issuance, of the Property under the Property Schedule will not be less than the total principal amount of the Installment Payments.
- (b) The Property under the Property Schedule has been ordered or is expected to be ordered within six months and the Property is expected to be delivered and installed, and the Vendor fully paid, within one year from the Commencement Date. Purchaser will pursue the completion of the Property and the expenditure of the net proceeds of the Property Schedule with due diligence.
- (c) Purchaser has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Installment Payments under the Property Schedule, or (ii) that may be used solely to prevent a default in the payment of the Installment Payments under the Property Schedule.
- (d) The Property under the Property Schedule has not been and is not expected to be sold or otherwise disposed of by Purchaser, either in whole or in major part, prior to the last maturity of the Installment Payments under the Property Schedule.
- (e) There are no other obligations of Purchaser which (i) are being sold within 15 days of the Commencement Date of the Property Schedule; (ii) are being sold pursuant to the same plan of financing as the Property Schedule; and (iii) are expected to be paid from substantially the same source of funds.
- (f) The officer or official who has executed the Property Schedule on Purchaser's behalf is familiar with Purchaser's expectations regarding the use and expenditure of the proceeds of the Property Schedule. To the best of Purchaser's knowledge, information and belief, the facts and estimates set forth in herein are accurate and the expectations of Purchaser set forth herein are reasonable.

14.03 Further Assurances. Purchaser agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of Seller, to perfect, confirm, establish, reestablish, continue, or complete the interests of Seller in this Agreement and the Property Schedules, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and the Property Schedules.

14.04 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Seller and Purchaser and their respective successors and assigns.

14.05 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.

14.06 Waiver of Jury Trials. Purchaser and Seller hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Seller or Purchaser in the negotiation, administration, performance or enforcement hereof.

14.07 Amendments, Changes and Modifications. This Agreement may be amended in writing by Seller and Purchaser to the extent the amendment or modification does not apply to outstanding Property Schedules at the time of such amendment or modification. The consent of the applicable assignee or Agent, if any, shall be required to any amendment or modification before such amendment or modification shall be applicable to any outstanding Property Schedule.

14.08 Execution in Counterparts. This Agreement and the Property Schedules hereunder 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.

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

14.10 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.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

<b>Seller: «Lessor»</b>
By:
Name:
Title:

<b>Purchaser: «Lessee»</b>
By:
Name:
Title:

<b>Attest:</b>
By:
Name:
Title:



## Property Schedule No. «PropertyScheduleNo»

### Master Tax-Exempt Installment Purchase Agreement

This Property Schedule No. «PropertyScheduleNo» is entered into as of the Commencement Date set forth below, pursuant to that certain Master Tax-Exempt Installment Purchase Agreement (the "Master Agreement"), dated as of «MasterDate», between «Lessor», and «Lessee».

1. Interpretation. The terms and conditions of the Master Agreement are incorporated herein by reference as if fully set forth herein. Reference is made to the Master Agreement for all representations, covenants and warranties made by Purchaser in the execution of this Property Schedule, unless specifically set forth herein. In the event of a conflict between the provisions of the Master Agreement and the provisions of this Property Schedule, the provisions of this Property Schedule shall control. All capitalized terms not otherwise defined herein shall have the meanings provided in the Master Agreement.
2. Commencement Date. The Commencement Date for this Property Schedule is «CommencementDate»
3. Property Description and Payment Schedule. The Property subject to this Property Schedule is described in Exhibit 1 hereto. Purchaser shall not remove such property from the locations set forth therein without giving prior written notice to Seller. The Installment Payment Schedule for this Property Schedule is set forth in Exhibit 1.
4. Opinion. The Opinion of Purchaser's Counsel is attached as Exhibit 2.
5. Purchaser's Certificate. The Purchaser's Certificate is attached as Exhibit 3.
6. Proceeds. Seller shall disburse the proceeds of this Property Schedule in accordance with the instructions attached hereto as Exhibit 4.
7. Acceptance Certificate. The form of Acceptance Certificate is attached as Exhibit 5.
8. Additional Purchase Option Provisions. In addition to the Purchase Option provisions set forth in the Master Agreement, Installment Payments payable under this Property Schedule shall be subject to prepayment as follows: See termination amount in Exhibit 1 (Payment Schedule), subject to per diem adjustment.
9. Bank Qualification and Arbitrage Rebate. Attached as Exhibit 6.
10. Expiration. Lessor, at its sole determination, may choose not to accept this Property Schedule if the fully executed, original Agreement (including this Property Schedule all ancillary documents) are not received by Lessor at its place of business by «DropDead».

IN WITNESS WHEREOF, Seller and Purchaser have caused this Property Schedule to be executed in their names by their duly authorized representatives as of the Commencement Date above.

**Seller: «Lessor»**

By:

Name:

Title:

**Purchaser: «Lessee»**

By:

Name:

Title:

Attest:

By

Name:

Title:

EXHIBIT 1**Property Description and Payment Schedule**

Re: **Property Schedule No. «PropertyScheduleNo»** to Master Tax-Exempt Installment Purchase Agreement between «Lessor», and «Lessee».

The Property is as follows: . The Property as more fully described in **Exhibit A** incorporated herein by reference and attached hereto.

