

**EQUIPMENT LEASE PURCHASE AGREEMENT**

**BETWEEN**

**METRO FUTURES, INC.**, a California corporation, as Lessor

**AND**

[\_\_\_\_\_], a [\_\_\_\_\_], as Lessee

**DATED AS OF**

[\_\_\_\_\_]

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Lease Documents:

- Equipment Lease-Purchase Agreement;
- Exhibit A – Description of Equipment;
- Exhibit B - Equipment Schedule;
- Exhibit C – Notice and Acknowledgment of Assignment;
- Exhibit D-1 – Insurance Coverage Request;
- Exhibit D-2 – Self-Insurance Rider (if applicable)<sup>1</sup>;
- Exhibit E – Essential Use Certificate;
- Exhibit F – Incumbency Certificate;
- Exhibit G – Opinion of Lessee’s Counsel;
- Exhibit H – Tax Opinion of Lessee’s Counsel;
- Exhibit I – Bank Qualified Certificate (if applicable);
- Exhibit J – Post Issuance Tax Compliance Procedures;
- Exhibit K – Escrow Agreement;
- Exhibit L – Form Resolution of Lessee<sup>2</sup>;
- Exhibit M – Form 8038-G; and
- Exhibit N – Closing Memorandum/Payment Proceeds Direction.

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<sup>1</sup> NTD – to be “Intentionally Omitted” if not applicable

<sup>2</sup> NTD – to be revised depending on deal if authorization achieved through different method (i.e. council meeting).

## EQUIPMENT LEASE PURCHASE AGREEMENT

THIS EQUIPMENT LEASE PURCHASE AGREEMENT, (as amended or supplemented from time to time, this “**Lease Agreement**”) dated as of [\_\_\_\_\_, \_\_\_\_], between METRO FUTURES, INC., a California corporation, (together with its successors and/or assigns, the “**Lessor**”) whose mailing address is 12520 High Bluff Drive, Suite 345, San Diego, California 92130, the [\_\_\_\_\_] a [political subdivision][governmental organization], (the “**Lessee**”), whose mailing address is [\_\_\_\_\_] and [\_\_\_\_\_, a \_\_\_\_\_], as Escrow Agent (the “**Escrow Agent**”), whose mailing address is [\_\_\_\_\_];

### **WITNESSETH:**

WHEREAS, the Lessor has agreed to purchase and lease the Equipment (as hereinafter defined) to the Lessee, and the Lessee has agreed to lease back and purchase the Equipment from the Lessor, pursuant to the terms and conditions hereinafter set forth;

WHEREAS, the Equipment has been ordered from the manufacturers or suppliers, has been approved for ordering by the Governing Body (as hereinafter defined) or has been identified by the Governing Body, but there is expected to be a delay in payment of the purchase price by the Lessor and delivery of the Equipment to the Lessee, and in order to secure the obligations of the Lessor hereunder, the Lessee has requested the Lessor to set aside in escrow with the Escrow Agent, pursuant to the terms hereof, the purchase price of the Equipment;

NOW, THEREFORE, for and in consideration of the premises and of the covenants hereinafter contained, and other good and valuable considerations, the mutual parties hereto agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

For purposes of this Lease Agreement and any related documents, the following definitions will apply:

1.1 Acceptance Certificate. A certificate in the form attached as Exhibit A to the Escrow Agreement attached hereto as Exhibit K by which the Lessee accepts delivery of all or a portion of the Equipment.

1.2 Acceptance Date. Unless otherwise agreed to by the prior written consent of the Lessor, the Equipment installation date.

1.3 Authorized Representative. Shall mean, with respect to the Lessee, the Chairman (or similar designation) of the Governing Body or other person or officer approved by Lessee in writing.

1.4 Code. Shall mean the Internal Revenue Code of 1986, as amended.

- 1.5 Governing Body. Shall mean the [Board of Supervisors].
- 1.6 Concluding Payment. Shall have the meaning set forth in Article 18.
- 1.7 Commencement Date. Shall have the meaning set forth on Exhibit B.
- 1.8 Costs of the Equipment. The total cost of acquisition and installation of the Equipment, including costs of issuance (\$[\_\_\_\_\_]).
- 1.9 Default Rate. Shall have the meaning set forth in Section 4.3.
- 1.10 Equipment. The personal property described in Exhibit A to this Lease Agreement that is now or may hereafter from time to time become attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, substitutions, repairs, accessories, replacements and parts thereof.
- 1.11 Escrow Fund. The fund created under Article 5 hereof.
- 1.12 Event of Nonappropriation. Shall have the meaning set forth in Section 4.7(b).
- 1.13 Fiscal Year. Shall mean [\_\_\_\_\_].
- 1.14 Lease Term. The period of time described in Article 3 of this Lease Agreement.

## ARTICLE 2

### LEASE

The Lessor hereby rents and leases to the Lessee, and the Lessee hereby rents and leases from the Lessor, the Equipment listed on Exhibit A attached hereto and incorporated herein by reference. The Lessee shall be entitled to possession of each piece of the Equipment constituting a part of the Equipment and may retain possession of the Equipment so long as the Lessee is not in default under this Lease Agreement and the Lessee has not failed to appropriate any amounts required to be paid by it hereunder. THIS LEASE IS NOT A PLEDGE OF THE FULL FAITH AND CREDIT OF THE LESSEE, AND DOES NOT CREATE ANY OBLIGATION ON THE PART OF THE LESSEE EXCEPT AS SPECIFICALLY STATED HEREIN. Subject to Section 15.1 hereof, the Lessee's obligation to pay all Rent payable hereunder and the Lessee's obligations otherwise to perform its obligations under or with respect to the Lease and the other Lease Documents, are and shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, including (i) any right of setoff, counterclaim, recoupment, deduction, abatement, defense or other right which the Lessee may have against the Lessor, the manufacturer or vendor of the Equipment, or any other Person, for any reason whatsoever, including, those arising or allegedly arising out of claims (present or future, alleged or actual, and including claims arising out of strict liability in tort or negligence of the Lessor) of the Lessee against the Lessor under this Lease Agreement or otherwise, (ii) any defect in the title, condition, design, operation, or fitness for use of, or any damage to or loss or destruction of all or any portion of, the Equipment, or any interruption or cessation in the use or possession thereof by the Lessee or any other Person for any reason whatsoever, (iii) the existence of any collateral, guaranty or security interest, (iv)

any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee, (v) any force majeure, or (vii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. It is the intention of the parties that all Rent and other amounts due hereunder shall continue to be payable in all events in the manner and at the times set forth herein unless the obligation to do so shall have been terminated pursuant to the express terms hereof.

### ARTICLE 3

#### LEASE TERM

The lease term shall commence on the Commencement Date and shall terminate, except as otherwise expressly provided herein, upon the first to occur of: (a) the exercise by Lessee of the option to purchase the Equipment pursuant to Article 18 hereof; (b) Lessor's election to terminate this Lease Agreement pursuant to Articles 14 or 15; (c) Lessee's option to terminate this Lease Agreement pursuant to Section 4.7(b); pursuant to the provisions of Section 15.1(b) of this Lease Agreement or upon payment by the Lessee of the outstanding principal balance of funds advanced under this Lease Agreement.

### ARTICLE 4

#### RENTAL PAYMENTS

4.1 Amount and Times of Payment. As rental for the Equipment, the Lessee hereby agrees to pay rental payments hereunder for the Lease Term in the amounts and on the dates identified in Exhibit B. As set forth on Exhibit B and as provided below, 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.

4.2 Place of Payments. All rental payments required to be made to the Lessor hereunder shall be made at the Lessor's principal office or as may be otherwise directed by the Lessor or its assignee by draft or debit.

4.3 Late Charges. Whenever any rental payment or other amount payable to Lessor by Lessee hereunder is not paid within ten (10) business days after such due date, Lessee agrees to pay Lessor a late charge on the delinquent amount at the "**Default Rate,**" which is one percent (1%) per month, or the maximum amount permitted under applicable law, whichever is less.

4.4 Abatement of Rental Payments. There will be no abatement or reduction of rental payments by the Lessee for any reason, including but not limited to, any defense, recoupment, set off, counterclaim, or any claim (real or imaginary) arising out of or related to any defects, damages, malfunctions, breakdowns or infirmities of the Equipment. The Lessee assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever, it being the intention of the parties that the rental payments shall be made in all events unless the obligation to make rental payments is terminated as otherwise provided herein.

4.5 Allocation of Interest. A portion of each rental payment shall be allocated to interest, with the imputed interest based on a 360-day year consisting of twelve 30-day months.

