

**TAXABLE QECB  
EQUIPMENT LEASE AGREEMENT**

This Taxable QECB Equipment Lease Agreement dated as of April 15, 2011 (the “*Agreement*”), entered into by and between Banc of America Leasing & Capital, LLC, a Delaware limited liability company (“*Lessor*”), and the City of San Diego, a charter city duly organized and existing under the laws of the State of California (“*Lessee*”),

**WITNESSETH:**

WHEREAS, Lessee desires to lease from Lessor certain Energy Conservation Equipment (as such term is defined herein), subject to the terms and conditions of this Agreement; and

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

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

**ARTICLE I**

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

“*Acceptance Certificate and Disbursement Request*” means, with respect to the items of Energy Conservation Equipment therein identified, an Acceptance Certificate and Disbursement Request substantially in the form attached as Schedule 1 to the Acquisition Fund Agreement.

“*Acceptance Date*” means, with respect to the items of Energy Conservation Equipment identified in an Acceptance Certificate and Disbursement Request, the date that Lessee identifies to Lessor and Acquisition Fund Custodian as the date on which Lessee has received and accepted the items of Energy Conservation Equipment therein identified for purposes of this Agreement and for which disbursement from the Acquisition Fund is then requested in accordance with such Acceptance Certificate and Disbursement Request.

“*Acquisition Amount*” means \$13,141,596.29. The Acquisition Amount is the amount represented by Lessee to be sufficient to acquire and install the Energy Conservation Equipment and to pay Delivery Costs.

“*Acquisition Fund*” means the fund so named that is established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement.

“*Acquisition Fund Agreement*” means the Acquisition Fund and Account Control Agreement substantially in the form of *Attachment F* attached hereto and executed by Lessee, Lessor and the Acquisition Fund Custodian.

“*Acquisition Fund Custodian*” means Deutsche Bank National Trust Company, as acquisition fund custodian under the Acquisition Fund Agreement, and its successors and assigns.

“*Acquisition Period*” means the period from the Funding Date to August 31, 2012, or to such later date as may be agreed upon by Lessor and Lessee.

“*Additional Rental Payments*” means the amounts specified as such in Section 4.01(e).

“*Agreement*” means this Taxable QECB Equipment Lease Agreement, including the Attachments and Schedules hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04.

“*Business Day*” means any day other than a City of San Diego holiday, a Saturday, Sunday or day upon which banks in the State or in the state in which the principal office of Lessor is located are authorized or required to be closed.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations and Internal Revenue Service Notices.

“*Contract Rate*” means the rate identified as such in the Payment Schedule, which equals the 10-Year U.S. Treasury Interest Rate Swap close value (using the Bloomberg Daily Summary) as of March 25, 2011 (that is, the date on which Lessor and Lessee entered into that certain Agreement to Execute Lease with respect to the Agreement) plus 2.65%.

“*Delivery Costs*” means the costs, fees and expenses incurred in connection with the execution and delivery of the Agreement and the Acquisition Fund Agreement, including financial advisor fees, counsel fees and similar costs, fees and expenses; *provided, however*, that Delivery Costs paid from the Delivery Costs Fund shall not exceed 2% of the aggregate Principal Component determined as of the Funding Date.

“*Delivery Costs Fund*” means the fund so named that is established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement.

“*Energy Conservation Equipment*” means Cobra-head replacement light fixtures for approximately 28,700 street lights and related improvements and equipment as part of Lessee’s energy efficient Broad Spectrum Street Lighting program, and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V. Whenever reference is made in this Agreement to Energy Conservation Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“*Equipment Costs*” means the total cost of the Energy Conservation Equipment, including related costs such as freight, installation, sales and other taxes and other capitalizable

costs incurred in connection with the acquisition, installation and/or financing of the Energy Conservation Equipment.

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

*“Fiscal Year”* means Lessee’s fiscal year which begins on July 1 of a calendar year and ends on June 30 of the following calendar year.

*“Funding Date”* means April 15, 2011, which is the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian in accordance with Section 3.04(c).

*“Lease Term”* means the period that begins on the Funding Date and ends on the first Business Day after the last scheduled Rental Payment Date, subject to extension as provided in Sections 3.03 and 4.01(b); *provided* that in no event shall any such extension result in the Lease Term exceeding the lesser of two additional years or the maximum term established by the Secretary of the Treasury that is applicable to the Agreement.

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

*“Lessee Representatives”* means the Chief Financial Officer, Debt Management Director, City Treasurer, City Attorney, City Comptroller and Deputy Environmental Services Director or such other person at the time designated to act on behalf of Lessee for the purpose of performing any act under this Agreement by a written certificate furnished to Lessor and the Acquisition Fund Custodian.

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

*“Lessor Representative”* means the President or any Vice President of Lessor, or any person or persons at the time designated to act on behalf of Lessor for purposes of performing any act or obligation on behalf of Lessor under this Agreement by a written certificate furnished to Lessee and the Acquisition Fund Custodian.

*“Material Adverse Change”* means a downgrade of two or more sub-grades on any of Lessee’s publicly available long-term general obligation bond ratings or any of Lessee’s other long-term general fund related bond ratings by either Moody’s Investors Service, Inc. or Standard & Poor’s Ratings Group or, if neither such rating agency publishes such ratings at the date of determination, any other nationally recognized statistical rating organization that is selected by Lessee for purposes of such long-term general obligation bond ratings and long-term general fund related bond ratings.

“*Opinion of Counsel*” means the opinion of Lessee’s counsel substantially in the form of *Attachment B* to this Agreement.

“*Payment Schedule*” means the Rental Payments Schedule attached hereto as *Attachment A* and made a part hereof.

“*Prepayment Price*” means, as of any date on which the Principal Component may be prepaid at the option of Lessee as provided in the Payment Schedule, the price at which Lessee may prepay the Principal Component in whole or in part in accordance with Section 10.01 of this Agreement.

“*Principal Component*” means, as of any date of calculation, the aggregate principal amount of the Rental Payments then unpaid.

“*Rental Payment Commencement Date*” means the date on which all of the Energy Conservation Equipment is substantially available for Lessee’s beneficial use and enjoyment or March 30, 2012, whichever is later, which is the date Lessee becomes obligated to commence payment of Rental Payments in accordance with the Payment Schedule pursuant to Section 4.01(a) hereof.

“*Rental Payment Date*” means each March 30, commencing on March 30, 2012, on which Lessee has agreed (subject to the terms of this Agreement) to make a Rental Payment under the Agreement as specified in the Payment Schedule.

“*Rental Payments*” means the basic rental payments payable by Lessee pursuant to the Agreement on the Rental Payment Dates and in the amounts as specified in the Payment Schedule, consisting of a principal component and an interest component, and sufficient to repay the Principal Component hereunder and interest thereon at the Contract Rate.

“*Rentals*” means the sum of the Rental Payments and Additional Rental Payments payable during each Fiscal Year by Lessee pursuant to this Agreement.

“*State*” means the State of California.

“*Vendor*” means the manufacturer, the contractor or the distributor who delivers or installs items of Energy Conservation Equipment to and for Lessee.

“*Vendor Payment Date*” means the date on which a Vendor or Lessee (in the case of reimbursement) receives payment from amounts disbursed pursuant to the Acquisition Fund Agreement and the related Acceptance Certificate and Disbursement Request.

“*Vendor Tax Letter*” means a letter delivered by the Vendor to Lessor substantially in the form of *Attachment G* attached hereto (with such reasonable changes as may be requested by Vendor based on its administrative practices, provided, that such requested changes are acceptable to Lessor).

## ARTICLE II

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

(a) Lessee is a charter city duly organized and existing under the Constitution and laws of the State, with full power and authority to enter into the Agreement and the Acquisition Fund Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder.

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

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

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

(e) Lessee expects to comply with such public bidding requirements as may be applicable to this Agreement and the acquisition and installation by Lessee of the Energy Conservation Equipment under this Agreement.