EQUIPMENT LOCATION: «PropLocAddress»«PropLocPostalCode»

USE: USE BRIEF DESCRIPTION HERE This use is essential to the proper, efficient and economic functioning of Purchaser or to the services that Purchaser provides; and Purchaser has immediate need for and expects to make immediate use of substantially all of the Property, which need is not temporary or expected to diminish in the foreseeable future.

Installment Payment Schedule

If the Due Dates are not defined in this Installment Payment Schedule, they shall be defined as the «FirstLast» day of each «PayPeriod» period of this Installment Payment Schedule commencing with the Acceptance Date.

Total Principal Amount «TotalPrincipalComponent»

Payment No.	Due Date	Installment Payment	Interest	Termination (Including Payment)
----------------	----------	------------------------	----------	---------------------------------------

<b>Purchaser : «Lessee»</b>
By:
Name:
Title:

## EXHIBIT 2

## Purchaser's Counsel's Opinion

[To be provided on letterhead of Purchaser's counsel.]

[Address to Seller and Purchaser]

RE: Property Schedule No. «PropertyScheduleNo» to Master Tax-Exempt Installment Purchase Agreement between «Lessor» and «Lessee».

Ladies and Gentlemen:

We have acted as special counsel to «Lessee» ("Purchaser"), in connection with the Master Tax-Exempt Installment Purchase Agreement, dated as of «MasterDate» (the "Master Agreement"), between «Lessee», as Purchaser, and «Lessor» as lessor ("Seller"), and the execution of Property Schedule No «PropertyScheduleNo» (the "Property Schedule") pursuant to the Master Agreement. We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

All capitalized terms not otherwise defined herein shall have the meanings provided in the Master Agreement and Property Schedule.

As to questions of fact material to our opinion, we have relied upon the representations of Purchaser in the Master Agreement and the Property Schedule and in the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion that, under existing law:

1. Purchaser is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) the police power.
2. Purchaser has all requisite power and authority to enter into the Master Agreement and the Property Schedule and to perform its obligations thereunder.
3. The execution, delivery and performance of the Master Agreement and the Property Schedule by Purchaser has been duly authorized by all necessary action on the part of Purchaser.
4. All proceedings of Purchaser and its governing body relating to the authorization and approval of the Master Agreement and the Property Schedule, the execution thereof and the transactions contemplated thereby have been conducted in accordance with all applicable open meeting laws and all other applicable state and federal laws.
5. Purchaser has acquired or has arranged for the acquisition of the Property subject to the Property Schedule, and has entered into the Master Agreement and the Property Schedule, in compliance with all applicable public bidding laws.
6. Purchaser has obtained all consents and approvals of other governmental authorities or agencies which may be required for the execution, delivery and performance by Purchaser of the Master Agreement and the Property Schedule.
7. The Master Agreement and the Property Schedule have been duly executed and delivered by Purchaser and constitute legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with the terms thereof, except insofar as the enforcement thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other laws of equitable principles of general application, or of application to municipalities or political subdivisions such as the Purchaser, affecting remedies or creditors' rights generally, and to the exercise of judicial discretion in appropriate cases.
8. As of the date hereof, based on such inquiry and investigation as we have deemed sufficient, no litigation is pending, (or, to our knowledge, threatened) against Purchaser in any court (a) seeking to restrain or enjoin the delivery of the Master Agreement or the Property Schedule or of other agreements similar to the Master Agreement; (b) questioning the authority of Purchaser to execute the Master Agreement or the Property Schedule, or the validity of the Master Agreement or the Property Schedule, or the payment of principal of or interest on, the Property Schedule; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Master Agreement and the Property Schedule; or (d) affecting the provisions made for the payment of or security for the Master Agreement and the Property Schedule.
9. The Purchaser is a political subdivision within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended, and the related regulations and rulings thereunder, and the portion of payments identified as the interest component of the Installment Payments (as set forth in the payment schedule attached to the Property Schedule) will not be includable in Federal gross income of the recipient under the statutes, regulations, court decisions and rulings existing on the date hereof and consequently will be exempt from Federal income taxes.

This opinion may be relied upon by Seller, its successors and assigns, and any other legal counsel who provides an opinion with respect to the Property Schedule.

Very truly yours,

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

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

## EXHIBIT 3

## Purchaser's Certificate

Re: **Property Schedule No. «PropertyScheduleNo»** to Master Tax-Exempt Installment Purchase Agreement between «Lessor» and «Lessee».

The undersigned, being the duly elected, qualified and acting keeper of records for the «Lessee» ("Purchaser ") do hereby certify, as of «CommencementDate», as follows:

1. Purchaser did, at a meeting of the governing body of the Purchaser held \_\_\_\_\_ by resolution or ordinance duly enacted, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Property Schedule (the "Property Schedule") and the Master Tax-Exempt Installment Purchase Agreement (the "Master Agreement") by the following named representative of Purchaser , to wit:

NAME OF EXECUTING OFFICIAL	TITLE OF EXECUTING OFFICIAL	SIGNATURE OF EXECUTING OFFICIAL
And / Or		

2. The above-named representative of the Purchaser held at the time of such authorization and holds at the present time the office set forth above.