4.6 Rental Adjustment<sup>3</sup>. The Lessee hereby designates its obligations hereunder as being within the \$10 million limitation described within Section 265(b) (3) of the Code, and represents and covenants that it will take no action which will directly or indirectly affect the exclusion of the interest component of the rental payments hereunder from gross income of the Lessor for Federal income tax purposes or the deductibility of any interest payments made by the Lessor, such actions including, but not limited to, the issuance and designation by the Lessee and its subordinate entities of more than \$10 million of tax-exempt obligations during the current calendar year. In the event the Lessee shall breach this representation or the Lessee or the Lessor shall receive notice from the Internal Revenue Service that the otherwise applicable exception set forth in Section 265(b)(3) of the Code is not available, the rental payments hereunder shall be adjusted to preserve the Lessor's after-tax economic yield with respect to the rental payments hereunder, taking into account any interest expense deductions lost by the Lessor as a direct or indirect result of the Lessee's actions. The Lessee hereby agrees to make adjusted rental payments hereunder in the event of a breach of the representations set forth hereinabove.

4.7 Appropriation.

(a) Lessee represents and warrants that: (i) it has made sufficient appropriations or has other legally available funds to pay all rental payments hereunder due during the first Fiscal Year hereunder; (ii) the officer of Lessee responsible for budget preparation will do all things lawfully within his/her power to obtain appropriated funds for the payment of rental payments and other amounts required to be paid hereunder in each next succeeding Fiscal Year for the Lease Term; and (iii) Lessee acknowledges that Lessor has relied upon these representations as an inducement to enter into this Lease. If an Event of Nonappropriation (hereinafter defined) shall occur, Lessee agrees, at Lessee's sole cost and expense, peaceably to deliver the corresponding Equipment to Lessor at such location in the continental United States as is specified by Lessor, in the condition required by Paragraph 8 of this Lease Agreement, on or before the effective date of termination.

(b) Notwithstanding any provision to the contrary in this Lease Agreement, Lessee may terminate this Lease at the end of any Fiscal Year of Lessee as identified in Exhibit B if sufficient funds are not appropriated by the Governing Body to pay rental payments and other amounts due hereunder during the next succeeding Fiscal Year (an "Event of Nonappropriation"). Lessee hereby agrees to notify Lessor at least 90 days prior to the last day of its then current Fiscal Year of the occurrence of an Event of Nonappropriation or, if nonappropriation has not occurred by that date, promptly upon the occurrence of an Event of Nonappropriation.

4.8 Unconditional Current Obligation. Except as expressly set forth in this Lease Agreement (including this Article 4), Lessee agrees that as of the Commencement Date, Lessee's obligations under this Lease Agreement are absolute and unconditional and shall continue without set-off, deduction, counterclaim, abatement, recoupment, or reduction and regardless of any disability of Lessee to use the Equipment or any part thereof because of any reason including, but not limited to, war, act of God, governmental regulations, strike, loss, damage, destruction, obsolescence, failure of or delay in delivery or failure of the Equipment to operate properly. Lessee's obligation to pay rental payments and any additional amounts payable hereunder

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<sup>3</sup> NTD – Section included in Bank Qualified Loans only.

constitutes a current obligation payable exclusively from legally available funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement.

## ARTICLE 5

### ESCROW FUND

5.1 Escrow Fund. On the Commencement Date, Lessor and Lessee shall enter into an escrow agreement in form and substance attached hereto as Exhibit K (an “**Escrow Agreement**”) dated the Commencement Date, between Lessor, Lessee, and Escrow Agent, relating to the non-interest bearing escrow fund (an “**Escrow Fund**”) created thereunder. On the Commencement Date, Lessor shall deposit: \$[\_\_\_\_\_] into the Escrow Fund to be held in escrow and applied upon the express terms and conditions of the Escrow Agreement for the acquisition of the equipment which shall be disbursed as provided for in the Closing Memorandum attached hereto and/or Escrow Agreement, each of even date herewith.

5.2 Intentionally Omitted.

5.3 Termination. This Escrow shall be terminated in accordance with the terms and conditions of the Escrow Agreement.

## ARTICLE 6

### RESPONSIBILITIES OF LESSEE

6.1 Care and Use. The Lessee shall use the Equipment in a careful and proper manner, in compliance with all applicable laws and regulations, and at its sole cost and expense, service, repair and maintain the Equipment so as to keep the Equipment in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Equipment as may from time to time become worn out, lost, stolen, destroyed or damaged or is unfit for use. Any and all additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Lease Agreement and included in the term “**Equipment**” as used in this Lease Agreement. If requested by the Lessor, the Lessee shall enter into or cause to be entered into, and maintained in full force and effect during the term of this Lease Agreement, standard maintenance contracts satisfactory to the Lessor covering the Equipment and shall comply with all its obligations thereunder. The Lessee shall furnish evidence to the Lessor of such signed maintenance agreement at or prior to the date of this Lease Agreement and the payment of all charges and premiums therefor. With Lessor’s prior written consent, Lessee may undertake maintenance of the Equipment by its employees in lieu of such a maintenance agreement. Substitute maintenance may be used if first approved by the Lessor in writing. Upon the early termination of this Lease Agreement pursuant to Article 14 and 15, the Lessee shall permit the Lessor to remove the Equipment from the premises in the same condition as originally received, ordinary wear and tear excepted, and in such a condition which will permit the Lessor to be eligible for such standard maintenance contract without incurring any expense to repair or rehabilitate the Equipment.

6.2 Inspection. The Lessor shall have the right upon reasonable prior notice to the Lessee to enter into and upon the premises where the Equipment is located to inspect the Equipment and observe its use during normal business hours.

6.3 Utilities. The Lessee shall pay all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility service, if any, furnished to or used in connection with the Equipment during the term of this Lease Agreement. There shall be no abatement of rental payments on account of interruption of any such services.

6.4 Taxes. The Lessee agrees to pay when due any and all taxes relating to the Equipment and the Lessee's obligations hereunder, including but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licenses and charges imposed on the ownership, possession or use of the Equipment by any governmental body or agency, together with any interest and penalties, other than taxes on or measured by the net income of the Lessor.

6.5 Alterations. Without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, the Lessee shall not make any alterations, modifications or attachments to the Equipment which cannot be removed without materially damaging the functional capabilities or economic value of the Equipment. Upon return of the Equipment and at the Lessor's request, the Lessee at its sole cost and expense, will remove all alterations, additions and attachments and repair the Equipment as necessary to return the Equipment to the condition in which it was furnished, ordinary wear and tear excepted.

6.6 Transportation and Installation Charges. The Lessee shall be responsible for all charges relating to the transportation of the Equipment to the Lessee's location and the installation at such location.

6.7 Insurance. The Lessee shall continuously maintain at its sole cost and expense or cause to be maintained insurance on the Equipment covering such risks as are customarily insured against by reasonable and prudent government bodies of like size for such equipment, and in such amounts at a minimum equal to the greater of the outstanding principal amount under this Lease Agreement or the replacement value of the Equipment with such deductibles as required, and with such insurance companies as shall be reasonably satisfactory to the Lessor. Lessor shall be named as an additional insured on any such policy and all insurance for loss or damage shall provide that losses if any, shall be payable to the Lessor. Reasonable evidence of all required liability insurance shall be provided to the Lessor. The Lessee shall pay the premiums therefor and deliver to the Lessor the policies of insurance or duplicates thereof and a certification in the form of Exhibit D-1 or other evidence reasonably satisfactory to the Lessor of such insurance coverage. Each insurer shall also agree by endorsement upon the policy or policies issued by it that it will give thirty (30) days prior written notice to the Lessor of cancellation, non-renewal, or material modification of such policy and ten (10) days prior written notice for non-payment of premium. The proceeds of such insurance, at the option of the Lessor, shall be applied: (a) toward the replacement, restoration or repair of the Equipment, or (b) toward payment of the obligations of the Lessee hereunder. The Lessee hereby appoints the Lessor as the Lessee's attorney-in-fact to make claim for, receive payment of, and execute all documents, checks or drafts received in payment of loss or damage

under any such insurance policy. If all or any part of the Equipment constitutes motor vehicles, such required insurance shall include without limitation comprehensive automobile liability coverage, medical payments coverage, uninsured motorist coverage and physical damage coverage to include comprehensive and collision and any other insurance as may be required from time to time by any government authority as a condition or in connection with Lessee's use of the Equipment. In lieu of the insurance policies described above, and with the consent of the Lessor, which consent shall not be unreasonably withheld, the Lessee may self-insure the Equipment by means of a self-insurance program whereby funds are set aside and maintained for the purpose of self-insuring the property of the Lessee. If Lessee chooses to self-insure the Equipment, Lessee will, at all times, provide Lessor a certification in the form of Exhibit D-2 together with evidence of the self-insurance program in form and substance satisfactory to Lessor. If at any time during the Lease Term, the Lessor in its reasonable discretion, deems it necessary so to do, the Lessee shall provide at its expense an insurance policy covering losses to the Equipment as set forth in this Section 6.7.