(f) During the Lease Term, the Energy Conservation Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied as such principles are required to be applied to government agencies by government accounting standards applicable to Lessee, and shall deliver to Lessor (i) its unaudited Governmental Funds Balance Sheet and its unaudited Statement of Revenues, Expenditures and Changes in Fund Balances for its Fiscal Year ended June 30, 2010 as soon as available; (ii) its unaudited Comprehensive Annual Financial Report for its Fiscal Year ended June 30, 2010 in draft form as soon as soon as available but in no event later than August 31, 2011; (iii) its audited Comprehensive Annual Financial Report for its Fiscal Year ended June 30, 2010 as soon as available but in no event later than September 30, 2011; (iv) its audited Comprehensive Annual Financial Report for each of its Fiscal Years ending on and after June 30, 2011 not later than 285 days after the end of each such Fiscal Year; (v) such other financial statements and information as Lessor may reasonably request (including with respect to its unaudited financial information provided pursuant to clauses (i) and (ii) of this subsection (g)) and as are

routinely prepared or may be prepared by Lessee without unreasonable expense or in excess of a reasonable time, and (vi) its proposed budget for the following Fiscal Year when released and the annual budget not later than 30 days after the adoption of the ordinance for the annual budget. The financial statements described in this subsection (g), other than as described in clauses (i) and (ii), shall be accompanied by the report of the independent auditor who conducted the audit of the financial statements of Lessee. Non-public credit information relating to Lessee may only be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns. (Note: Lessor is aware of the Fiscal Year 2010 Financial Close Schedule as outlined in the Chief Financial Officer Memorandum to the Lessee's City Council dated March 1, 2011. To the extent that any further requests for extension of financial statement due dates are made by the Lessee, those will be considered by Lessor in its sole discretion.)

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

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

(j) The Energy Conservation Equipment is and will be located on improvements within a right-of-way that is dedicated to public use for a period that is longer than the Lease Term. Lessee has good and marketable title to such improvements on which Energy Conservation Equipment is or will be located, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such improvements.

(k) No lease-purchase agreement, installment payment agreement, conditional sale agreement or similar finance contract to which Lessee has been a party during the past ten (10) Fiscal Years and that is subject to annual non-renewal or termination upon the decision of the governing body of Lessee not to appropriate funds sufficient to make payments thereunder has not been renewed or been terminated by the governing body of Lessee as a result of insufficient or no funds being appropriated in any such Fiscal Year. No principal or interest payment delinquency has occurred during the past ten (10) Fiscal Years under any debt, revenue bond or other obligation that has required Lessee to file a material events notice in accordance with a continuing disclosure undertaking or agreement that Lessee has entered into for purposes of Rule 15c2-12 promulgated under

the Securities Exchange Act of 1934, as amended. No event of default by Lessee as a result of the failure to pay principal or interest has occurred under any debt, revenue bond or other obligation that Lessee has issued during the past five (5) Fiscal Years and that is exempt from the requirements of such Rule 15c2-12 based on subsection (d)(1)(i) thereof.

### ARTICLE III

*Section 3.01. Lease of Energy Conservation Equipment.* Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire and install the Energy Conservation Equipment and pay the Delivery Costs. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Energy Conservation Equipment for the consideration indicated in the Payment Schedule at the Contract Rate and for the Lease Term.

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03, to continue the Lease Term and to pay the Rental Payments and Additional Rental Payments hereunder. Lessee affirms that sufficient funds are available for its current Fiscal Year to pay any Rentals under the Agreement when due during the current Fiscal Year (but only if any such Rentals are in fact due during its current Fiscal Year), and Lessee reasonably believes that an amount sufficient to make all Rental Payments on each scheduled Rental Payment Date can be obtained from legally available funds of Lessee.

*Section 3.03. Abatement.* During any period in which, by reason of material damage or destruction or taking under the power of eminent domain (or sale to any entity threatening the use of such power) or material title defect with respect to any Energy Conservation Equipment, there is substantial interference with the beneficial use and enjoyment by Lessee of such Equipment, the Rental Payments due hereunder shall be abated in the same proportion (including in whole) that the portion of such Equipment that is unavailable for Lessee's beneficial use and enjoyment bears to all of the Energy Conservation Equipment, as evidenced by a certificate of a Lessee Representative. Lessee shall immediately notify Lessor upon the occurrence of any event causing substantial interference with Lessee's beneficial use and enjoyment of any Energy Conservation Equipment hereunder. Such abatement shall commence on the date that Lessee's beneficial use and enjoyment of the affected Energy Conservation Equipment is restricted because of such interference and end on the earlier of (a) the date on which the beneficial use and enjoyment thereof are restored to Lessee, or (b) the date on which Lessee replaces the affected Energy Conservation Equipment for purposes of this Agreement; *provided, however*, that the provisions of this Agreement, including (but not limited to) dates on which Rental Payments are due, shall be extended for a period equal to the shorter of the period the obligation to make Rental Payments was abated or two years; and *provided further, however*, that in no event shall any such extension result in the Lease Term exceeding the lesser of two years or the maximum term established by the Secretary of the Treasury that is applicable to the Agreement. Notwithstanding any such interference with Lessee's beneficial use and enjoyment of a portion of the Energy Conservation Equipment, this Agreement shall continue in full force and effect with respect to any remaining Energy Conservation Equipment. Lessee hereby waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other

rights to terminate this Agreement by virtue of any interference with the use and possession of the Energy Conservation Equipment.

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

(i) An Acquisition Fund Agreement substantially in the form set forth in *Attachment F* hereto, satisfactory to Lessor and executed by Lessee and the Acquisition Fund Custodian.

(ii) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate with respect to its security interest in the Energy Conservation Equipment as of the Funding Date.

(iii) A certified copy of an ordinance adopted by Lessee's governing body authorizing the execution and delivery of this Agreement and the Acquisition Fund Agreement and performance by Lessee of its obligations under this Agreement and the Acquisition Fund Agreement.

(iv) A Certificate executed by a Lessee Representative, in substantially the form attached hereto as *Attachment C*, completed to the satisfaction of Lessor.

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

(vi) Signed Vendor Tax Letters from the Vendor with respect to the cost of acquiring and installing each portion of the Energy Conservation Equipment in substantially the form attached hereto as *Attachment G* (the form and content of which shall be satisfactory to Lessor); such Vendor Tax Letters may be provided after April 15, 2011, *provided, however*, that no "Acceptance Certificate and Disbursement Request" pursuant to the Acquisition Fund Agreement shall be authorized by Lessor with respect to any portion of the Energy Conservation Equipment until the related Vendor Tax Letter has been delivered to Lessor.

(vii) The Opinion of Counsel with respect to this Agreement and the Acquisition Fund Agreement in substantially the form attached hereto as *Attachment B* and otherwise satisfactory to Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Acquisition Fund Agreement shall be subject to: (i) no Material Adverse Change shall have occurred since the Funding Date and (ii) no Event of Default shall have occurred and be continuing since the Funding Date.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Acquisition Fund Custodian for deposit into the Acquisition Fund and the Delivery



Costs Fund as provided in the Acquisition Fund Agreement. Nothing in this Agreement is intended, or shall be construed, to require Lessor to deposit any moneys other than the Acquisition Amount into the Acquisition Fund, the Delivery Costs Fund or any other fund or account in the event that amounts in the Acquisition Fund are insufficient to pay the Equipment Costs in full for the Energy Conservation Equipment.

(d) To the extent that Lessee designates additional Lessee Representatives that are not specifically identified in the definition of such term in this Agreement, Lessee shall promptly provide to Lessor and the Acquisition Fund Custodian a listing of such additional authorized Lessee Representatives.

#### ARTICLE IV

*Section 4.01. Rental Payments and Additional Rental Payments.* (a) Lessee agrees, subject to Sections 3.03 and 4.01(b), to pay to Lessor beginning on the Rental Payment Commencement Date: (i) Rental Payments representing a principal component payable in the respective annual installments and on the respective Rental Payment Dates as indicated in the Payment Schedule under the column entitled "*Principal Component*" and (ii) Rental Payments representing an interest component in the respective annual installments and on the respective Rental Payment Dates as indicated in the Payment Schedule under the column entitled "*Interest Component*." To the extent that Lessee is not obligated pursuant to Section 4.01(b) to pay Rental Payments that are scheduled to be paid prior to the Rental Payment Commencement Date because less than all of the Energy Conservation Equipment is substantially available and accepted for Lessee's use and enjoyment, Lessee agrees to pay to Lessor the amount by which such Rental Payments would be reduced as provided in Section 4.01(b) solely from moneys then in Lessee's general fund that are legally available and duly appropriated by Lessee's governing body at its discretion, and not at its obligation, for such purpose. The failure or unwillingness (for whatever reason) of Lessee's governing body to appropriate moneys to pay Rental Payments that would otherwise be reduced pursuant to Section 4.01(b) shall not constitute a default on the part of Lessee or change Lessee's obligation to pay the balance of Rental Payments in accordance with this Section 4.01(a).