3. The meeting(s) of the governing body of the Purchaser at which the Master Agreement and the Property Schedule were approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, and the enactment approving the Master Agreement and the Property Schedule and authorizing the execution thereof has not been altered or rescinded. All meetings of the governing body of Purchaser relating to the authorization and delivery of Master Agreement and the Property Schedule have been: (a) held within the geographic boundaries of the Purchaser; (b) open to the public, allowing all people to attend; (c) conducted in accordance with internal procedures of the governing body; and (d) conducted in accordance with the charter of the Purchaser , if any, and the laws of the State.

4. 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 (as such terms is defined in the Master Agreement) exists at the date hereof with respect to this Property Schedule or any other Property Schedules under the Master Agreement.

5. The acquisition of all of the Property under the Property Schedule has been duly authorized by the governing body of Purchaser .

6. Purchaser has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Installment Payments scheduled to come due during the current budget year under the Property Schedule and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.

7. As of the date hereof, no litigation is pending, (or, to my knowledge, threatened) against Purchaser in any court (a) seeking to restrain or enjoin the delivery of the Master Agreement or the Property Schedule or of other agreements similar to the Master Agreement; (b) questioning the authority of Purchaser to execute the Master Agreement or the Property Schedule, or the validity of the Master Agreement or the Property Schedule, or the payment of principal of or interest on, the Property Schedule; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Master Agreement and the Property Schedule; or (d) affecting the provisions made for the payment of or security for the Master Agreement and the Property Schedule.

«Lessee»
By:
Title:
<b>SIGNER MUST NOT BE THE SAME AS THE EXECUTING OFFICIAL(S) SHOWN ABOVE.</b>

EXHIBIT 4Payment of Proceeds Instructions

«Lessor»  
«LessorAddress»  
«LessorCity», «LessorState» «LessorPostalCode»

Re: Property Schedule No. «PropertyScheduleNo» (the "Property Schedule") to Master Tax-Exempt Installment Purchase Agreement between «Lessor» ("Seller"), and «Lessee» ("Purchaser").

Ladies and Gentlemen:

The undersigned, an Authorized Representative of the Purchaser hereby requests and authorizes Seller to disburse the net proceeds of the Property Schedule as follows:

Name of Payee: \_\_\_\_\_

By check \_\_\_\_\_

By wire transfer \_\_\_\_\_

If by check, Payee's address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If by wire transfer, instructions as follows:

Pay to Bank Name: \_\_\_\_\_

Bank Address: \_\_\_\_\_

Bank Phone #: \_\_\_\_\_

For Account of: \_\_\_\_\_

Account No.: \_\_\_\_\_

ABA No.: \_\_\_\_\_

«Lessee»

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

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

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

EXHIBIT 5

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**Acceptance Certificate**

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«Lessor»  
«LessorAddress»  
«LessorCity», «LessorState» «LessorPostalCode»

Re: **Property Schedule No. «PropertyScheduleNo»** to Master Tax-Exempt Installment Purchase Agreement  
between «Lessor» and «Lessee»

Ladies and Gentlemen:

In accordance with the above-referenced Master Tax-Exempt Installment Purchase Agreement (the "Master Agreement"), the undersigned ("Purchaser") hereby certifies and represents to, and agrees with, «Lessor» ("Seller"), as follows:

- (1) The Property, as such terms are defined in the above-referenced Property Schedule, has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) Purchaser has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes.
- (3) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as such terms are defined in the Master Agreement) exists at the date hereof.

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

«Lessee»  
as Purchaser

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

EXHIBIT 6**Bank Qualification And Arbitrage Rebate**

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«Lessor»  
«LessorAddress»  
«LessorCity», «LessorState» «LessorPostalCode»

Re: **Property Schedule No. «PropertyScheduleNo»** to Master Tax-Exempt Installment Purchase Agreement  
between «Lessor» and «Lessee»

Qualified Tax-Exempt Obligation

This section intentionally left blank

Arbitrage Rebate.

(a) Purchaser is a governmental unit under the law of the State with general taxing powers, (b) this Property Schedule is not a private activity bond as defined in Section 141 of the Code, and (c) 95% or more of the net proceeds of this Property Schedule will be used for local government activities of Purchaser .

<b>Purchaser : «Lessee»</b>
By:
Name:
Title:

Form **8038-G**  
(Rev. May 1999)

## Information Return for Tax-Exempt Governmental Obligations

Under Internal Revenue Code Section 149 (e)  
See separate instructions

OMB No. 1545-0720

Department of the Treasury  
Internal Revenue Service

Caution: Use Form 8038-GC if the issue price is under \$100,000

**Part I** Reporting AuthorityIf Amended Return, Check here ☐

1 Issuer's name «Lessee»		2 Issuer's employer identification «EID» «EmpID2»	
3 Number and street (or P. O. box if mail is not delivered to Street address) «Address1»		Room/suite	4 Report number G 2000 -
5 City, town, or post office, state, and ZIP code «City», «State» «PostalCode»		6 Date of Issue	
7 Name of issue		8 CUSIP number	
9 Name and title of officer or legal representative whom the IRS may call for more information «LesseeContact»		10 Telephone number of officer or legal representative «WorkPhone»	