6.8 Risk of Loss. Lessee shall bear the entire risk of loss, theft, destruction of or damage to the Equipment or any part thereof from any cause whatsoever during the Lease Term and thereafter until redelivery to a location designated by Lessor, and shall not be relieved of the obligation to pay rental payments or any other obligation hereunder because of any such occurrence. If (a) the Equipment or any portion thereof hereunder is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof hereunder is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the net proceeds of any insurance claim (including self-insurance) or condemnation award to be applied, at Lessor's option, to (i) the prompt repair, restoration, modification or replacement of the Equipment so affected or (ii) the payment in full of the then applicable Concluding Payment. Any balance of net proceeds remaining after completion of such work or payment of such Concluding Payment shall be paid promptly to Lessee. If the net proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Concluding Payment in full, Lessee shall, at Lessor's direction and sole discretion, either complete the work or pay the then applicable Concluding Payment in full, and in either case pay any cost in excess of the amount of net proceeds, but only from legally available funds.

6.9 Performance by the Lessor of the Lessee's Responsibilities. Any performance required of the Lessee or any payments required to be made by the Lessee, if not timely performed or paid, may be performed or paid by the Lessor, and in that event, the Lessor shall be immediately reimbursed by the Lessee for these payments and for any costs and expense, legal or otherwise, associated with the payments or other performance by the Lessor, with interest thereon at the legal rate of interest, per annum.

6.10 Financial Statements. The Lessee agrees that it will furnish the Lessor at such reasonable times as the Lessor shall request, but in no event later than ten (10) days prior to the end of each Fiscal Year, current financial statements, including without limitation the Lessee's annual budget or other proof of appropriation for the ensuing Fiscal Year and such other information relating to Lessee's ability to continue the Lease Term for the next succeeding Fiscal Year, and permit the Lessor or its agents and representatives to inspect the Lessee's books and records and make extracts therefrom. Additionally, Lessee shall furnish to Lessor as soon as

available, but in no event later than 180 days after the end of each Fiscal Year, the audited financial statements of Lessee, in customary and reasonable detail including the report provided by Lessee's auditor. The Lessee represents and warrants to the Lessor that all financial statements which have been delivered to the Lessor, if any, and accurately reflect the Lessee's financial condition and there has been no material adverse change in Lessee's financial condition as reflected in the statements since the date thereof.

## **ARTICLE 7**

### **EQUIPMENT**

7.1 Title. Title to the Equipment and any and all additions, repairs, replacements or modifications thereto, shall be deemed to be vested in the Lessee subject to the rights of the Lessor hereunder from and after the date of the acceptance of the Equipment so long as the Lessee shall not be in default hereunder and/or this Lease Agreement shall not have been terminated pursuant to the provisions of Article 15 hereof, and shall vest permanently in the Lessee upon the completion of all rental payments, free and clear of any lien or security interest of the Lessor therein. Immediately upon the occurrence of an event of default by the Lessee hereunder or the termination of this Lease Agreement under Article 15, title to the Equipment (and all additions, repairs, replacements or modifications thereto) shall revert to the Lessor, free and clear of any right, title or interest of the Lessee unless the Lessor elects otherwise, without the necessity of any further action or the execution of any documents by the parties.

7.2 Security Agreement.

(a) The provisions of this Section 7.2(a) apply generally to all Equipment, regardless of the type, and the Escrow Fund (if any/applicable): To secure the performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor, and Lessor shall have and retain, a security interest constituting a first priority and perfected lien and security interest on the Equipment delivered hereunder and on any attachments, proceeds therefrom. Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, financing statements, landlord-tenant or mortgagee waivers, notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of Lessor's rights hereunder. As further security therefor, Lessee hereby grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time in the Escrow Fund and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party under the applicable provisions of the Uniform Commercial Code as enacted in the applicable state. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. Lessor shall have the right during normal hours, upon reasonable prior notice to Lessee, to enter upon the premises where the Equipment is located in order to inspect the Equipment.

(b) Solely with respect to Equipment that is not comprised of vehicles and during the Lease Term, ownership and legal title of all of the Equipment and all substitutions,

repairs, modifications, and replacements shall be in Lessee, and Lessee shall take all necessary action to vest such ownership and title in Lessee. Lessor does not own the Equipment, and, by this Lease Agreement, Lessor is merely financing the acquisition of the Equipment for the Lessee. Lessor has not been in the chain of title, does not operate, control or have possession or control over the Equipment, or Lessee's use, maintenance, operation, storage, or maintenance of the Equipment. Lessee is entitled to use and possession of the Equipment, subject to the rights of Lessor hereunder (including its interest in the Equipment as the lessor hereunder). If Lessor terminates this Lease Agreement pursuant to the terms hereof or an Event of Nonappropriation occurs hereunder, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons.

(c) Solely with respect to Equipment consisting of vehicles, the provisions of this Section 7.2(c) shall apply: Lessee agrees to either cause the original registration to reflect Lessor or its assignee as legal owner of the Equipment or endorse the certificate of ownership to show Lessor or its assignee as legal owner (as required by Section 6301 of the California Vehicle Code). Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, MSOs/Certificates of Origin, Title Applications, notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of Lessor's rights hereunder. During the Lease Term, Lessee shall be the owner (as defined in Section 460 of the California Vehicle Code) of the Equipment entitled to use and possession of the Equipment, subject to the rights of Lessor hereunder, which is the legal owner (as defined in Section 370 of the California Vehicle Code) of the Equipment. If Lessor terminates this Lease Agreement pursuant to Paragraph 17 hereof or an Event of Nonappropriation occurs hereunder, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee.

7.3 Personal Property. The Equipment is, and shall at all times be and remain, personal property notwithstanding that the Equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon, real property or any building thereon or any fixtures, or attached in any manner to what is permanent by any means of cement, plaster, nails, bolts, screws or otherwise. Upon request of the Lessor, Lessee shall obtain, as to any place where the Equipment is located, a waiver from the landlord and mortgagee thereof with respect to any rights they may have in and to the Equipment or the rights of levy or seizure thereon.

7.4 Liens. The Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or claim on or with respect to the Equipment or any interest therein, except for the lien and security interest of the Lessor therein created under this Lease Agreement. The Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time.

7.5 Inspection. Acceptance and Written Notice of Defects. Immediately upon receipt and installation of the Equipment, the Lessee shall inspect the Equipment. Unless the Lessee gives the Lessor written notice of each defect or other proper objection to the Equipment before the execution of the Acceptance Certificate, it shall be conclusively presumed upon execution of an Acceptance Certificate, as between the Lessor and the Lessee, that Lessee has fully inspected and acknowledged that the Equipment described in the Acceptance Certificate is in good condition and repair, has been properly installed and is performing satisfactorily, and that the Lessee is satisfied with and has accepted such Equipment in such good condition and repair.

7.6 Use of Equipment; Maintenance and Repairs. Lessee shall keep the Equipment within the State specified on Exhibit B in the “**Equipment Location**” section and Lessee shall not remove any of the Equipment therefrom without Lessor’s prior written consent. Lessee shall use the Equipment for the purpose for which such Equipment was designed. Lessee shall at all times and at the Lessee’s sole cost and expense operate, maintain, service and repair the Equipment in good operating order, repair and condition (A) in accordance and consistent with (1) the manufacturer’s warranties, recommendations and all maintenance and operating manuals or service agreements, whenever furnished or entered into, including any subsequent amendments or replacements thereof, issued by the manufacturer, (2) the requirements of all applicable insurance policies, (3) preserving all rights to any warranties, indemnities or other rights or remedies (such service to include monitoring the degradation of the Equipment and enforcing or assisting with the enforcement of the applicable warranties with respect to such degradation), (4) all applicable laws, ordinances, regulations or requirements of any governmental authority, official, board or department relating to its installation, possession, use or maintenance, and (5) prudent industry standards; and (B) without limiting the foregoing, so as to cause the Equipment to be in at least the same condition as when delivered to the Lessee hereunder, except for ordinary wear and tear. Lessee shall not make any alterations, additions, or improvements to the Equipment that are not readily removable without causing damage to or reducing the value of the Equipment. All alterations, additions, or improvements not readily removable shall become property of Lessor.

7.7 Essentiality. Lessee represents that, with respect hereto, (a) the use and operation of the Equipment is essential to its proper, efficient, and economic governmental operation and (b) the functions performed by the Equipment could not be transferred to other equipment available for its use. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last rental payment scheduled to be paid hereunder. On the Commencement Date, Lessee shall complete and provide Lessor a certificate in the form of Exhibit E.