(b) Lessee shall become obligated to pay Rental Payments (including to the extent allocable to Delivery Costs) as and to the extent that Energy Conservation Equipment is made available for Lessee's beneficial use and enjoyment and is accepted by Lessee for its beneficial use and enjoyment; *provided, however*, that nothing in this subsection (b) is intended, or shall be construed, to require Lessee to pay Rental Payments prior to March 30, 2012. In the event that less than all of the Energy Conservation Equipment is made available for Lessee's beneficial use and enjoyment by March 30, 2012 and Lessee accepts such portion of the Energy Conservation Equipment for its beneficial use and enjoyment prior to March 30, 2012, any Rental Payments that are scheduled to be paid by Lessee pursuant to the Payment Schedule that relate to the period that is prior to the Rental Payment Commencement Date (and during which Lessee has beneficial use and enjoyment of less than all of the Energy Conservation Equipment) shall be prorated by Lessor for the period from March 30, 2012 to the Rental Payment Commencement Date based upon a fraction the numerator of which equals the amount disbursed from the Acquisition Fund to pay the Equipment Costs for the Energy Conservation Equipment that is so

accepted plus the portion of Delivery Costs allocable thereto and the denominator of which equals the total amount deposited into the Acquisition Fund and the Delivery Costs Fund on the Funding Date. The provisions of this Agreement shall be extended for a period equal to the shorter of the period during which Rental Payments are prorated or two years and the amount by which Rental Payments had been reduced on each scheduled Rental Payment Date prior to the Rental Payment Commencement Date shall be payable in such amounts on the same dates during the extension period as Rental Payments are due, unless such period during which Rental Payments are prorated is less than one year in which case the amount by which Rental Payments had been reduced shall be payable on the last Business Day of such period; *provided, however*, that in no event shall any such extension result in the Lease Term exceeding the lesser of two additional years or the maximum term established by the Secretary of the Treasury that is applicable to this Agreement, and in no event shall the amount of Rental Payments during any extension period exceed the highest Rental Payment shown on the Payment Schedule.

(c) Lessee covenants and agrees to include in the budget submitted to City Council for the Fiscal Year beginning July 1, 2011, prepared by the Mayor acting on behalf of Lessee in accordance with applicable law, the amount necessary (after taking into account any moneys then legally available for such purpose) to pay the amount by which Rental Payments that are scheduled to be paid prior to the Rental Payment Commencement Date are expected to be reduced as provided in Section 4.01(b). The parties acknowledge that City Council will be under no obligation to adopt a budget or otherwise appropriate moneys to pay such amount.

(d) Invoices from Lessor to Lessee shall be received by Lessee no less than 30 days prior to each Rental Payment Date; *provided, however*, that Lessee's receipt of such an invoice shall not be a condition to Lessee's obligation to pay each Rental Payment when due.

(e) In addition to the Rental Payments hereunder, Lessee agrees to pay as Additional Rental Payments all of the following:

(i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes including sales taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon the Energy Conservation Equipment or upon any title or interest of Lessor in or to the Energy Conservation Equipment, to the extent provided in Section 7.01 hereof;

(ii) any amount required to be paid by Lessee pursuant to Section 7.05 hereof;  
and

(iii) a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date.

Amounts constituting Additional Rental Payments shall be paid by Lessee directly to the person(s) to whom such amounts shall be payable. Lessee shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within thirty (30) calendar days after notice in writing from Lessor to Lessee stating the amount of Additional Rental Payments then due and payable and the purpose thereof.

(f) Subject to Sections 3.03 and 4.01(b), Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, on the Rental Payment Dates and in such amounts as provided in the Payment Schedule, to Lessor by wire transfer in immediately available funds in accordance with wire payment instructions provided by Lessor to Lessee in writing or to such other place or in such other manner as may be designated by Lessor in writing to Lessee.

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

*Section 4.03. Rental Payments to Constitute a Current Expense of Lessee.* The Rental Payment payable on a particular Rental Payment Date shall be for the period from the immediately preceding Rental Payment Date (or the Funding Date in the case of the first Rental Payment Date) to such particular Rental Payment Date. For each Fiscal Year or portion thereof during the Lease Term, Rental Payments and Additional Rental Payments shall constitute the total Rentals for such Fiscal Year or portion thereof and shall be paid by Lessee for and in consideration of the right of use and possession, and the continued quiet use and enjoyment, of the Energy Conservation Equipment by Lessee for and during such Fiscal Year or portion thereof. Lessor and Lessee have agreed and determined that such Rentals are not in excess of the fair rental value of such Equipment. In making such determination, consideration has been given to the costs of acquiring and installing the Energy Conservation Equipment, the uses and purposes served by such Equipment and the benefits therefrom that will accrue to Lessee by reason of this Agreement and to the general public by reason of Lessee's use of the Energy Conservation Equipment hereunder. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rentals shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of Lessee.

*Section 4.04. Rental Payments to be Unconditional.* Subject to Sections 3.03 and 4.01(b), the obligations of Lessee to make Rental Payments and Additional Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Energy Conservation Equipment, any defects, malfunctions, breakdowns or infirmities in the Energy Conservation Equipment, disputes with any Vendor or Lessor, failure of any Vendor to perform any of its obligations under its agreement or contract with Lessee for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to any Vendor under any such agreement or contract, the failure or inability (for whatever reason) of Lessee to receive (or delay in receipt of) all or any portion of the direct cash subsidy payment from the U.S. Treasury with respect to this Agreement or any accident, condemnation or unforeseen circumstances.

*Section 4.05. Payment of Equipment Costs from Acquisition Fund; Mandatory Prepayment from Unspent Acquisition Fund Moneys.* (a) Amounts on deposit in the Acquisition Fund may be expended for the payment (including reimbursement to Lessee for amounts previously advanced by Lessee for such purpose) of Equipment Costs for Energy Conservation Equipment that is available for Lessee's beneficial use and enjoyment and that Lessee has accepted for its beneficial use and enjoyment for purposes of this Agreement and in accordance with the Acquisition Fund Agreement to and including the earlier of (i) the expiration of the Acquisition Period or (ii) the date on which Lessee executes and delivers to Lessor, for approval and delivery to the Acquisition Fund Custodian, an Acceptance Certificate and Disbursement Request that notifies Lessor and the Acquisition Fund Custodian that, after payment or reimbursement of Equipment Costs for accepted Energy Conservation Equipment pursuant to such Acceptance Certificate and Disbursement Request, Lessee intends not to seek payment or reimbursement for any further Equipment Costs for Energy Conservation Equipment pursuant to this Agreement, *provided* that the scheduled expiration of the Acquisition Period as described in clause (i) above may be extended and Lessee need not deliver such an Acceptance Certificate and Disbursement Request as described in clause (ii) above if Lessee has determined that application of amounts then remaining on deposit in the Acquisition Fund to prepayment of Rental Payments (as herein provided) could adversely affect treatment of this Agreement as a "qualified energy conservation bond" for federal income tax purposes. All amounts remaining on deposit in the Acquisition Fund as of the earlier of such dates shall be applied by the Acquisition Fund Custodian as provided in the Acquisition Fund Agreement to prepay Rental Payments in whole or in part as provided in Section 10.01(e).

(b) In connection with any prepayment pursuant to subsection (a) of this Section 4.05, Lessee shall pay the prepayment premium and interest component of Rental Payments accrued to the prepayment date on such principal component to be prepaid, but only from moneys then in Lessee's general fund that are legally available and duly appropriated by Lessee's governing body at its discretion and not at its obligation for such purpose.

(c) Notwithstanding anything in this Agreement or the Acquisition Fund Agreement to the contrary, Lessee shall not be entitled to submit an Acceptance Certificate and Disbursement Request to Lessor for approval and delivery to the Acquisition Fund Custodian after the fifth Business Day next preceding the end of the Acquisition Period.

*Section 4.06. Covenant to Budget and Appropriate.* Lessee hereby covenants to take such action as may be necessary under the laws applicable to Lessee to budget for and appropriate and maintain funds sufficient and available to discharge its obligation to meet all Rental Payments and Additional Rental Payments in each of its Fiscal Years during the Lease Term.

The covenants on the part of Lessee herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of Lessee to take such action and do such things as are required by law in the performance of the official duty of such officials to enable Lessee to carry out and perform the covenants and agreements in this Agreement agreed to be carried out and performed by Lessee.

## ARTICLE V

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

(a) Lessee shall order the Energy Conservation Equipment, cause the Energy Conservation Equipment to be delivered and installed at such locations within the City of San Diego as Lessee shall direct and pay any and all Equipment Costs and other delivery and installation costs in connection therewith from amounts in the Acquisition Fund. When items of Energy Conservation Equipment have been delivered and installed and are available for Lessee's beneficial use and enjoyment, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor an Acceptance Certificate and Disbursement Request as provided in the Acquisition Fund Agreement.

(b) Lessee shall deliver to Lessor original invoices (and proof of payment of such invoices if Lessee seeks reimbursement) relating to each item of Energy Conservation Equipment accepted by Lessee pursuant to the related Acceptance Certificate and Disbursement Request.

*Section 5.02. Quiet Enjoyment of Energy Conservation Equipment.* So long as an Event of Default has not occurred and is then continuing, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Energy Conservation Equipment during the Lease Term.