**Part II** Type of Issue (check applicable box(es) and enter the issue price) See Instructions and attach schedule

11 <input type="checkbox"/> Education	11	
12 <input type="checkbox"/> Health and hospital	12	
13 <input type="checkbox"/> Transportation	13	
14 <input type="checkbox"/> Public safety	14	
15 <input type="checkbox"/> Environment (including sewage bonds)	15	
16 <input type="checkbox"/> Housing	16	
17 <input type="checkbox"/> Utilities	17	
18 <input checked="" type="checkbox"/> Other. Describe (see instructions) ▶ «Equipment8038G»	18	\$«TotalPrincipalComp»
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>		
20 If obligations are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>		

**Part III** Description of Obligations (Complete for the entire issue for which this form is being filed)

	(a) Final Maturity date	(b) Issue Price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	N/A	\$«TotalPrincipalComponent»	\$ N/A	«WAM»	«Yield» %

**Part IV** Uses of Proceeds of Bonds Issue (including underwriters' discount)

N/A

22 Proceeds used for accrued interest	22	
23 Issue Price of entire issue (Enter amount from line 21, column (b))	23	
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	
25 Proceeds used for credit enhancement	25	
26 Proceeds allocated to reasonably require reserve or replacement fund	26	
27 Proceeds used to currently refund prior issues	27	
28 Proceeds used to advance refund prior issues	28	
29 Total (add lines 24 through 28)	29	
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	

**Part V** Description of Refunded Bonds (Complete this part only for refunding bonds.)

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	years
32 Enter the remaining weighted average maturity of the bonds to be advanced refunded	years
33 Enter the last date on which the refunded bonds will be called	
34 Enter the date(s) the refunded bonds were issued	

**Part VI** Miscellaneous

N/A

35 Enter the amount of the state volume cap allocated to the issue under section 141 (b)(5)	35	
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	
b Enter the final maturity date of the guaranteed investment contract		
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer		
38 If the issuer has designated the issue under section 265 (b)(3)(B)(i)(III) (smaller issuer exception), check box <input type="checkbox"/>		
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>		
40 If the issuer has identified a hedge, check box <input type="checkbox"/>		

Please  
Sign  
Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and complete.

Signature of Issuer's authorized representative

Date

Type or print name and title

For Paperwork Reduction Act Notice, see page 2 of the Instructions.

Cat. No. 63773S

Form 8038-G (Rev. 5-99)



## ESCROW AGREEMENT

This Escrow Agreement (the "Escrow Agreement"), dated as of «CommencementDate» and entered into among «Lessor» ("Seller"), «Lessee» ("Purchaser") and KeyBank National Association (the "Escrow Agent").

### RECITALS:

A. Seller and Purchaser are parties to a Master Tax-Exempt Installment Purchase Agreement, dated as of «MasterDate» and Schedule No. «PropertyScheduleNo» thereunder, dated as of «CommencementDate» (the "Purchase Agreement") whereunder Purchaser is acquiring from Seller certain personal property more particularly described therein (the "Property").

B. Seller and Purchaser intend to cause or have caused certain funds to be deposited with Escrow Agent to pay for costs of the Property, and Escrow Agent has agreed to disburse said funds in accordance with the terms and conditions of this Agreement.

C. Each of the parties has authority to enter into this Agreement and has taken all actions necessary to authorize the execution of this Agreement by the officers whose signatures are hereto.

NOW, THEREFORE, the parties agree as follows:

1. Appointment of Escrow Agent. Seller, Purchaser and Escrow Agent agree that Escrow Agent shall act as sole Escrow Agent under the Purchase Agreement and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. The Escrow Agent, in its capacity as escrow agent hereunder, shall not be deemed to be a party to the Purchase Agreement, and this Escrow Agreement shall be deemed to constitute the entire agreement regarding the Acquisition Fund (as hereinafter defined) among Seller, Purchaser and Escrow Agent.

2. Acquisition Fund. There is hereby established in the custody of Escrow Agent a special trust fund designated as the «Lessee» Acquisition Fund" (the "Acquisition Fund") to be held and administered by Escrow Agent in trust for Purchaser in accordance with this Escrow Agreement, subject to Seller's rights under Section 3 hereof. It is anticipated that the funds in the Acquisition Fund and earnings thereon shall be sufficient to pay the cost of acquisition of the Property. In the event such sums are insufficient, Purchaser shall be responsible for the timely payment of any deficiency.

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

2.A. Deposit in Acquisition Fund. There shall be deposited in the Acquisition Fund the sum of «TotalPrincipalComponent». Escrow Agent shall maintain accounting records sufficient to permit calculation of the income on investments and interest earned on deposit of amounts held in the Acquisition Fund, and such income and interest shall become part of the Acquisition Fund and may be expended as provided herein.

2.B. Disbursements from Acquisition Fund. Escrow Agent shall make payments from the Acquisition Fund to pay costs of the Property upon receipt of requisitions from Purchaser, signed by an authorized individual substantially in the form attached hereto as Exhibit A, which is incorporated by reference herein. In the event Escrow Agent is directed or requested by Purchaser to hold or deposit any retained funds or to accept a retainage bond (in lieu of funds) as may be required by law or the terms of the acquisition contract to which Purchaser is a party, Escrow Agent shall act in accordance with Purchaser's instructions, and such retained funds (or performance bond) and any interest thereon shall be paid as provided in instructions to Escrow Agent from Purchaser. The final requisition shall include the final acceptance certificate required in the Purchase Agreement, which shall be executed by the Purchaser and delivered to the Escrow Agent. Where requisitions involve titled motor vehicles, the requisition shall also include:

- (i) Manufacturers Certificate of Origin.
- (ii) Motor vehicle paperwork appropriate to state of registration, noting Key Corporate Capital Inc. as lien holder.