7.8 Sublease. Lessee will not sublease or otherwise in any manner transfer, deliver or, except as expressly consented to by Lessor, relinquish possession (except on a temporary basis for repair or maintenance) or use of the Equipment without the prior written consent of Lessor.

## ARTICLE 8

### WARRANTIES AND REPRESENTATIONS OF THE LESSEE

The Lessee warrants and represents to the Lessor as follows, which representations and warranties shall be continuing.

(a) The Lessee is a political subdivision within the meaning of Section 103(c) of the Code and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such.

(b) The Lessee is authorized under the Constitution and laws of the state of California to enter into this Lease Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder.

(c) The execution and delivery of this Lease Agreement by or on behalf of the Lessee has been duly authorized by all necessary action of the Governing Body, and the Lessee has obtained such other approvals and consents as are necessary to consummate this Lease Agreement. The Lessee further represents and warrants that all requirements have been met and procedures have been followed in order to ensure the enforceability of this Lease Agreement in accordance with its terms.

(d) The Lessee has complied with such public bidding requirements as may be applicable to this Lease Agreement and has complied or will comply with such requirements for the acquisition of the Equipment hereunder.

(e) The Lessee shall cause to be executed and delivered to the Lessor (1) an incumbency certificate in substantially the form attached as Exhibit F hereto, (2) an Opinion of Lessee's Counsel in substantially the form attached as Exhibit G hereto and (3) a Tax Opinion of Lessee's Counsel in substantially the form attached as Exhibit H hereto.

(f) The Lessee has an immediate need for, and expects to make immediate use of all of the Equipment which need is not temporary or expected to diminish during the term of this Lease Agreement.

(g) The execution, delivery and performance of this Lease Agreement and transactions contemplated herein will not violate any judgment, order, law or regulation applicable to the Lessee or result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bond, loan or credit agreement or other instrument to which the Lessee is a party or by which it is bound.

(h) There are no actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened against or affecting the Lessee in any court or before any governmental commission, board or authority which, if adversely determined, would have a material adverse effect on the ability of the Lessee to perform its obligations hereunder.

(i) The Equipment is essential to and will be used only for the purpose of performing one or more governmental functions of the Lessee consistent with the scope of the Lessee's authority and will not be used in a trade or business of any person or entity. The Lessee shall execute and deliver to Lessor an Essential Use Certificate in form and substance reasonably satisfactory to the Lessor.

(j) The Equipment is, and shall remain during the term of this Lease Agreement, personal property.

(k) The Lessee will promptly and duly execute and deliver to the Lessor such further documents, instruments and assurances and take such further action as the Lessor may from time to time reasonably request in order to carry out the intent and purpose of this Lease Agreement and to establish and protect the rights and remedies created or intended to be created in favor of the Lessor hereunder.

(l) The lessee has sufficient funds in its budget for the current Fiscal Year to pay the aggregate amount of the rental payments due under this Lease Agreement during the current Fiscal Year.

## ARTICLE 9

### WARRANTIES AND REPRESENTATIONS OF THE LESSOR

The Lessor warrants and represents to the Lessee as follows, which representations and warranties shall be continuing.

(a) The Lessor is a financial institution duly incorporated under the laws of the state of California and is in good standing with the state of California and is duly authorized to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder;

(b) The Lessor has full power and authority to enter into this Lease Agreement and all other documents relating thereto and the performance of the Lessor's obligations hereunder have been duly and validly authorized, executed and delivered by the Lessor and approved under all laws, regulations and procedures applicable to Lessor and this Lease Agreement constitutes a valid, legal and binding obligation of the Lessor, enforceable in accordance with its terms;

(c) Lessor hereby assigns to Lessee, to the extent that it may lawfully do so, so long as no Event of Default and no Event of Nonappropriation shall have occurred and be continuing hereunder, all rights and benefits that Lessor may have under any warranty, guaranty or the like that may be made with respect to the Equipment by the manufacturer, seller and/or supplier (collectively, the "**Vendor**") thereof. To the fullest extent permitted by applicable law, Lessor shall not be liable to Lessee or any third party for any loss, damage, injury or expense of any kind or nature caused directly or indirectly by any of the Equipment or the use or maintenance thereof or any defect therein, the failure of operation thereof or by any interruption of service or loss of use thereof or for any loss of business or damage whatsoever and howsoever caused. Lessor makes no warranty as to the treatment of this Lease for tax or accounting purposes or as to the compliance of the Equipment with applicable government regulations or requirements. Lessee agrees to look solely to the Vendor for any claim arising from any defect, breach of warranty, failure or delay in delivery, mis-delivery or inability to use the Equipment for any reason whatsoever and Lessee's obligations to Lessor hereunder shall not in any manner be affected thereby, including (without limitation) Lessee's obligations to pay Lessor all rental payments and other amounts payable hereunder. Lessee has selected both the Equipment and the Vendor and acknowledges that Lessor has not participated in any way in Lessee's selection of the Equipment or the Vendor. Lessor has no obligation to install, erect, test, adjust, service or maintain the Equipment.

(d) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY LESSEE HAS SELECTED EACH ITEM, TYPE, QUALITY, QUANTITY AND SUPPLIER OF THE EQUIPMENT BASED UPON RECOMMENDATIONS OF ITS INDEPENDENT CONSULTANTS PRIOR TO HAVING REQUESTED LESSOR TO FINANCE THE SAME AND THAT LESSOR HAS NOT MADE ANY, AND MAKES NO, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO ANY MATTER RELATING TO THE SUITABILITY OF THE EQUIPMENT, ITS VALUE, DESIGN, CONDITION, DURABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OPERATION, MATERIALS, WORKMANSHIP AND/OR ITS QUALITY. AS BETWEEN LESSEE AND LESSOR, LESSEE LEASES, PURCHASES AND ACQUIRES THE EQUIPMENT “AS IS” “WHERE IS” AND “WITH ALL FAULTS.”

(e) Lessee agrees that Lessor shall have no liability or be obligated in any manner for any obligation, loss, expense, claim, damage, action, suit or proceeding arising out of, connected with, or resulting directly or indirectly from the Equipment, including without limitation, the manufacture, selection, delivery, installation, possession, condition, lease, use, operation or return of the Equipment, notwithstanding the full payment of all obligations under this Agreement.

## ARTICLE 10

### WARRANTIES AND REPRESENTATIONS OF THE ESCROW AGENT

The Escrow Agent warrants and represents to the Lessee as follows, which representations and warranties shall be continuing.

(a) The Escrow Agent is a [national banking association][financial institution duly incorporated under the laws of \_\_\_\_\_] and is in good standing with the state of California and is duly authorized to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder;

(b) The Escrow Agent has full power and authority to enter into this Lease Agreement and all other documents relating thereto and the performance of the Escrow Agent’s obligations hereunder have been duly and validly authorized, executed and delivered by the Escrow Agent and approved under all laws, regulations and procedures applicable to Escrow Agent and constitutes a valid, legal and binding obligation of the Escrow Agent, enforceable in accordance with its terms;

## ARTICLE 11

### TAX COVENANTS AND INDEMNIFICATION

11.1 Covenants. The parties assume that the Lessor can exclude the interest component of the rental payments from Federal gross income. The Lessee covenants and agrees that it will (i) rebate an amount equal to any excess earnings on the Escrow Fund to the Federal Government if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations, and maintain the records required by and otherwise comply with all regulations

applicable thereto; (ii) register in writing the owner of this Lease Agreement so as to meet the applicable requirements of Section 149(a)(3) of the Code; (iii) timely file a Form 8038-G with the Internal Revenue Service in accordance with Section 149(e) of the Code; (iv) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code; and (v) comply with all provisions and regulations applicable to excluding interest from Federal gross income pursuant to Section 103 of the Code.

11.2 Further Covenants. The Lessee further covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest portion of the rental payments made hereunder under Section 103 of the Code. The Lessee will not directly or indirectly use or permit the use of any proceeds available from the Lessor or any other funds of the Lessee, or take or omit to take any action that would cause the lease purchase obligation evidenced by this Agreement to be an “arbitrage bond” within the meaning of Section 148(a) of the Code. To that end, the Lessee will comply with all requirements of Section 148 of the Code to the extent applicable to the lease purchase obligation evidenced by this Agreement.