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

*Section 5.04. Use and Maintenance of the Energy Conservation Equipment.* Lessee shall not install, use, operate or maintain the Energy Conservation Equipment (or cause the Energy Conservation Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Energy Conservation Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Energy Conservation Equipment or its interest or rights hereunder.

Lessee agrees that it will maintain, preserve and keep the Energy Conservation Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Energy Conservation Equipment.

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

## ARTICLE VI

*Section 6.01. Title to the Energy Conservation Equipment.* Except as otherwise provided in Section 10.01 hereof, title to Energy Conservation Equipment shall be deemed to vest in Lessor on the applicable Vendor Payment Date upon payment to Vendor or reimbursement to Lessee pursuant to the Acquisition Fund Agreement for such Energy Conservation Equipment and immediately and automatically (without any further action by Lessor or Lessee) shall pass from Lessor to Lessee on such Vendor Payment Date in reliance on Lessee's acceptance of the Energy Conservation Equipment as evidenced by the related Acceptance Certificate and Disbursement Request. Title will, at Lessor's option, immediately vest in Lessor upon termination of this Agreement as the result of the occurrence of an Event of Default. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Energy Conservation Equipment from and against all claims, liens and legal processes of its creditors, and keep all Energy Conservation Equipment free and clear of all such claims, liens and processes. Upon purchase of the Energy Conservation Equipment by Lessee pursuant to Section 10.01 hereof, Lessor shall release its security interest in and to the Energy Conservation Equipment, as is and where is, without warranty of any kind other than as to the absence of liens created by or through Lessor, and shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the release of Lessor's security interest in such Energy Conservation Equipment.

*Section 6.02. Security Interest.* As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor, and Lessor hereby retains, a first priority security interest constituting a first lien on (a) the Energy Conservation Equipment, (b) moneys and investments held from time to time in the Acquisition Fund and the Delivery Costs Fund and (c) any and all proceeds of the foregoing. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Energy Conservation Equipment, the Acquisition Fund, the Delivery Costs Fund and the proceeds thereof, including such financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code, which Lessor acknowledges is not applicable to governmental entities such as Lessee, but treating such Article 9 as if it were applicable to governmental entities such as Lessee.

*Section 6.03. Personal Property, No Encumbrances.* Lessee agrees that, to the extent permitted by State law, the Energy Conservation Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Energy Conservation Equipment or any part thereof

may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Energy Conservation Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Energy Conservation Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* (a) Lessee shall keep the Energy Conservation Equipment free of all levies, liens, and encumbrances except those created by this Agreement. Lessor and Lessee contemplate that the Energy Conservation Equipment will be used for a governmental or proprietary purpose of Lessee and that the Energy Conservation Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Energy Conservation Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment as Additional Rental Payments in accordance with Section 4.01(d) hereof. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Energy Conservation Equipment. In the event that the Energy Conservation Equipment or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, Lessee shall, during the Lease Term, pay the amount of all such taxes, assessments and governmental charges then due, as Additional Rental Payments, as described in Section 4.01(d) hereof. At the expense and in the name of Lessee, Lessee may in good faith contest any such taxes, assessments and other charges in any reasonable manner which does not, in the opinion of independent counsel, adversely affect the right, title and interest of Lessor in and to any item of the Energy Conservation Equipment or its rights or interest under this Agreement or subject any portion of any item of Energy Conservation Equipment to loss or forfeiture, and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest or any appeal therefrom.

*Section 7.02. Insurance.* Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Energy Conservation Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Prepayment Price of the Energy Conservation Equipment or (ii) the replacement cost of the Energy Conservation Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount satisfactory to Lessor; (c) worker's compensation coverage as required by the laws of the State and (d) rental interruption insurance naming Lessor as loss payee, with coverage equal to the

maximum total Rental Payments payable by Lessee for any consecutive 12-month period and insuring against abatement of Rental Payments payable by Lessee resulting from Lessee's loss of beneficial use or enjoyment of the Energy Conservation Equipment or any substantial portion thereof and caused by any and all other perils either insured or uninsured; *provided* that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a), (b) and/or (c). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached as *Attachment D* to this Agreement. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification.

*Section 7.03. Risk of Loss.* Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Energy Conservation Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Energy Conservation Equipment shall relieve Lessee of the obligation to pay Rentals or to perform any other obligation under this Agreement, except as otherwise provided in Section 3.03. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to indemnify Lessor (to the fullest extent authorized by State law, but only from moneys then in Lessee's general fund that are legally available and duly appropriated by Lessee's governing body at its discretion and not at its obligation for such purpose) for any and all liabilities, obligations, losses, costs (except capital, reserve or similar costs), claims, taxes (except income, franchise or similar taxes) or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses and penalties connected therewith) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership, use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Energy Conservation Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Energy Conservation Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

*Section 7.04. Lessee to Pursue Remedies Against Contractors and Sub-Contractors.* In the event of a material default of any Vendor under its agreement or contract with Lessee in connection with the acquisition, installation, maintenance and/or servicing of the Energy Conservation Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Energy Conservation Equipment to such an extent that there is substantial interference with the use and right of possession by Lessee of such Equipment which would result in an abatement of Rental Payments or any thereof pursuant to Section 3.03, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in



connection with any such default or breach. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against such abated Rental Payments and otherwise paid to Lessee.

*Section 7.05. Advances.* In the event Lessee shall fail to keep the Energy Conservation Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Energy Conservation Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute Additional Rental Payments for the Lease Term, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less; *provided, however,* that any amount payable by Lessee pursuant to this Section 7.05 shall be payable solely from moneys then in Lessee's general fund that are legally available and duly appropriated by Lessee's governing body at its discretion and not at its obligation for such purpose.

## ARTICLE VIII

*Section 8.01. Damage, Destruction and Condemnation.* If, prior to the termination of the Lease Term, (a) the Energy Conservation Equipment subject 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 Energy Conservation Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Energy Conservation Equipment or such part thereof as required by Section 8.02 (except as otherwise provided in Section 8.02 with respect to prepayment of Rental Payments pursuant to Section 10.01(b) hereof) and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

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

*Conservation Equipment*” for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event.

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

*Section 8.02. Insufficiency of Net Proceeds.* If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds or (b) pay or cause to be paid to Lessor the amount of the then applicable Prepayment Price with respect to the affected Energy Conservation Equipment and, upon such payment, Lessor’s security interest in such Energy Conservation Equipment shall terminate as provided in Section 6.01 hereof; *provided, however,* that any amount payable by Lessee pursuant to this Section 8.02 shall be payable solely from moneys then in Lessee’s general fund that are legally available and duly appropriated by Lessee’s governing body at its discretion and not at its obligation for such purpose. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing such Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

## **ARTICLE IX**

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

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

warranties whatsoever as to the existence or the availability of such warranties relating to any of the Energy Conservation Equipment.

## ARTICLE X

*Section 10.01. Prepayment Option.* Lessee shall have the option to prepay all, but not less than all, of the Principal Component of Rental Payments under this Agreement (except that Lessee shall have the option to prepay Rental Payments in part as set forth in subsections (b) and (e) of this Section), at the following times and upon the following terms:

(a) From and after the date specified in the Payment Schedule (the "*Prepayment Option Commencement Date*"), on the Rental Payment Dates specified in the Payment Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the Rental Payments then due and all other amounts then owing hereunder plus the then applicable Prepayment Price, which includes a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event that Energy Conservation Equipment is destroyed or damaged to such an extent that there is substantial interference with the use and right of possession by Lessee of that item which would result in an abatement of Rental Payments or any thereof pursuant to Section 3.03, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which prepayment date shall be the earlier of the next Rental Payment Date or 60 days after the casualty event) upon payment in full to Lessor of the sum of (i) any Rental Payment then due in accordance with Section 4.01 plus (ii) an amount equal to the lesser of the then applicable Prepayment Price or 102% of the aggregate unpaid principal portion of Rental Payments (or, in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of such amount determined as of the next preceding Rental Payment Date plus accrued interest component to such prepayment date) plus (iii) all other amounts then owing hereunder; provided, however, that if Lessee is making such prepayment with respect to less than all of the Energy Conservation Equipment, then Lessor shall provide to Lessee the pro rata amount of the Prepayment Price to be paid by Lessee with respect to such damaged or destroyed Energy Conservation Equipment together with a revised Payment Schedule under which equal annual Rental Payments will be payable on the same Rental Payment Dates for the remainder of the Lease Term; or