- (iii) Insurance certificate naming «Lessor», its successors and assigns as sole loss payee and additional insured for the specified equipment.

3. Termination of Escrow.

(a) Acquisition of Property. Upon the final acceptance of the Property by Purchaser, as evidenced by execution by Purchaser of a final acceptance certification pursuant to the Purchase Agreement and delivered to Escrow Agent, and the payment of all costs related thereto (i) any retainage shall be disbursed as directed by Purchaser, and (ii) any amounts remaining in the Acquisition Fund (including the earnings from investments thereof) shall be transferred to Purchaser and be applied toward reimbursement of Purchaser for funds advanced for the Property. To the extent that additional moneys in excess of those needed to reimburse Purchaser for the acquisition of the Property exist in the Acquisition Fund, such amounts shall be paid to Purchaser and applied first to the next payment due on the Purchase Agreement and then to Seller and applied to prepayment of the principal component of installment payments and Seller shall recalculate the installment payment schedule for the remaining term such that the remaining installment payments shall be level. Upon disbursement of all sums in the Acquisition Fund, this Escrow Agreement shall terminate, provided that the indemnifications by Purchaser shall survive the termination of this Escrow Agreement.

(b) Eighteen Months. This Escrow Agreement shall terminate eighteen (18) months from the date of this Escrow Agreement. It may, however, be extended by mutual consent of the Purchaser and Seller in writing to the Escrow Agent either in advance of the termination or retroactively. Any money remaining in the Acquisition Fund at the time of termination under this subsection (b) shall be transferred to Seller and shall be applied first to the next payment due under the Purchase Agreement, and then, if there are amounts remaining, applied to the prepayment the Purchase Agreement being applied to principal and Seller shall recalculate the installment payment schedule for the remaining term such that the remaining installment payments shall be level. Purchaser shall be deemed to have accepted all Property paid for from the Acquisition Fund at the time of termination under this subsection (b). Upon disbursement of all sums in the Acquisition Fund, this Escrow Agreement shall terminate, provided that the indemnifications by Purchaser shall survive the termination of this Escrow Agreement.

(c) Event of Default; Nonappropriation. Upon receipt of written notice from Seller of an event of default by Purchaser under the Purchase Agreement or an event of nonappropriation, if provided for under the Purchase Agreement, Escrow Agent shall disburse the funds in the Acquisition Fund to Seller for application in accordance with the Purchase Agreement. Upon such payments from the Acquisition Fund, this Escrow Agreement shall terminate, provided that the indemnifications by Purchaser shall survive the termination of this Escrow Agreement.

4. Investment of Acquisition Fund; Arbitrage Rebate.

(a) Investment of Acquisition Fund. Monies held by Escrow Agent hereunder shall be invested and reinvested by Escrow Agent upon written instructions from Purchaser in an investment which is a permitted investment for Purchaser under the laws of the state in which Purchaser is organized. Escrow Agent shall have no responsibility for advising Purchaser or Seller as to the permissibility of any investment of monies in the Acquisition Fund. If Escrow Agent does not receive a written direction from Purchaser as to the investment or reinvestment of monies in the Acquisition Fund, Escrow Agent may hold such monies uninvested until such direction is received. Escrow Agent shall have no responsibility for any losses suffered from any investment of monies on deposit in the Acquisition Fund authorized by Purchaser.

(b) Arbitrage Rebate. Purchaser hereby represents, covenants and warrants that pursuant to Treasury Regulations Section 1.148-7(d), the gross proceeds of the Purchase Agreement will be expended for the governmental purposes for which the Purchase Agreement was entered into, as follows: at least 15% within six months after the Commencement Date, such date being the date of deposit of funds into the Acquisition Account under Section 2.A., hereof, at least 60% within 12 months after the Commencement Date, and 100% within 18 months after the Commencement Date. If Purchaser is unable to comply with Section 1.148-7(d) of the Treasury Regulations, Purchaser shall, at its sole expense and cost, compute rebatable arbitrage on the Purchase Agreement and pay rebatable arbitrage to the United States at least once every five years, and within 60 days after payment of the final rental or installment payment due under the Purchase Agreement.

5. Amendment and Modification. This Escrow Agreement may not be amended, modified, altered, supplemented or waived except by a written instrument executed by Seller, Purchaser and Escrow Agent.

6. Regarding the Escrow Agent.

(a) Duties of Escrow Agent. Escrow Agent undertakes to perform only such duties as are specifically set forth in this Escrow Agreement. Escrow Agent shall be under no implied obligation or subject to any implied liability hereunder. Escrow Agent shall incur no liability whatsoever except for its gross negligence or willful misconduct so long as it is acting in good faith. Escrow Agent shall not be required to take notice of any of the provisions of the Purchase Agreement or any document or instrument executed in connection therewith, except as expressly set forth in this Escrow

Agreement. The permissive right of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as a duty.

(b) **Escrow Agent Reliance.** Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder shall be limited to those specifically provided herein.