11.3 Indemnification. If the Lessor receives notice, in any form, from the Internal Revenue Service that it has determined that the Lessor may not exclude any interest paid hereunder from Federal gross income because the Lessee breached a covenant contained herein, then the Lessee shall pay to the Lessor, within ninety (90) days after the Lessor notifies the Lessee of such determination, an amount which, with respect to the rental payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all rental payments due through the date of such event), will restore to the Lessor its after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of payments and reinvestment at the after-tax yield rate) on the transaction evidenced by this Lease Agreement through the date of such payment. Additionally, the Lessee agrees that upon the occurrence of such an event, it shall pay as additional rent to the Lessor on such succeeding rental payment due date such amount as will maintain such after-tax yield to the Lessor. Notwithstanding the foregoing, the Lessee’s obligations under this paragraph shall be subject to the appropriation of funds for such purpose by the Governing Body.

## ARTICLE 12

### GENERAL INDEMNIFICATION

The Lessee hereby agrees to indemnify, protect and save the Lessor harmless, to the extent permitted by law, from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys’ fees, arising out of, connected with, or resulting directly or indirectly from the Equipment, including without limitation, the manufacture, selection, delivery, possession, condition, lease, use, operation or return of the Equipment. The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations due under this Lease Agreement. Notwithstanding the foregoing, the Lessee does not waive any sovereign immunity or other defense which may be available to it under applicable law.

## ARTICLE 13

### INTENTIONALLY OMITTED

## ARTICLE 14

### DEFAULT AND REMEDIES

14.1 Definition of Default. The Lessee shall be deemed to be in default hereunder upon the happening of any of the following events of default, which default (other than a monetary default under Section 14.1(a)) is not cured within thirty (30) days after receipt of written notice thereof (an “**Event of Default**”).

(a) The Lessee shall fail to make any rental payment or pay any other sum under this Lease Agreement when due or shall fail to perform or observe any term or condition or covenant of this Lease Agreement, subject to the last paragraph of this Section 14.1.

(b) Proceedings under any bankruptcy, insolvency, reorganization or similar litigation shall be instituted by or against the Lessee, or a receiver, custodian or similar officer shall be appointed for the Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within sixty (60) days after the institution or occurrence thereof.

(c) Any warranty, representation or statement made by the Lessee is found to be incorrect or misleading in any material respect on the date made.

(d) An attachment, levy or execution is levied upon or against the Equipment.

(e) Any insurance carrier cancels any insurance on the Equipment which is required hereunder without the Lessee first providing replacement coverage.

(f) The Equipment or any part thereof is abused, illegally used, misused, lost, destroyed or damaged beyond repair.

(g) The failure of the officer charged with the preparation of the Lessee’s budget to include in the budget for each Fiscal Year of the Lessee during the Lease Term a request that the Governing Body appropriate in such Fiscal Year the amount of the rental payments and other payments due under this Lease Agreement during such Fiscal Year.

Notwithstanding anything contained in this Section to the contrary, a failure by the Lessee to pay when due any payment required to be made under this Agreement or a failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, resulting from a failure by the Governing Body to appropriate money for such purposes after a request to appropriate in accordance with the requirements of Article 15, shall not constitute an Event of Default. Upon any such failure, the provisions of Article 15 shall be applicable.

14.2 Remedies on Default. Upon the occurrence of any Event of Default, the Lessor may exercise any one or more of the following remedies as the Lessor in its sole discretion shall elect.

(a) Declare the entire amount of rental payments hereunder immediately due and payable as to any or all items of Equipment without notice or demand to the Lessee.

(b) Proceed by appropriate court action to enforce performance by the Lessee of the applicable covenants of this Lease Agreement or to recover for the breach thereof including the payment of rental payments due or to become due hereunder or any deficiency therefor following disposition of the Equipment.

(c) Reenter and take possession of the Equipment wherever situated without any court order or other process of law and without liability for entering the premises and sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of the Lessee, and apply the proceeds of any such sale, lease, sublease, or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition costs, toward the balance due under this Lease Agreement.

(d) Terminate this Lease Agreement as to all or any part of the Equipment and use, operate, lease or hold the Equipment as the Lessor in its sole discretion may decide.

(e) Terminate the Escrow Fund in accordance with Section 5.3 hereof.

14.3 Further Remedies. A termination hereunder shall occur only upon notice by the Lessor to the Lessee and only with respect to such portion or portions of the Equipment as the Lessor specifically elects to terminate in such notice. Except as to those parts of the Equipment with respect to which there is a termination, this Lease Agreement shall remain in full force and effect and the Lessee shall be and remain liable for the full performance of all its obligations hereunder. All remedies of the Lessor are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

14.4 Reinstatement. Notwithstanding the exercise of any remedy granted by either Article 14 or Article 15 of this Lease Agreement, if all amounts that have become due and payable to the Lessor have been paid, all other things have been performed in respect of which there was a default and there has been paid the reasonable fees and expenses of the Lessor, including administrative expenses and attorneys' fees paid or incurred, then the Event of Default or termination for non-appropriation of funds under this Lease Agreement shall be waived without further action on the part of any party hereto. Upon such payment and waiver, this Lease Agreement shall be fully reinstated, as if it had never been terminated, and the Lessee shall be restored to the use and possession of the Equipment.

## ARTICLE 15

### NON-APPROPRIATION

#### 15.1 Nature of Obligations of the Lessee.

(a) Except as otherwise provided in this Article 15, the obligation of the Lessee to make rental payments and all other payments provided for in this Lease Agreement and to perform its obligations under this Lease Agreement will be absolute and unconditional, and such rental payments and other amounts will be payable without any rights of set-off, recoupment or counterclaim that the Lessee might have against the Lessor or any other person and whether or not the Equipment is used by the Lessee or available for use by the Lessee.

(b) While recognizing that it is not empowered to make any binding commitment beyond the current Fiscal Year of the Lessee, it is the current intention of the Lessee to make sufficient annual appropriations during the Lease Term to pay all rental payments and other amounts required to be paid by the Lessee under this Lease Agreement. Notwithstanding anything in this Lease Agreement to the contrary, the Lessee's obligation to pay the cost and expense of performing its obligations under this Lease Agreement, including without limitation its obligations to pay all rental payments and all other amounts required to be paid by the Lessee under this Lease Agreement, are subject to and dependent upon appropriations being made from time to time by the Governing Body for such purpose. The Lessee directs the Authorized Representative or other officer charged with the responsibility of preparing the Lessee's budget to include in the budget for each Fiscal Year of the Lessee during the Lease Term a request that the Governing Body appropriate in the Fiscal Year the amount of rental payments and other payments due under this Lease Agreement during such Fiscal Year. The Lessee shall notify the Lessor in writing each year during the Lease Term that such budget request has been made as soon as practicable following the submission of the Lessee's annual budget to the Governing Body. If at any time during any Fiscal Year of the Lessee, the amount appropriated in the budget of the Lessee for the Fiscal Year is insufficient to pay when due the rental payments and other amounts due under this Lease, the Lessee directs the Governing Body (or other officer charged with responsibility for preparing the Lessee's budget) to submit to the Governing Body at the next scheduled meeting of the Governing Body, or as promptly as practicable, but in any event within 45 days, a request for a supplemental appropriation sufficient to cover the deficit.

(c) Termination of this Lease Agreement pursuant to this Section 15.1 as a result of non-appropriation shall not be deemed to be an Event of Default, but such termination shall entitle the Lessor to exercise any one or more of the remedies set forth in Sections 14.2(c), (d) or (e). Section 14.4 shall apply to any termination of this Lease Agreement pursuant to this Article 15.

15.2 Notice of Appropriation. The Lessee shall give notice to the Lessor by no later than June 30 of each year of the amount budgeted by the Lessee and appropriated by the Governing Body for all payments required to be made by the Lessee under the Lease Agreement in the Fiscal Year commencing on the immediately succeeding July 1 and whether such amount is sufficient to meet all such required payments during such period.

15.3 Non-Substitution. The Lessee acknowledges and agrees that the non-appropriation provisions of Section 15.1 hereof are not intended to be used as a substitute for convenience termination nor for the purpose of replacing the Equipment with other substantially identical property. The Lessee, to the extent permitted by applicable law, acknowledges and agrees not to utilize such provisions for such purposes.

## **ARTICLE 16**

### **ASSIGNMENT**

16.1 Assignment By Lessee. The Lessee agrees not to sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Lease Agreement or the Equipment (except for the lien and security interest of the Lessor therein) or to remove the Equipment from its place of installation without the Lessor's prior written consent which shall not be unreasonably withheld. The Lessee's interest herein may not be assigned or transferred by operation of law.