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

(d) In the event that a Loss of Subsidy (as hereafter defined) occurs, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option provided under this subsection (d), Lessee shall have the option to prepay all, but not less than all, of the then unpaid Principal Component with respect to the Energy Conservation Equipment from and after any Loss of Subsidy upon payment in full to Lessor of the sum of (i) any Rental Payment then due in accordance with this Agreement plus (ii) an

amount equal to the lesser of the then applicable Prepayment Price hereunder or 102% of the aggregate unpaid Principal Component (or, in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of such lesser amount determined as of the next preceding Rental Payment Date plus accrued interest component to such prepayment date) plus (iii) all other amounts then owing hereunder. “*Loss of Subsidy*” means the occurrence of any of the following: (A) legislation enacted by the Congress of the United States of America or a ruling, regulation or statement issued by the Treasury Department or the Internal Revenue Service, the effect of which (I) denies, repeals, revokes or reduces Lessee’s applicable cash subsidy payments from the United States Treasury under Section 54A or 6431 of the Code (as currently in effect) with respect to this Agreement (herein referred to as “*Direct Subsidy Payments*”) or (II) imposes one or more new substantive conditions on the receipt by Lessee of Direct Subsidy Payments and such conditions are unacceptable to Lessee; and (B) any governmental, administrative, judicial or other official action that is beyond Lessee’s control and results in the significant reduction or loss of Direct Subsidy Payments to Lessee or imposes one or more new substantive conditions on the receipt by Lessee of Direct Subsidy Payments and such conditions are unacceptable to Lessee; *provided, however*, that in no event shall a “*Loss of Subsidy*” occur as the result of Lessee’s failure or inability for reasons within its control to receive (or delay in receipt of) all or any portion of any Direct Subsidy Payment from the United States Department of Treasury or Lessee’s failure to comply with applicable law and regulations to obtain payment of any Direct Subsidy Payment from the United States Department of Treasury, including (without limitation) any offset against any Direct Subsidy Payment as a result of other liabilities of Lessee to the United States Department of Treasury; or

(e) In the event that amounts remain on deposit on the earlier of the two dates provided in Section 4.05(a) and are to be applied to the prepayment of Rental Payments as therein provided, on the earlier of the fifth Business Day after delivery of the Acceptance Certificate and Disbursement Request described in Section 4.05(a)(ii) or the first Business Day after the end of the Acquisition Period upon payment in full to Lessor of the sum of (i) any Rental Payment then due in accordance with Section 4.01 plus (ii) an amount equal to 102% of the aggregate principal portion of Rental Payments to be prepaid (or, in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of such amount plus accrued interest component to such prepayment date) plus (iii) all other amounts then owing hereunder; *provided, however*, that if such prepayment of Rental Payments is in part, then Lessor shall provide to Lessee the pro rata amount of Rental Payments determined for purposes of clause (ii) above to be paid from such remaining amount in the Acquisition Fund plus amounts to be paid by Lessee pursuant to Section 4.05(b) together with a revised Payment Schedule under which equal annual Rental Payments will be payable on the same Rental Payment Dates for the remainder of the Lease Term.

After payment of the applicable Prepayment Price and all other amounts owing under this Agreement, Lessor’s security interests in and to the Energy Conservation Equipment will be terminated and Lessee will own the Energy Conservation Equipment free and clear of Lessor’s security interest in the Energy Conservation Equipment. Lessor shall deliver to Lessee all

documents necessary or convenient to transfer or confirm, as the case may be, legal and beneficial title and possession free and clear of all liens and encumbrances created by, through or under Lessor, to Lessee and to evidence termination of Lessor's security interest therein. The Energy Conservation Equipment will be accepted by Lessee at that time on an AS IS, WHERE IS basis, and Lessor makes no warranties or representations of any type as to such Energy Conservation Equipment.

## ARTICLE XI

*Section 11.01. Assignment by Lessor.* (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Acquisition Fund Agreement, its security interest in the Energy Conservation Equipment, the Acquisition Fund and the Delivery Costs Fund and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom Lessor reasonably believes is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, and is purchasing the Agreement (or any interest therein) for its own account with no present intention to resell or distribute the Agreement (or interest therein), subject to each investor's right at any time to dispose of the Agreement or any interest therein as it determines to be in its best interests, (ii) shall not result in more than 35 owners of Lessor's rights and interests under the Agreement or the creation of any interest in the Agreement in an aggregate Principal Component that is less than \$100,000 and (iii) to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to applicable State law. Lessee agrees that (i) Lessor may assign, sell, transfer or encumber all or any part of the Agreement, the Energy Conservation Equipment, the Rental Payments and the Acquisition Fund Agreement and (ii) in the event of any such assignment of Rental Payments under this Agreement and written notice thereof to Lessee, to unconditionally pay directly to any such assignee all Rental Payments and other sums due or to become due under this Agreement so assigned. Lessor acknowledges and agrees that any assignment under this Section shall not, and shall not purport to, alter or modify in any respect Lessee's obligations to perform in accordance with the terms of this Agreement in accordance with its terms as originally executed. THE RIGHTS OF ANY SUCH ASSIGNEE SHALL NOT BE SUBJECT TO ANY DEFENSE, COUNTERCLAIM OR SETOFF WHICH LESSEE MAY HAVE AGAINST LESSOR; *PROVIDED*, THAT LESSEE SHALL NOT BE PRECLUDED FROM ASSERTING AGAINST ANY ASSIGNEE ANY CLAIM IT MAY HAVE AS A RESULT OF ASSIGNEE'S BREACH OF ANY OF THE OBLIGATIONS OF LESSOR UNDER THIS AGREEMENT OCCURRING AFTER ANY SUCH ASSIGNMENT. Notwithstanding any of the foregoing, any such assignment (A) shall be subject to Lessee's right to possess and use the Energy Conservation Equipment so long as Lessee is not in default hereunder, and (B) shall not release any of Lessor's obligations under this Agreement, unless Lessee otherwise agrees in writing, or any claim which Lessee has against Lessor. Lessor acknowledges that the Agreement has not been, and will not be, registered under the Securities Act of 1933 or any state securities laws and that Lessee has not prepared, and will not prepare, any offering or disclosure materials or document for use in connection with any assignment under this Section. Any assignment under this Section shall be subject to the condition that Lessee shall incur no costs nor be required to provide or execute any documents (except as expressly provided in subsection (c) of this Section) or participate in any

manner in connection with such assignment, and Lessor and any such assignee shall be solely responsible for compliance with all securities and other laws in connection with such assignment.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor, *provided* that any such claim, counterclaim or other right shall survive such assignment. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Energy Conservation Equipment, the Acquisition Fund and the Delivery Costs Fund and all rights in, to and under this Agreement and the Acquisition Fund Agreement related to such Equipment and the Acquisition Fund and Delivery Costs Fund, respectively.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of *Attachment E* attached hereto within ten (10) Business Days after its receipt of such request.

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

## ARTICLE XII

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

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

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor,

unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

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

(d) Any payment default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregate amount in excess of \$10,000,000, in each case payable from the general fund;

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

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

Failure on the part of Lessee to make any payment, transfer or disbursement provided for in this Agreement or in the Acquisition Fund Agreement to be paid from moneys in Lessee's general fund that are legally available and duly appropriated by Lessee's governing body at its discretion and not at its obligation shall not be a default or Event of Default under this Agreement or the Acquisition Fund Agreement and no remedy is provided for any such failure.

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

(a) By written notice to Lessee, Lessor may without terminating this Agreement, take whatever action at law or in equity may appear necessary or desirable to

collect each Rental Payment payable by Lessee and other amounts payable by Lessee hereunder as they become due and payable;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Energy Conservation Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within one hundred (100) miles from Lessee's business location as Lessor shall specify;

(c) Lessor may retain prior payments and sell or lease the Energy Conservation Equipment through public or private transaction after giving Lessee reasonable notice with or without having the Energy Conservation Equipment at any such sale or leasing. Lessor may purchase all or part of the Energy Conservation Equipment as a result of such transactions. The proceeds of any sale or leasing will be applied to the payment of the unpaid balance of Lessee's obligations under this Agreement. Lessee shall remain liable for any deficiency of unpaid payment for the current Fiscal Year of Lessee, or portion thereof, during which Lessee has quiet use and enjoyment of the Energy Conservation Equipment. Any excess obtained by Lessor at any sale or leasing of the Energy Conservation Equipment over the amounts owed by Lessee for the remainder of the Lease Term shall be paid to Lessee or to such other persons as is prescribed by law;

(d) Lessor may terminate the Acquisition Fund Agreement and apply any proceeds in the Acquisition Fund and the Delivery Costs Fund to the Rental Payments due hereunder;

(e) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or the Acquisition Fund Agreement or as a secured party in any or all of the Energy Conservation Equipment or the Acquisition Fund or the Delivery Costs Fund; and

(f) By action pursuant to the California Code of Civil Procedure, or as otherwise provided by law, obtain the issuance of a writ of mandamus enforcing, for each Fiscal Year *seriatim* during the entire balance of the remaining Lease Term, subject to Section 3.03, the duty of Lessee to appropriate and take all other administrative steps necessary for the payment of Rental Payments and other amounts due hereunder.