(c) **Counsel and Fees.** If Escrow Agent believes it to be reasonably necessary to consult with counsel concerning any of its duties in connection herewith, or in case the Escrow Agent becomes involved in litigation on account of acting hereunder, then, in either case, its cost, expenses and reasonable attorneys' fees shall be paid by Purchaser. Escrow Agent's right to receive its attorneys' fees and expenses shall survive the termination of this Escrow Agreement.

(d) **No Obligation to Take Legal Action.** Escrow Agent shall not be under any obligation to take any legal action in connection with this Escrow Agreement or for its enforcement, or to appear, prosecute or defend any action or legal proceeding which, in its opinion, would or might involve it in any costs, expense, loss or liability, or to otherwise expend or risk its own funds or incur any financial liability in the performance of this Escrow Agreement, unless and as often required by it, it shall be furnished with security and indemnity satisfactory against all such costs, expenses, losses or liabilities. If any controversy arises between the parties hereto or with any third person, the Escrow Agent shall not be required to resolve the same or to take any action to do so (other than to use its best efforts to give notice of such controversy to Seller and Purchaser) but may, at its discretion, institute such interpleader or other proceedings as it deems proper.

(e) **Quarterly Statement.** Escrow Agent shall issue a quarterly accounting statement showing receipts to and disbursements from the Acquisition Fund. Such statement shall be mailed to Seller and Purchaser.

(f) **Resignation and Termination.** Escrow Agent may, upon providing thirty days written notice, resign its position as Escrow Agent and terminate its liabilities and obligations hereunder. In the event Escrow Agent is not notified within thirty days of a successor Escrow Agent, Escrow Agent shall be entitled to transfer all funds to a court of competent jurisdiction with a request to have a successor appointed, at the expense of Purchaser. Upon filing such action and delivering such assets, Escrow Agent's obligations and responsibilities shall cease. Seller and Purchaser may jointly terminate Escrow Agent and appoint a successor Escrow Agent by providing 15 days written notice to Escrow Agent.

7. **Indemnification.** To the extent permitted by law, Purchaser hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its respective successors, assigns, agents, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by or asserted against, Escrow Agent at any time (whether or not also indemnified against the same by Purchaser or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Acquisition Fund, the acceptance of the funds and securities deposited therein, the purchase of any securities to be purchased pursuant thereto, the retention of such securities or the proceeds thereof, and any payment, transfer or other application of moneys or securities by Escrow Agent in accordance with the provisions of this Escrow Agreement; provided, however, that Purchaser shall not be required to indemnify, protect, save or keep harmless Escrow Agent against Escrow Agent's own gross negligence or willful misconduct or gross negligence or willful misconduct of Escrow Agent's respective successors, assigns, agents and employees or the material breach by Escrow Agent of the terms of this Escrow Agreement. The indemnities contained in this Section shall survive the termination of this Agreement.

8. **Notices.** Any notices permitted or required under this Escrow Agreement shall in writing and shall be deemed given upon the date of personal delivery or 48 hours after deposit in the United States mail, certified or registered, postage fully prepaid, return receipt requested, addressed to the addresses set forth on the signature page of this Escrow Agreement. The party to whom notices or copies of notices are to be sent shall have the right at any time and from time to time to change its address for notice or person to receive notice by giving notice in the manner specified in this paragraph.

9. **Escrow Agent's Fee.** Escrow Agent shall be paid no fee for setting up the escrow. In the event that Escrow Agent is made a party to litigation with respect to the Acquisition Fund, or brings an action in interpleader, or Escrow Agent is required to render any service not provided for in this Escrow Agreement, or there is any assignment of interests in this escrow or any modification hereof, Escrow Agent shall be entitled to reasonable compensation for such extraordinary services and reimbursement by Purchaser for all fees, costs, liability and expenses, including attorney fees. Purchaser also agrees to pay any investment fees or other charges of Escrow Agent, such as wire transfer charges and disbursement charges.

and agrees such fees and charges may be deducted by and paid to the Escrow Agent from funds in or to be deposited in the Acquisition investment earnings to be deposited in the Acquisition Fund.

10. Counterparts. This Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Escrow Agreement is to be executed by the parties hereto in sufficient numbers so that an Escrow Agreement bearing each party's original signature can be held by the Escrow Agent.

11. Waiver. Any waiver by any party of any breach of any term or condition of this Escrow Agreement shall not operate as a waiver of any other breach of such term or condition or any other term or condition, nor shall any failure to enforce such provision hereof operate as a waiver of such provision or of any other provision hereof, nor constitute nor be deemed a waiver or release of any other party for anything arising out of, connected with, or based on this Escrow Agreement.

12. Exhibits. All exhibits, schedules and lists attached to this Escrow Agreement or delivered pursuant to this Escrow Agreement shall be deemed a part of this Escrow Agreement and incorporated herein, where applicable, as if fully set forth herein.

13. Applicable Law. This Escrow Agreement shall be governed by the laws of the state in which Purchaser is located.

14. Successors and Assigns. This Escrow Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Any corporation or association into which the Escrow Agent may merge, or to which Escrow Agent may sell or transfer its banking business, shall automatically be and become successor Escrow Agent hereunder and vested with all powers as was its predecessor without the execution or filing of any instruments or further act, deed or conveyance on the part of the parties hereto.

15. Severability. In the event any provision of this Escrow 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.

IN WITNESS WHEREOF, Seller, Purchaser and Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives, all as of the date first above written.