16.2 Assignment By The Lessor. The Lessor may, at any time and from time to time, assign all or any part of its interest in the Equipment or this Lease Agreement, including without limitation, the Lessor's rights to receive the rental payments and any additional payments due and to become due hereunder. The Lessee agrees that this Lease Agreement may become part of a pool of agreement obligations at the Lessor's or its assignee's option. The Lessor or its assignees may assign or reassign either the entire pool or any partial interest herein. The Lessee agrees to execute any document reasonably required by the Lessor in connection with any assignment; provided, however, no such assignment of reassignment shall impose any additional obligations on the Lessee beyond those provided for in this Lease Agreement.

After the giving of notice described above to the Lessee, the Lessee shall therefore make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

16.3 Escrow Assignment By the Lessor. The Escrow Agent may freely assign all or any part of its interest in the Escrow Fund established pursuant to Article 5 hereof in connection with an assignment by the Lessor of the Lease Agreement.

## **ARTICLE 17**

### **NATURE OF AGREEMENT**

The Lessor and the Lessee agree that it is their intention that, for federal income tax purposes, the interest of the Lessor in the Equipment is as a secured party and the interest of the Lessee is as a debtor, and that the Lessor neither has nor will have any equity in the Equipment. It is the agreement of the Lessor and the Lessee that the aggregate rental payments provided for hereunder constitute the purchase price of the Equipment together with the interest on the unamortized amount thereof over the term of this Lease Agreement, that each installment of rent constitutes principal and interest, which fully amortizes the purchase price of the Equipment,

together with interest, over the term of this Lease Agreement, and that upon the due and punctual payment and performance of the rental payments and other amounts and obligations under this Lease Agreement, title to the Equipment shall vest permanently in Lessee as provided in this Lease Agreement, free and clear of any lien or security of the Lessor therein.

## ARTICLE 18

### OPTION TO PURCHASE

At the option of Lessee, and provided that no Event of Default has occurred and is continuing hereunder, Lessor's interest in all, but not less than all, of the Equipment will be transferred, conveyed and assigned to Lessee, thereby vesting title to the Equipment permanently in Lessee, and this Lease shall terminate: (a) upon payment in full of the rental payments and all other payments then due hereunder or (b) on any rental payment date hereunder, by paying to Lessor, in addition to the rental payment due on such date, an amount equal to the concluding payment (the "**Concluding Payment**") shown for such rental payment date in the rental payment schedule in Exhibit B. Lessee shall not have the option to purchase the Equipment hereunder as provided in the foregoing clause (b) on any rental payment date hereunder for which a Concluding Payment is not stated in the rental payment schedule. Notwithstanding anything to the contrary contained herein, the purchase option in this Article 18 is non-assignable and non-transferrable.

This option to purchase may be exercised by the Lessee on any Payment Date on or after [\_\_\_\_\_] and is conditioned upon:

(a) the Lessee's having performed all of the terms and conditions of the Lease Agreement between the parties other than the payment of monies not yet due and payable under this Lease Agreement;

(b) the Lessee's giving written notice to the Lessor of its election to exercise the option not less than sixty (30) days prior to the date of exercise of the option by the Lessee; and

(c) the Lessee's payment of the purchase price in cash at the time of the exercise of the option.

## ARTICLE 19

### MISCELLANEOUS

19.1 Waiver. No covenant or condition of this Lease Agreement can be waived except by the written consent of the Lessor. Any failure of the Lessor to require strict performance by the Lessee or any waiver by the Lessor of any terms, covenants or agreements herein shall not be construed as a waiver of any other breach of the same or of any other term, covenant or agreement herein.

19.2 Severability. In the event any portion of this Lease Agreement shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Lease Agreement shall continue in full force and effect.

19.3 Governing Law. This Lease Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of California.

19.4 Notice. All notices made or required to be given pursuant to this Lease Agreement shall be in writing and shall be deemed duly served if and when mailed, certified or registered mail, postage prepaid, return receipt requested, to the other party at its address set forth above or at such other address as such party shall hereafter designate in writing.

If to the Escrow Agent, address to:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Email: [\_\_\_\_\_]

If to the Lessor, address to:

Metro Futures, Inc.  
12520 High Bluff Drive, Suite 345  
San Diego, California 92130  
Attention: Brad Chapman  
Email: Brad@absenergy.com

If to the Lessee, address to:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Email: [\_\_\_\_\_]

19.5 Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease Agreement.

19.6 Entire Agreement. This Lease Agreement, together with any schedules hereto, constitutes the entire agreement between the parties and shall not be modified, amended, altered or changed except by written agreement signed by the parties.

19.7 Binding Effect. Subject to the specific provisions of this Lease Agreement, this Lease Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

19.8 Time. Time is of the essence of this Lease Agreement.

19.9 Counterparts. This Lease Agreement, and any exhibit hereto, may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

19.10 No Third-Party Beneficiaries. This Lease Agreement and any documents or certificates executed in connection with, or pursuant to it, are intended only for the benefit of the Lessor, the Lessee and the Escrow Agent, and no rights are intended, or shall be deemed to be, granted to any other parties thereby.

19.11 Exhibits. This Agreement includes the Exhibits attached hereto, all of which Exhibits are made a part hereof for all purposes. Lessee and Lessor agree that if any Exhibit to this Agreement contains blanks, the same shall be completed correctly and in accordance with this Agreement prior to or at the time of the execution and delivery thereof.

*[Remainder of page intentionally left blank signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed as of the day and year first above written.

LESSOR:

**METRO FUTURES, INC.**, a California corporation

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

LESSEE:

[\_\_\_\_\_, a \_\_\_\_\_]

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

ESCROW AGENT:

[\_\_\_\_\_, a \_\_\_\_\_]

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

**EXHIBIT A**

**DESCRIPTION OF EQUIPMENT**

The Equipment shall mean [\_\_\_\_\_].

**EXHIBIT B**  
**EQUIPMENT SCHEDULE**

1. Description of the Equipment: See Exhibit A
2. Equipment Location: [\_\_\_\_\_]
3. Rental Payment Schedule: The rental payments shall be made for the Equipment as follows: See attached Schedule 1 to Exhibit B.

\* Assumes that all rental payments and additional rentals due on and prior to that date have been paid.

4. Interest Rate: [\_\_\_\_\_]%
5. Commencement Date: [\_\_\_\_\_]
6. Scheduled Lease Term: [\_\_\_\_\_] years
7. Lessee's current Fiscal Year extends from [\_\_\_\_\_].
8. The terms and provisions of the Equipment Lease-Purchase Agreement described above are hereby incorporated into this Schedule by reference and made a part hereof.
9. Lessee hereby represents, warrants, and covenants that (i) its representations, warranties, and covenants set forth in the Equipment Lease-Purchase Agreement are true and correct as though made on the date of execution of this Schedule, and (ii) sufficient funds have been appropriated by Lessee for the payment of all rental payments due under this Schedule during Lessee's current Fiscal Year.
10. Interest, if any, accruing from the Commencement Date to the actual date of funding shall be retained by Lessor as additional consideration for entering into this Schedule.

[\_\_\_\_\_] as Lessee

METRO FUTURES,  
as Lessor

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

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

**SCHEDULE 1 TO EXHIBIT B**

**[INSERT RENTAL PAYMENT SCHEDULE]**

**EXHIBIT C**

**NOTICE AND ACKNOWLEDGEMENT OF SALE OF RENTAL PAYMENTS AND  
ASSIGNMENT OF LEASE AGREEMENT AND ESCROW AGREEMENT**

Metro Futures, Inc. (“**Lessor**”) and [\_\_\_\_\_] (“**Lessee**”) have entered into an that certain Equipment Lease-Purchase Agreement dated [\_\_\_\_\_] (the “**Lease Agreement**”), under which Lessee has, or will have prior to its execution hereof, leased equipment (the “**Equipment**”) described therein.

Lessee hereby acknowledges that, pursuant to the terms of the Lease Agreement, Lessor has assigned its right, title, and interest in and to the Lease Agreement, the leased Equipment, and the rental payments to [\_\_\_\_\_] (“**Assignee**”).