*Section 12.03. No Remedy Exclusive; No Acceleration.* No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity; *provided* that Lessor shall have no right to accelerate any Rental Payment or otherwise declare any Rental Payment or other amount payable not then in default to be immediately due and payable. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In



order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice other than such notice as may be required in this Article.

### ARTICLE XIII

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

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

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

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

*Section 13.05. Execution in Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided, however*, that only one counterpart of this Agreement shall constitute the original of this Agreement for purposes of the sale or transfer of this Agreement as chattel paper.

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

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

*Section 13.08. Good Faith Discussions Regarding Refinancing.* If Lessee determines that refinancing this Agreement on a federally tax-exempt basis is advisable or desirable for Lessee, Lessee may contact Lessor for the purpose of engaging Lessor in discussions regarding any such potential refinancing and Lessee and Lessor will discuss in good faith potential terms and conditions on which Lessor may be willing to provide banking services and funding to Lessee with respect to any such refinancing. Nothing in this Section 13.08 is intended, or shall be construed, to obligate Lessee or Lessor with respect to any such discussions or the terms and conditions for any possible refinancing, all of which shall be subject to negotiations and agreements of the parties at that time.

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

LESSOR:  
Banc of America Leasing & Capital, LLC  
11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 556-6977

LESSEE:  
City of San Diego  
202 "C" Street, 9th Floor  
San Diego, California 92101  
Attention: Chief Financial Officer  
Fax No.: (619) 533-3215

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

Terri Preston  
Vice President

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

Mary Lewis  
Chief Financial Officer

**APPROVED AS TO FORM AND LEGALITY** this 15th day of April, 2011.

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

Brant Will  
Deputy City Attorney

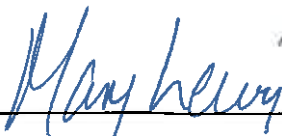
Counterpart No. \_\_\_\_ of \_\_\_\_ manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than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

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


LESSOR:  
Banc of America Leasing & Capital, LLC  
11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 556-6977

LESSEE:  
City of San Diego  
202 "C" Street, 9th Floor  
San Diego, California 92101  
Attention: Chief Financial Officer  
Fax No.: (619) 533-3215

By: \_\_\_\_\_  
Terri Preston  
Vice President

By:  \_\_\_\_\_  
Mary Lewis  
Chief Financial Officer

APPROVED AS TO FORM AND LEGALITY this 15th day of April, 2011.

By:  \_\_\_\_\_  
Brant Will  
Deputy City Attorney

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

LIST OF ATTACHMENTS AND SCHEDULES

- Attachment A — Rental Payments Schedule
- Attachment B — Form of Opinion of Counsel
- Attachment C — Form of Incumbency and Authorization Certificate
- Attachment D — Form of Self-Insurance Certificate
- Attachment E — Form of Notice and Acknowledgement of Assignment
- Attachment F — Form of Acquisition Fund and Account Control Agreement
- Attachment G — Vendor Tax Letter

**ATTACHMENT A**

**RENTAL PAYMENTS SCHEDULE**

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST COMPONENT	PRINCIPAL COMPONENT	OUTSTANDING BALANCE	PREPAYMENT PRICE (including prepayment premium)
3/30/12	\$1,526,065.76	\$775,792.23	\$750,273.53	\$12,391,322.76	NA
3/30/13	\$1,518,446.00	\$763,305.48	\$755,140.52	\$11,636,182.24	NA
3/30/14	\$1,490,060.27	\$716,788.83	\$773,271.44	\$10,862,910.80	NA
3/30/15	\$1,460,993.00	\$669,155.31	\$791,837.69	\$10,071,073.11	NA
3/30/16	\$1,431,227.82	\$620,378.10	\$810,849.72	\$9,260,223.39	NA
3/30/17	\$1,400,747.98	\$570,429.76	\$830,318.22	\$8,429,905.17	\$8,598,503.27
3/30/18	\$1,369,536.32	\$519,282.16	\$850,254.16	\$7,579,651.01	\$7,731,244.03
3/30/19	\$1,337,575.26	\$466,906.50	\$870,668.76	\$6,708,982.25	\$6,843,161.90
3/30/20	\$1,304,846.82	\$413,273.30	\$891,573.52	\$5,817,408.73	\$5,933,756.90
3/30/21	\$1,271,332.57	\$358,352.37	\$912,980.20	\$4,904,428.53	\$5,002,517.10
3/30/22	\$1,237,013.65	\$302,112.79	\$934,900.86	\$3,969,527.67	\$4,009,222.95
3/30/23	\$1,201,870.73	\$244,522.90	\$957,347.83	\$3,012,179.84	\$3,042,301.64
3/30/24	\$1,165,884.02	\$185,550.27	\$980,333.75	\$2,031,846.09	\$2,052,164.55
3/30/25	\$1,129,033.28	\$125,161.71	\$1,003,871.57	\$1,027,974.52	\$1,038,254.27
3/30/26	\$1,091,297.74	\$ 63,323.25	\$1,027,974.52	\$-	\$-

*Contract Rate.* The Contract Rate is 6.16% per annum, which has been calculated based on the method provided in the definition of such term.

*Prepayment Option Commencement Date.* For purposes of Section 10.01(a) of the Agreement, the Prepayment Option Commencement Date is March 30, 2017.

DATED this 15th day of April, 2011.

CITY OF SAN DIEGO, CALIFORNIA, as Lessee

By: Mary Lewis  
Mary Lewis  
Chief Financial Officer

BANC OF AMERICA LEASING & CAPITAL, LLC,  
as Lessor

By: \_\_\_\_\_  
Terri Preston  
Vice President

DATED this 15th day of April, 2011.

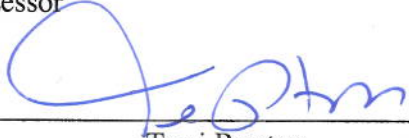
CITY OF SAN DIEGO, CALIFORNIA, as Lessee

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

Mary Lewis  
Chief Financial Officer

BANC OF AMERICA LEASING & CAPITAL, LLC,  
as Lessor

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



Terri Preston  
Vice President

**ATTACHMENT B**

**FORM OF OPINION OF COUNSEL TO LESSEE**  
(to be typed on letterhead of counsel)

April 15, 2011

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

Re: Taxable QECB Equipment Lease Agreement  
dated as of April 15, 2011, between  
Banc of America Leasing & Capital, LLC, as Lessor, and  
City of San Diego, California, as Lessee

Ladies and Gentlemen:

This office is counsel to the City of San Diego, California (the "*Lessee*") and in that capacity we have examined (a) an executed counterpart of that certain Agreement to Execute Lease dated March 25, 2011 (the "*Agreement to Execute Lease*") between Banc of America Leasing & Capital, LLC and the Lessee, (b) an executed counterpart of that certain Taxable QECB Equipment Lease Agreement, dated as of April 15, 2011 (the "*Agreement*"), and Attachments thereto, between Banc of America Leasing & Capital, LLC (the "*Lessor*") and the Lessee, which, among other things, provides for the lease of certain property (the "*Energy Conservation Equipment*"), (c) an executed counterpart of that certain Acquisition Fund and Account Control Agreement dated as of April 15, 2011 (the "*Acquisition Fund Agreement*") among the Lessor, the Lessee and Deutsche Bank National Trust Company, as Acquisition Fund Custodian, (d) a certified copy of the ordinance of the governing body of the Lessee with respect to the transaction contemplated by the Agreement to Execute Lease, the Agreement and the Acquisition Fund Agreement (collectively, the "*Transaction Documents*") and documents related thereto and (e) such other opinions, documents and matters of law as we have deemed necessary in connection with the following opinions. This opinion of counsel is delivered in accordance with Section 3.04(a)(vi) of the Agreement.

As a result of our examination of the Transaction Documents and such other examinations as we deemed appropriate, we have advised the Lessee and hereby indicate to Banc of America Leasing & Capital, LLC, as Lessor, that, in our opinion:



(1) The Lessee is a political subdivision of the State of California, duly organized, existing and operating under the Constitution and laws of the State of California and the City's home rule charter;

(2) The Lessee is authorized by the Constitution and the laws of the State of California to enter into the transactions contemplated by each of the Transaction Documents and to carry out its obligations thereunder;

(3) The Lessee's participation in the Transaction Documents and the performance of the Lessee's obligations thereunder have been duly authorized, approved and executed under all laws, regulations and procedures applicable to the Lessee;

(4) The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of the Lessee, and are legal, valid and binding contracts of the Lessee enforceable in accordance with their respective terms, except to the extent limited by state and federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights;

(5) No approval, consent, or withholding of objection is required from any governmental authority with respect to the entering into or performance by the Lessee of the Transaction Documents or the transactions contemplated thereby, or if any such approval is required, it has been obtained;

(6) The entering into and the performance of the Transaction Documents will not violate any judgment, or order, applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee other than the Energy Conservation Equipment subject to the Agreement pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;

(7) To the knowledge of the Lessee, there is no litigation or proceeding pending or threatened against the Lessee or any other person affecting the right of the Lessee to execute the Transaction Documents or the ability of the Lessee to make the Rental Payments required under the Agreement or to otherwise comply with the obligations contained in the Transaction Documents; and

(8) Ordinance Number 0-20004 of the governing body of the Lessee was duly and validly adopted, modified or supplemented and remains in full force and effect.