«Lessor»

«Lessee»

By \_\_\_\_\_

Authorized Officer

Title \_\_\_\_\_

Address: «LessorAddress»  
«LessorCity», «LessorState»  
«LessorPostalCode»

By \_\_\_\_\_

Title \_\_\_\_\_

Address: «Address1»  
«City», «State» «PostalCode»

KEYBANK NATIONAL ASSOCIATION

By \_\_\_\_\_

Authorized Officer

Address: 60 State Street  
Albany, NY 12201

[Please type on your letterhead]

EXHIBIT A

FORM OF REQUISITION  
COSTS OF PROPERTY

KeyBank National Association  
60 State Street  
Albany, NY 12201

Amount Requested: \$ \_\_\_\_\_

Total Disbursements to Date: \$ \_\_\_\_\_

Requisition No.: \_\_\_\_\_

1. The undersigned, an officer or official of Purchaser, hereby requests and authorizes KeyBank National Association, as Escrow Agent under the Escrow Agreement dated as of «CommencementDate», among «Lessee»(the "Purchaser"), «Lessor» (the "Seller") and Escrow Agent, to pay to or upon the order of the Purchaser the amount specified above for the payment or reimbursement of costs of Property described in Schedule 1 attached.

2. The Purchaser hereby certifies that:

(a) each obligation mentioned in Schedule 1 has been properly incurred, is a proper charge against the Acquisition Fund and has not been the basis of any previous disbursement;

(b) no part of the disbursement requested hereby will be used to pay for materials not yet incorporated into the Property or for services not yet performed in connection therewith;

(c) The insurance requirements of the Purchase Agreement have been complied with and such coverage is in force;

(d) as of the date of this Requisition no event of default or event of nonappropriation, if any, as that such terms are is defined in the Purchase Agreement between Seller and Purchaser has occurred and is continuing and no event which with notice or lapse of time, or both, has occurred and is continuing which would constitute such event of default or event of nonappropriation; and

(e) the Property acquired with this disbursement is functionally complete and operationally independent and is hereby accepted. If this is the final requisition, the final acceptance certification required in the Purchase Agreement is attached hereto.

3. All capitalized terms herein shall have the meanings assigned to them in the Escrow Agreement

«Lessee»

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

Approved by Seller, or in the event Seller's right, title and interest in the Purchase Agreement has been assigned, by the current assignee of Seller's right, title and interest in the Purchase Agreement:

«Lessor»

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

[Purchaser to attach final acceptance certification if final disbursement request.]

## SCHEDULE 1

## DISBURSEMENT SCHEDULE

To Requisition No. \_\_\_\_\_ for the Acquisition Fund:

1. Amount: \$ \_\_\_\_\_

Payee: \_\_\_\_\_

By check \_\_\_\_\_ By wire transfer \_\_\_\_\_

If by check, Payee's address: \_\_\_\_\_  
\_\_\_\_\_

If by wire transfer, instructions as follows:

Pay to (name of bank): \_\_\_\_\_  
For Account of: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
ABA No.: \_\_\_\_\_

2. Amount: \$ \_\_\_\_\_

Payee: \_\_\_\_\_

By check \_\_\_\_\_ By wire transfer \_\_\_\_\_

If by check, Payee's address: \_\_\_\_\_  
\_\_\_\_\_

If by wire transfer, instructions as follows:

Pay to (name of bank): \_\_\_\_\_  
For Account of: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
ABA No.: \_\_\_\_\_By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

# **PUBLIC ENGAGEMENT PLAN**

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## STREETCAR FARE POLICY



## Portland Streetcar Fare Policy Update

### Public Engagement and Open House Plan

#### **REQUIREMENTS:**

Title VI of the 1964 Civil Rights Act (Title VI) provides that no person in the United States shall, on the grounds of race, color, national origin, limited English proficiency, sex, income, age or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving federal financial assistance.

As a sub-recipient of Small Starts funds for transit service, the City of Portland must comply with Title VI including evaluating any and all fare changes to determine whether those changes will have a discriminatory impact based on race, color, or national origin of the transit riders. Specifically, the transit provider shall engage the public in the decision-making process to develop a major service change policy and fare change policy. Additionally, the transit provider shall develop a policy for measuring disparate impact. To meet the federal requirements and to assist in the decision making process, the City of Portland staff have developed this public engagement plan. TriMet has reviewed this plan and offered comment. Because TriMet's status as the Small Starts Grant Recipient and the regional Transit Agency, they will provide support to complete this effort. The findings from this engagement process are incorporated into the Title VI analysis and staff recommendations.

## TECHNICAL ANALYSIS

#### **FARE REVENUE PROJECTIONS:**

The technical analysis on this project includes both the fare revenue projections and impact analysis. The Bureau of Transportation hired a consultant to develop an independent revenue generation model and analyze the various proposed fare rates. These projections are informative on how revenues will affect ridership and the utilization of the streetcar line. The projected revenue will also allow the City to make assumptions on service levels.

#### **IMPACT ANALYSIS:**

A consultant has been hired to establish the methodology and perform the analysis on how any fare or service changes will impact the protected classes. The City will examine if there are any detrimental or beneficial impacts as a result of the proposed fare and the implications of a fare, such as continuing to operate streetcar without collecting a fare in the Free Rail Zone and impact to the frequency of operations.