Lessee is hereby directed to pay any and all rental payments and other amounts due under the Lease Agreement to Assignee, as directed by Assignee or a paying agent acting on behalf of Assignee, pursuant to the instructions contained in any invoice or notice. Lessee will also direct any and all correspondence, notice and servicing requests to the Assignee at the following address:

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

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

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

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

Date: [\_\_\_\_\_] [\_\_\_\_\_] , as Lessee

By: \_\_\_\_\_
Name: [\_\_\_\_\_]
Title: [\_\_\_\_\_]

**EXHIBIT D-1**

**INSURANCE CERTIFICATION<sup>4</sup>**

Metro Futures, Inc.  
12520 High Bluff Drive, Suite 345  
San Diego, California 92130

[\_\_\_\_\_, \_\_\_\_]

Re: That certain Equipment Lease-Purchase Agreement dated [\_\_\_\_\_]

In connection with the above referenced Lease Agreement, [\_\_\_\_\_], as lessee (the “Lessee”) certifies that it has instructed the insurance agent named below:

Name of Agent: [\_\_\_\_\_]
Address: [\_\_\_\_\_]
Phone: [\_\_\_\_\_]

to issue the following insurance coverages:

- 1. Liability Insurance. Lessee is required to maintain public liability insurance, personal injury and property damage with policy limits of \$3,000,000. The policy should be endorsed to name [\_\_\_\_\_] (the “Additional Insured”) as an additional insured.
- 2. Casualty Insurance. Lessee is required to maintain all risk extended coverage, malicious mischief and vandalism insurance for the Equipment described in the above-referenced Equipment Schedule in an amount not less than the greater of [\_\_\_\_\_] or the full replacement cost of the Equipment. Such insurance shall be endorsed to name the Additional Insured and its successors and or assigns as a co-loss payee with respect to such Equipment.

The required insurance should also be endorsed to give the Additional Insured at least 30 days prior written notice of the effective date of any material alteration or cancellation of coverage, and an endorsement confirming that the interest of the Additional Insured shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee.

<sup>4</sup> NTD – Complete only if Lessee is not self-insuring

Proof of insurance coverage will be provided to the Additional Insured prior to and/or commensurate with the later of the Commencement Date of the Lease or the delivery and acceptance of the Equipment.

Very truly yours,

[\_\_\_\_\_], as Lessee

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

**EXHIBIT D-2**

**INSURANCE CERTIFICATION<sup>5</sup>**

Metro Futures, Inc.  
12520 High Bluff Drive, Suite 345  
San Diego, California 92130

[ \_\_\_\_\_, \_\_\_\_\_ ]

Re: That certain Equipment Lease-Purchase Agreement dated [ \_\_\_\_\_ ]

In connection with the above referenced Lease Agreement, [ \_\_\_\_\_ ], as lessee (the “**Lessee**”) certifies that it participates in an actuarially sound self insurance program for property damage and public liability risks.

The following is attached (check all that apply):

- Letter from risk manager describing self-insurance program
- Other evidence of Lessee’s participation in self-insurance program

Very truly yours,

[ \_\_\_\_\_ ], as Lessee

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

Name: [ \_\_\_\_\_ ]

Title: [ \_\_\_\_\_ ]

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<sup>5</sup> NTD – Complete only if Lessee is self-insuring

**EXHIBIT E**

**ESSENTIAL USE CERTIFICATE**

Metro Futures, Inc.  
12520 High Bluff Drive, Suite 345  
San Diego, California 92130

[\_\_\_\_\_, \_\_\_\_]

Re: Equipment Lease-Purchase Agreement dated [\_\_\_\_\_]

1. What is the specific use of the Equipment?
  
2. What increased capabilities will the Equipment provide?
  
3. Why is the Equipment essential to your ability to deliver governmental services?
  
4. Does the Equipment replace existing equipment?  
(If so, please explain why you are replacing the existing equipment)
  
5. Why did you choose this specific Equipment?
  
6. For how many years do you expect to utilize the Equipment?

Very truly yours,  
[\_\_\_\_\_], as Lessee

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

**EXHIBIT F**

**INCUMBENCY CERTIFICATE**

I, [\_\_\_\_\_] , do hereby certify that I am the [\_\_\_\_\_] of the [\_\_\_\_\_] (“**Lessee**”), which is a [\_\_\_\_\_] duly established and validly existing as a [\_\_\_\_\_] of the State of California.

I hereby certify that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the Lessee holding the offices set forth opposite their respective names. I further certify that:

- (i) The signatures set opposite their respective names and titles are their true and authentic signatures, and
- (ii) Such officers have the authority on behalf of such entity to:
  - a. Enter into that certain Equipment Lease-Purchase Agreement dated [\_\_\_\_\_] (the “**Lease Agreement**”), between Lessee and Metro Futures, Inc., as lessor, and that certain Escrow Agreement dated as of [\_\_\_\_\_] (the “**Escrow Agreement**”) between Lessee, Metro Futures, Inc., and [\_\_\_\_\_] , as escrow agent; and
  - b. Execute certificate, documents, and agreements relating to the Lease Agreement and Escrow Agreement on behalf of Lessee.

NAME	TITLE	SIGNATURE
[_____]	[_____]	_____

IN WITNESS WHEREOF, I have duly executed this Certificate on behalf of the Lessee.

[\_\_\_\_\_, \_\_\_\_]

\_\_\_\_\_  
Name: [\_\_\_\_\_]   
Title: [\_\_\_\_\_]

**EXHIBIT G**

**[Print on Counsel Letterhead]**

**OPINION OF LESSEE’S COUNSEL**

[ \_\_\_\_\_ \_\_, \_\_\_\_ ]

Metro Futures, Inc.  
12520 High Bluff Drive, Suite 345  
San Diego, California 92130

Re: That certain Equipment Lease-Purchase Agreement dated [ \_\_\_\_\_ ]

Ladies and Gentlemen:

As counsel to the [ \_\_\_\_\_ ] (the “**Lessee**”), I have examined that certain Equipment Lease-Purchase Agreement dated as of [ \_\_\_\_\_ ] (the “**Lease Agreement**”), between the Lessee and Metro Futures, Inc., as lessor (“**Lessor**”), the form of the Escrow Agreement, together with the Disbursement Request Form and Certificate of Acceptance (collectively, the “**Escrow Agreement**”), and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement and the Escrow Agreement. The Lease Agreement and the Escrow Agreement are herein collectively referred to as the “**Transaction Documents**.” Based upon the foregoing examination and upon an examination of such other documents and matters of law as we have deemed necessary or appropriate, we are of the opinion that:

1. The Lessee is a political subdivision of the State of California and operates under a Governing Board, and the laws of the State of California with full power and authority to enter into the Transaction Documents.

2. The Transaction Documents have each been duly authorized, executed, and delivered by the Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors’ rights generally.

3. The Equipment to be leased pursuant to the Lease Agreement constitutes personal property and, when subjected to use by the Lessee, will not be a fixture under applicable law.

4. The Lessee has complied with any applicable public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. By proper action, the Governing Body of the Lessee authorized the execution and delivery of the Transaction

Documents and certain other matters, which actions were duly taken at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.

5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the Governing Body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement.

6. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation 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 or on the Equipment (as such term is defined in the Lease Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound. Notwithstanding the foregoing, upon the due and timely filing of a UCC-1 and a Title Application and/or Certificate of Title (the latter solely with respect to Equipment constituting titled vehicles), the Lessor will have a perfected security interest in the Equipment.

This opinion may be relied upon by Lessor and purchasers and assignees of Lessor's interests in the Lease Agreement.

Respectfully submitted,

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**EXHIBIT H**

**[Print on Counsel Letterhead]**

**TAX OPINION OF LESSEE’S COUNSEL**

[ \_\_\_\_\_ \_\_, \_\_\_\_ ]

Metro Futures, Inc.  
12520 High Bluff Drive, Suite 345  
San Diego, California 92130

Re: That certain Equipment Lease-Purchase Agreement dated [ \_\_\_\_\_ ]

Ladies and Gentlemen:

We have acted as special tax counsel to [School District/Government Org] (the “**District**”), in connection with the execution and delivery of the [Energy Conservation Equipment Lease-Purchase Agreement and Equipment Schedule], both dated [Date] (the “**Lease Agreement**”), between the District and Metro Futures (the “**Corporation**”). Pursuant to an Assignment Agreement dated [Date], the Corporation has assigned its interests in the Lease Agreement to [Bank Partner] (the “**Bank**”). Capitalized terms used herein and not otherwise defined have the meanings ascribed thereto in the Lease Agreement.

In such connection, we have reviewed the Lease Agreement, the Post-Issuance Tax Compliance Procedures certificate of the District dated the date hereof (the “**Tax Certificate**”), the opinion of [Law Firm] dated the date hereof (the “**Validity Opinion**”), and such other certified proceedings and other documents, and we have made such investigations of law, as we deem necessary to render this opinion.

Insofar as the opinions expressed below relate to factual matters, we have relied upon representations and information supplied to us by the District and its officers. In the course of our representation, nothing has come to our attention that caused us to believe that any of the factual representations upon which we have relied are untrue, but we have made no other factual investigations. We have assumed that all documents and certificates that we have reviewed, and the signatures thereto, are genuine.

In arriving at the conclusions hereinafter expressed, we are not expressing any opinion or view on, and with your permission are relying on the Validity Opinion regarding and are assuming, the due authorization, execution, and delivery of the Lease Agreement by the District.