This opinion may be relied upon by assignees of the Lessor's interest in the Agreement to the extent that such interest is assigned and transferred in accordance with Section 11.01 of the Agreement.

CITY OF SAN DIEGO, CALIFORNIA

Jan I. Goldsmith, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**ATTACHMENT C**

**FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE**

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

A. The following listed persons are duly elected or appointed and acting officials of Lessee and Lessee Representatives (as such term is defined in the Agreement described below) in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Lessee Representatives are duly authorized, on behalf of Lessee, to negotiate, execute and deliver that certain Agreement to Execute Lease dated March 25, 2011 between Banc of America Leasing & Capital, LLC and Lessee, the Taxable QECB Equipment Lease Agreement dated as of April 15, 2011, between Lessee and Banc of America Leasing & Capital, LLC (“*Lessor*”), the Acquisition Fund and Account Control Agreement dated as of April 15, 2011, among Lessor, Lessee and Deutsche Bank National Trust Company, as Acquisition Fund Custodian, and all documents related thereto and delivered in connection therewith (collectively, the “*Agreements*”), and the Agreements are each the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

NAME OF LESSEE REPRESENTATIVE	TITLE	SIGNATURE
Mary Lewis	Chief Financial Officer	_____
Thomas Blair	Deputy Environmental Services Director	_____
Claudia CastilloDelMuro	Liability Claim Manager	_____

Dated: April 15, 2011

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

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

**ATTACHMENT D**

**FORM OF SELF-INSURANCE CERTIFICATE**

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

Re: Taxable QECB Equipment Lease Agreement dated as of April 15,  
2011 (the “*Agreement*”) between  
Banc of America Leasing & Capital, LLC, as Lessor,  
and City of San Diego, California, as Lessee

In connection with the above-referenced Agreement, the City of San Diego, California (the “*Lessee*”), warrants and represents to Banc of America Leasing & Capital, LLC the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

1. The Lessee is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Energy Conservation Equipment. The dollar limit for such liability claims under the Lessee’s self-insurance program is \$4,000,000. The Lessee maintains an umbrella insurance policy for claims in excess of Lessee’s self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Energy Conservation Equipment in the amount of \$50,000,000.

2. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund are not subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee’s self-insurance liabilities is \$17,000,000.

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

LESSEE:  
City of San Diego, California

By: \_\_\_\_\_  
Claudia CastilloDelMuro  
Liability Claim Manager

**ATTACHMENT E**

**FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT**

**DATED** \_\_\_\_\_

BANC OF AMERICA LEASING & CAPITAL, LLC (“Assignor”) hereby gives notice that it has assigned and sold to \_\_\_\_\_ (“Assignee”) all of Assignor’s right, title and interest in, to and under that certain Taxable QECB Equipment Lease Agreement dated as of April 15, 2011 (the “Agreement”), between Assignor and the City of San Diego, California (“Lessee”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor’s right, title and interest in the Energy Conservation Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Acquisition Fund and Account Control Agreement dated as of April 15, 2011, by and among Lessee, Assignor and Deutsche Bank National Trust Company, as Acquisition Fund Custodian, together with the Acquisition Fund and the Delivery Costs Fund related thereto (collectively, the “Assigned Property”). Assignor hereby represents and warrants to Lessee that the assignment of the Agreement to Assignee has been effected in compliance with the conditions set forth in Section 11.01(a) of the Agreement, including compliance by Assignor with all securities and other laws in connection with such assignment.

1. In accordance with the terms of the Agreement, Lessee hereby acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees, as provided in Section 11.01(a) of the Agreement, to pay directly to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Energy Conservation Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all remedies thereunder; and (ii) except as provided in Sections 3.03 and 4.01(b) of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without diminution, deduction, set-off or defense. As provided in Section 11.01(a) of the Agreement, nothing herein or in the assignment of the Assigned Property shall release any of the original Lessor’s obligations under the Agreement, unless Lessee otherwise agrees in writing, or any claim which Lessee has against Assignor.

3. The Agreement remains in full force and effect and has not been amended.

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

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

**ACKNOWLEDGED AND AGREED:**

LESSEE: CITY OF SAN DIEGO, CALIFORNIA

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

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

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

ASSIGNOR: BANC OF AMERICA LEASING & CAPITAL, LLC

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

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

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

## ATTACHMENT F

### FORM OF ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement (this “*Agreement*”), dated as of April 15, 2011, by and among Banc of America Leasing & Capital, LLC (hereinafter referred to as “*Lessor*”), the City of San Diego, California (hereinafter referred to as “*Lessee*”) and Deutsche Bank National Trust Company (hereinafter referred to as “*Acquisition Fund Custodian*”).

Reference is made to that certain Taxable QECB Equipment Lease Agreement dated as of April 15, 2011, between Lessor and Lessee (hereinafter referred to as the “*Lease*”), covering the acquisition, installation and lease of certain Energy Conservation Equipment described therein (the “*Energy Conservation Equipment*”). It is a requirement of the Lease that the Acquisition Amount (\$13,141,596.29) be deposited into an escrow under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the acquisition and installation of and payment for the Energy Conservation Equipment and payment of the Delivery Costs.

The parties agree as follows:

1. *Creation of Acquisition Fund and Delivery Costs Fund.*

(a) There is hereby created a special trust fund to be known as the “City of San Diego, California, Energy Conservation Equipment Acquisition Fund” (the “*Acquisition Fund*”) to be held in trust by Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) There is hereby created a special trust fund to be known as the “City of San Diego, California, Energy Conservation Equipment Delivery Costs Fund” (the “*Delivery Costs Fund*”) to be held in trust by Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(c) Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund and the Delivery Costs Fund in Qualified Investments (as hereinafter defined in this subsection) in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, State and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither Acquisition Fund Custodian nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or

indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund or the Delivery Costs Fund, and Lessee agrees to and does hereby release Acquisition Fund Custodian and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund and the Delivery Costs Fund shall become part of the respective Funds, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund and the Delivery Costs Fund shall be borne by the respective Funds. For purposes of this Agreement, "Qualified Investments" means any investments which meet the requirements of California Government Code Sections 53600 *et seq.*

(d) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (f) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. Any moneys remaining in the Acquisition Fund on or after the earlier of the dates described in Section 4 hereof shall be applied as therein provided and in accordance with Section 4.05 of the Lease.

(e) Unless the Delivery Costs Fund is earlier terminated in accordance with the provisions of paragraph (f) below, amounts in the Delivery Costs Fund shall be applied to pay (or reimburse Lessee for payment of) Delivery Costs upon receipt by Acquisition Fund Custodian of written directions from Lessee that identify the payees and the amounts to be paid for Delivery Costs. Upon the earlier of August 1, 2011 or payment of all Delivery Costs, amounts in the Delivery Costs Fund shall be transferred to the Acquisition Fund and the Delivery Costs Fund shall thereupon be closed.

(f) The Acquisition Fund and the Delivery Costs Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund and the Delivery Costs Fund, including disbursement pursuant to Section 4 hereof and Section 4.05 of the Lease, or (ii) disbursement to Lessor of amounts in the Acquisition Fund and the Delivery Costs Fund pursuant to Section 12.02(d) of the Lease upon written notice given by Lessor of the occurrence of an Event of Default under the Lease, whereupon this Agreement shall terminate.

(g) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the



Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(h) Unless Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this Agreement; and in connection therewith does (to the fullest extent authorized by State law, but only from moneys then in Lessee's general fund that are legally available and duly appropriated by Lessee's governing body at its discretion and not at its obligation for such purpose) indemnify Acquisition Fund Custodian against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(i) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by Acquisition Fund Custodian hereunder, Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement.

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

(k) Lessee shall reimburse Acquisition Fund Custodian for all reasonable costs and expenses, including those of Acquisition Fund Custodian's attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund and the Delivery Costs Fund and the performance of Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Acquisition Fund or the Delivery Costs Fund.

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

(a) *Acquisition Contracts.* Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition and installation of the Equipment with moneys from the Acquisition Fund. Lessee represents that the estimated costs of the Energy Conservation Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits

and approvals, if any, for the acquisition, equipping and installation of the Energy Conservation Equipment, and the operation and maintenance thereof.