## PUBLIC ENGAGEMENT

### **OUTREACH TO ADVISORY BOARDS:**

Two boards advise the Portland Streetcar on operations issues. Portland Streetcar, Inc. (PSI) and the Streetcar Citizen Advisory Committee (CAC) together include affected property owners, advocates, transit riders, neighbors and the aging and disability communities. Staff are actively engaging the PSI and the CAC. Input from the PSI and the CAC are essential to defining the criteria for establishing the eastside fare.

**OUTCOMES:** Understanding of the impact of fare policy and changes in service on streetcar users. Identified key issues and establish any benefits of the additional headways on the west side and the consideration of the Free Rail Zone. Identify any detriments. Refined recommendations and performed analysis of impact.

### **OUTREACH AND ENGAGEMENT OF SERVICE PROVIDERS IN AFFECTED AREA:**

Several large educational institutions, community service providers, hospitals and affordable housing agencies are located in the existing service area. In order to ensure their participation, staff will perform one-on-one interviews to understand how a change to the streetcar transit service will impact their clients and their employees. **An inventory of properties in the affected area and targeted outreach to affected groups performed.** Additionally, invitations to the open house were sent to the affected service area.

The following is a partial list of the institutions that were contacted for interviews: Portland State University, Multnomah County Library, Central City Concern, Outside In, Goodwill, Housing Authority of Portland, Oregon Health and Sciences University, and Good Samaritan Hospital.

**OUTCOMES:** Understanding how the low income community uses transit in the Central City. Access to healthcare and social services are critical to our community. Gained knowledge of the role of service providers in promoting access to transit and impact to clients related to increased fares or changes in service. Refined recommendations and performed analysis of impact.

### **ENGAGEMENT OF AFFECTED NEIGHBORHOODS AND BUSINESS COMMUNITIES:**

The neighborhoods and business associations along the alignment are affected differently depending on their locations.

Westside neighborhoods and business associations currently have access to streetcar. The Northwest and Southwest neighborhoods (paid zone) are served by streetcar and pay \$2.10 for an all-day fare that allows a two-hour transfer to the TriMet system.

The service area between Riverplace and NW Glisan are in the TriMet established Free Rail zone. Free Rail Zone evolved from the Fareless Square. In 1975, Fareless Square was established by TriMet in to improve downtown air quality and mobility. In 2001, Streetcar was introduced in Portland's downtown, and the fare structure followed

TriMet's Fareless Square boundaries. In 2007, Streetcar service extended to South Waterfront and followed the fare collection boundaries providing free service to the Riverplace stop. In 2009, TriMet removed bus service from Fareless Square and renamed the area as the Free Rail Zone. The change allowed the new MAX service on the mall to remain free for riders within the Free Rail Zone boundaries. Goals were to reduce fare evasion and eliminate conflict over fare collection. Again, Streetcar fare policy followed TriMet's direction on the Free Rail policy.

When the new service runs from OMSI to Market streetcar frequencies in the downtown core will be increased. Waiting times will be reduced from 12 minutes to 7-10 minutes in the area within the area known as Free Rail Zone.

New service is offered on the eastside of the river creating new travel patterns and connections with 11 bus routes and the Max service. The east side streetcar service will be 15 minute headways and 28 new station locations. Eastside service will be expanded in 2015 when the Portland Milwaukie Light Rail service opens and a new transit/bike/ped bridge connects the Central Eastside and the South Waterfront.

To expand the depth of our public engagement the City of Portland will meet with the following neighborhood associations, business associations and transportation management associations: Central Eastside Industrial Council, Portland Business Association, Kerns, Buckman, Hosford Abernathy, South Waterfront, Pearl District, Northwest, Lloyd TMA, South Waterfront TMA, and the newly forming Central Eastside TMA.

**OUTCOMES:** Understanding of how the proposed fare affects the neighborhoods adjacent to the streetcar. Analysis addressed composition of income, racial affinity and ethnicity, home ownership versus rental population, native English speakers and of the neighborhoods. Equity issues related to new and existing service will be discussed. Determined if the proposed fare and service changes will adversely affect people on the basis of race, color nation origin or will disproportionately effect minority or low income populations. Refined recommendations and performed analysis of impact.

#### **TARGETED ENGAGEMENT OF PROTECTED CLASSES AND UNAFFILIATED PERSONS:**

Central to the Title VI analysis is the engagement of low income, minority and communities of color. It is also important for the City to examine the ability for non-English proficient speakers to participate. To deepen the engagement of these communities the City plans to conduct two open houses that serves the Central Eastside and Downtown or Northwest neighborhoods.

The purpose of the open houses is to communicate the issues related to the imposition of a fare for the Eastside Streetcar Loop as well as any potential impacts to the current service in the downtown. The open houses are also opportunities to receive feedback and engage the public in the decision making process. Given the federal requirements, special attention should be made to reach under-represented, minority and low income people.

The City supplemented the public engagement process and sought meaningful public engagement on the proposal for the updated Streetcar Fare Policy at east and west open houses. The City identified key constituencies that are targeted for participation.

The open houses were broadly publicized and held at locations along the alignment, one of which is located in the Free Rail Zone.

OUTCOMES: Created a meaningful tool to receive feedback on the fare study and an opportunity to provide comments, an analysis of comments will be submitted to the FTA as part of our Title VI submission. Engaged the public in the decision making process.