(b) *Authorized Acquisition Fund Disbursements.* Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring and installing the Energy Conservation Equipment.

(c) *Requisition Procedure.* Prior to disbursement from the Acquisition Fund there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of an Acceptance Certificate and Disbursement Request attached hereto as Schedule 1 (an “*Acceptance Certificate and Disbursement Request*”), stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due. Each such Acceptance Certificate and Disbursement Request shall be signed by an authorized representative of Lessee (an “*Authorized Representative*”) and approved by Lessor, shall be executed and delivered by Lessee to Lessor no later than the fifth Business Day next preceding the end of the Acquisition Period and shall be subject to the following:

1. Delivery to Lessor of a completed Acceptance Certificate and Disbursement Request executed by an Authorized Representative of Lessee and in substantially the form of Schedule 1 attached hereto.

2. Delivery to Lessor of invoices (and proof of payment of such invoices if Lessee seeks reimbursement) and any additional documentation reasonably requested by Lessor;

3. Delivery to Lessor of the signed Vendor Tax Letter(s) relating to the cost of acquiring and installing the portion of Energy Conservation Equipment for which payment is being sought; and

4. The disbursement shall occur during the Acquisition Period.

3. *Deposit to Acquisition Fund and Delivery Costs Fund.* Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited as follows: (a) \$12,946,596.29 into the Acquisition Fund and (b) \$195,000.00 into the Delivery Costs Fund. Nothing in this Agreement is intended, or shall be construed, to require Lessor to deposit any moneys other than the Acquisition Amount into the Acquisition Fund, the Delivery Costs Fund or any other fund or account in the event that amounts in the Acquisition Fund are insufficient to pay the Equipment Costs in full for the Energy Conservation Equipment.

4. *Excess Acquisition Fund Moneys.* Any funds remaining in the Acquisition Fund (including any funds transferred from the Delivery Costs Fund pursuant to Section 1(e) hereof) on the earlier of the two dates provided in Section 4.05 of the Lease shall be applied by Acquisition Fund Custodian to the prepayment of Rental Payments under the Lease subject to and in accordance with Sections 4.05 and 10.01(e) of the Lease.

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

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

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

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

(c) Acquisition Fund Custodian hereby represents and warrants that (i) the records of Acquisition Fund Custodian show that Lessee is the sole owner of the Collateral, (ii) Acquisition Fund Custodian has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (iii) Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral,

except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lessor under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Acquisition Fund Custodian shall promptly notify Lessor if any person requests Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(c) hereof, Acquisition Fund Custodian may allow Lessee to effect sales, trades, transfers and exchanges of Collateral within the Acquisition Fund and the Delivery Costs Fund, but will not, without the prior written consent of Lessor, allow Lessee to withdraw any Collateral from the Acquisition Fund or the Delivery Costs Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to Acquisition Fund Custodian, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Acquisition Fund or the Delivery Costs Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lessor to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lessor to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Acquisition Fund Custodian and Lessee hereby agree that any property held in the Acquisition Fund and the Delivery Costs Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code,

notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

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

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

If to Lessor:                   Banc of America Leasing & Capital, LLC  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration  
Fax: (443) 556-6977

If to Lessee:                   City of San Diego  
202 "C" Street, 9th Floor  
San Diego, California 92101  
Attn: Mary Lewis  
Chief Financial Officer  
Fax: (619) 533-3215

If to Acquisition  
Fund Custodian:               Deutsche Bank National Trust Company  
200 South Tryon Street, Suite 550  
Charlotte, NC 28202  
Attn: Michael Weber  
Phone: (704) 333-5744  
Fax: (704) 333-5852

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

Banc of America Leasing & Capital, LLC,  
as Lessor

City of San Diego, California  
as Lessee

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

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

Deutsche Bank National Trust Company,  
as Acquisition Fund Custodian

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

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

**SCHEDULE 1**

**TO THE ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT**

**FORM OF ACCEPTANCE CERTIFICATE AND DISBURSEMENT REQUEST**

Re: Taxable QECCB Equipment Lease Agreement dated as of April 15, 2011 (the “*Lease*”), between Banc of America Leasing & Capital, LLC, as Lessor, and the City of San Diego, California, as Lessee (Capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of April 15, 2011 (the “*Acquisition Fund Agreement*”) by and among Banc of America Leasing & Capital, LLC (“*Lessor*”), the City of San Diego, California (“*Lessee*”) and Deutsche Bank National Trust Company (“*Acquisition Fund Custodian*”), the undersigned on behalf of Lessee hereby (a) accepts for purposes of the Lease (described above) the Energy Conservation Equipment described below as of the Acceptance Date identified below and (b) requests that the Acquisition Fund Custodian pay the following persons (or reimburse Lessee) the following amounts from the Acquisition Fund created under the Acquisition Fund Agreement:

PAYEE’S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	DESCRIPTION OF ENERGY CONSERVATION EQUIPMENT ACCEPTED AND FOR WHICH DISBURSEMENT IS REQUESTED

The undersigned hereby certifies as follows:

(i) The Acceptance Date for the Energy Conservation Equipment for which disbursement is hereby requested is \_\_\_\_\_, 20\_\_\_\_.

(ii) The Energy Conservation Equipment for which disbursement is hereby requested has been delivered to Lessee and installed at the locations listed or identified on the attached schedule, has been fully and finally accepted by Lessee and has been found by Lessee to be in good working order.

(iii) An obligation in the stated amount has been incurred by Lessee, is a proper charge against the Acquisition Fund for Equipment Costs related to the Energy Conservation Equipment identified above and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof). Attached hereto is the original invoice with respect to such obligation.

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

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

(vi) The Energy Conservation Equipment for which disbursement is hereby requested is insured in accordance with Section 7.02 of the Lease. All signed Vendor Tax Letters relating to the Energy Conservation Equipment for which disbursement is hereby requested are attached hereto as required by the Lease and the Acquisition Fund Agreement.

(vii) No Material Adverse Change has occurred since the Funding Date. No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

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

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

[(x) IF APPLICABLE: Lessee hereby notifies Lessor and Acquisition Fund Custodian that, after payment or reimbursement of Equipment Costs for accepted Energy Conservation Equipment pursuant to this Acceptance Certificate and Disbursement Request, Lessee intends not to seek payment or reimbursement for any further Equipment Costs for Energy Conservation Equipment pursuant to the Lease, *provided* that Lessee need not deliver such an Acceptance Certificate and Disbursement Request as described in this clause (x) if Lessee has determined that application of amounts then remaining on deposit in the Acquisition Fund to prepayment of Rental Payments could adversely affect treatment of the Lease as a "*qualified energy conservation bond*" for federal



income tax purposes. Upon delivery of such an Acceptance and Disbursement Request as described in this clause (x), any balance in the Acquisition Fund shall be applied to prepayment of Rental Payments as provided in Section 4 of the Acquisition Fund Agreement and Sections 4.05 and 10.01(e) of the Lease.]

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

CITY OF SAN DIEGO, CALIFORNIA

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

Disbursement of funds from the Acquisition Fund in accordance with the foregoing Acceptance Certificate and Disbursement Request hereby is authorized

BANC OF AMERICA LEASING & CAPITAL, LLC,  
as Lessor under the Lease

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

**ATTACHMENT G**  
**VENDOR TAX LETTER**

(To be printed on Vendor Letterhead)

Banc of America Leasing & Capital, LLC  
11333 McCormick Road  
Hunt Valley, MD 21031

Re: City of San Diego, California  
Taxable QECB Equipment Lease Agreement dated as of April 15, 2011, between Banc of America Leasing & Capital, LLC, as Lessor, and City of San Diego, California, as Lessee (the "QECB Lease")

Gentlemen:

The **[Name of Vendor Contract]** dated \_\_\_\_\_ between **[Vendor]** and the City of San Diego, California, in the amount of \$\_\_\_\_\_, is financed with \$\_\_\_\_\_ of proceeds of the QECB Lease (defined above) for the purchase and installation of Cobra-head replacement light fixtures for approximately 28,700 street lights and related improvements and equipment (the "*Project*") as part of the City of San Diego, California's energy efficient Broad Spectrum Street Lighting program.

The Project-related invoice(s) (attached hereto) for the total amount of \$\_\_\_\_\_ dated \_\_\_\_\_ included California sales/use tax on such items where sales/use tax is due. The sales/use tax for such invoice(s) is \$\_\_\_\_\_.

Such sales/use tax was (will be) remitted to California on \_\_\_\_\_ **[At a minimum provide a date range or the quarter in which sales/use tax will be remitted]** under **[Vendor]**'s California sales/use tax registration number of \_\_\_\_\_.

**[Vendor Signature Block]**

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