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

1. The portion of the rental payments designated as and constituting interest paid by the District pursuant to the Lease Agreement and received by the Bank is excludable from gross income for federal income tax purposes and is not a specific preference item for purposes of the

federal alternative minimum tax. The foregoing opinions assume the timely filing of a properly completed Form 8038-G, "Information Return for Tax-Exempt Governmental Obligations," with the Internal Revenue Service Center in Ogden, Utah, on or before August 15, 20[\_\_\_]. The foregoing opinions are further subject to the condition that the District comply with all the other requirements of the Internal Revenue Code of 1986 that must be satisfied subsequent to the delivery of the Lease Agreement in order that such interest be, or continue to be, excludable from gross income for federal income tax purposes. The District has covenanted to comply with each such requirement in the Tax Certificate and the Lease Agreement. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of delivery of the Lease Agreement. We express no opinion regarding other federal tax consequences arising with respect to the accrual or receipt of such interest or the ownership or disposition of an interest in the Lease Agreement.

2, The portion of the rental payments designated as and constituting interest paid by the District pursuant to the Lease Agreement and received by the Bank is exempt from State of California personal income taxes.

The opinions set forth above are further qualified as follows:

- a. Our opinions are limited to the matters expressly set forth herein and no opinion is to be implied or may be inferred beyond the matters expressly so stated;
- b. We are licensed to practice law in the State of California; accordingly, the foregoing opinions only apply insofar as the laws of the State of California and the United States may be concerned, and we express no opinion with respect to the laws of any other jurisdiction;
- c. We disclaim any obligation to update this opinion for events occurring after the date hereof.

This letter is furnished by us as counsel to the District. No attorney-client relationship has existed or exists between our firm and the Bank or the Corporation in connection with the delivery of the Lease Agreement or by virtue of this letter. This letter is delivered to the addressees solely for their benefit and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person.

Respectfully submitted,

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**EXHIBIT I**

**BANK-QUALIFIED DESIGNATION<sup>6</sup>**

[\_\_\_\_\_], as lessee, (the “**Lessee**”) under that certain Equipment Lease-Purchase Agreement (the “**Lease**”) dated as of [\_\_\_\_\_] to which this Designation is attached, hereby designates the Lease as a “qualified tax-exempt obligation” for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Lessee hereby represents that the Lessee is a “qualified small issuer” in that it reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Lease) the aggregate principal amount of which exceed \$10,000,000 during the calendar year in which the Lease is executed and delivered and interest commences to accrue thereunder; and that the Lease is being entered into and will be used in connection with public purposes.

This Designation is attached to and made a part of the Lease and inures to the benefit of the Lessor and its successors and/or assigned.

EXECUTED as of this [\_\_] day of [\_\_\_\_], [\_\_\_\_\_].

[\_\_\_\_\_], as Lessee

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

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<sup>6</sup> NTD – Include only if Bank Qualified transaction. If not “Intentionally Omit” exhibit.

## EXHIBIT J

### POST-ISSUANCE TAX COMPLIANCE PROCEDURES

Dated: [\_\_\_\_\_]

The following certificate is delivered in connection with the execution and delivery of the Equipment Lease-Purchase Agreement dated [\_\_\_\_\_] (the “**Lease Agreement**”), entered into between the [\_\_\_\_\_] (the “**Lessee**”) and Metro Futures, Inc. (the “**Corporation**”). Capitalized terms used herein have the meanings defined in the Lease Agreement.

#### **Section 1. In General.**

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the “**Equipment**”) to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Equipment Schedule executed under the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the “**Financing Documents**”). As described in the Financing Documents, Lessor shall apply \$[\_\_\_\_\_] (the “**Principal Amount**”) toward the acquisition of the Equipment and closing costs, and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the Governing Body’s approval or other official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule. The Principal Amount will be deposited in escrow by Lessor on the date of issuance of the Financing Documents and held by [\_\_\_\_\_], as escrow agent (the “**Escrow Agent**”) pending acquisition of the Equipment under the terms of that certain Escrow Agreement dated as of [\_\_\_\_\_] (the “**Escrow Agreement**”), by and between Lessor, Lessee and Escrow Agent.

1.4. Lessee will timely file for each payment schedule issued under the Lease a Form 8038-G (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC) relating to such Lease with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the “**Code**”).

1.5. The Lease is designated a “qualified tax-exempt obligation” for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. In that regard, the Lessee is a “qualified small issuer” in that it reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Lease) the aggregate principal amount of which exceed \$10,000,000 during the calendar year in which the Lease is executed and delivered and interest commences to accrue thereunder; and that

the Lease is being entered into and will be used in connection with public purposes.<sup>7</sup>

## **Section 2. Non-Arbitrage Certifications.**

2.1. The Rental Payments due under the Financing Documents will be made with monies retained in Lessee's general operating fund (or an account or subaccount therein). No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefor.

2.2. There have been and will be issued no obligations by or on behalf of Lessee that would be deemed to be (i) issued or sold within fifteen (15) days before or after the date of issuance of the Financing Documents, (ii) issued or sold pursuant to a common plan of financing with the Financing Documents and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.

2.3. Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.

2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.

2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

## **Section 3. Disbursement of Funds; Reimbursement to Lessee.**

3.1 It is contemplated that the entire Principal Amount will be used to pay the acquisition cost of Equipment to the vendors or manufacturers thereof or for any financial advisory or closing costs, provided that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2 below are satisfied.

3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following conditions have been satisfied:

- (a) If applicable, Lessee adopted a resolution or otherwise declared its official

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<sup>7</sup> NTD – to be included only if bank qualified transaction. If not “Intentionally Omit” section.

intent in accordance with Treasury Regulation § 1.150-2 (a copy of which will be provided to Lessor, if applicable, the “**Declaration of Official Intent**”), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to the Vendor (as defined in the Lease Agreement) not earlier than sixty (60) days before Lessee adopted the Declaration of Official Intent;

(b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18) months after the items of Equipment to which such payment relates were placed in service;

(c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and

(d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

#### **Section 4. Use and Investment of Funds; Temporary Period.**

4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee’s control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate. No portion of the Principal Amount will be used to acquire investments that do not carry out the governmental purpose of the Financing Documents and that have a substantially guaranteed yield of four (4) years or more.

4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited under the Escrow Agreement to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by [\_\_\_\_\_].

(b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless (i) the entire Principal Amount is expended on the Equipment by the date that is the six-month anniversary of the Financing Documents or (ii) the Principal Amount is expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within six months from the date of issuance of the Financing

Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within 12 months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents.

(c) Lessee hereby covenants that (i) Lessee is a governmental unit with general tax powers; (ii) the Lease is not a “private activity bond” under Section 141 of the Code; (iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee; and (iv) the aggregate principal amount of all tax-exempt obligations (including the Lease) issued by Lessee and its subordinate entities, if any, during the current calendar year is [not]<sup>8</sup> reasonably expected to exceed \$10,000,000. Accordingly, the rebate requirements of Section 148(f) of the Code are treated as being met, in lieu of the spending exceptions set forth in paragraph (b) above.

### **Section 5. Escrow Account.**

The Financing Documents provide that the monies deposited in escrow shall be invested until payments to the vendor(s) or manufacturer(s) of the Equipment are due. Lessee will ensure that such investment will not result in Lessee’s obligations under the Financing Documents being treated as an “arbitrage bond” within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended (the “Code”), respectively. Any monies which are earned from the investment of these funds shall be labeled as interest earned. All such monies will be disbursed on or promptly after the date that Lessee accepts the Equipment. Lessee acknowledges that the provisions of Sections 2 and 4 herein are particularly applicable when the Principal Amount is funded into an Escrow Fund subject to the Escrow Agreement.

### **Section 6. No Private Use; No Consumer Loan.**

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than 10% of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

6.2 In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the “**Excess Private Use Portion**”) will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 6.2, “**Private Business**

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<sup>8</sup> NTD – include only if bank qualified transaction.

**Use**” means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

6.3. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

**Section 7. No Federal Guarantee.**

7.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

7.2. No portion of the Principal Amount or interest earned thereon shall be (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would cause the financing under the Financing Documents to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

**Section 8. Miscellaneous.**

8.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code unless Lessor or its assignee agrees to act as Lessee’s agent for such purpose.

8.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of five (5) years after payment in full under the Financing Documents.

8.3. To the best of the undersigned’s knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

8.4. The Lessee’s Tax Identification Number is: [\_\_\_\_\_].

**IN WITNESS WHEREOF**, this Post-Issuance Tax Compliance Procedures Certificate has been executed on behalf of Lessee as of [\_\_\_\_\_].

[\_\_\_\_\_]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

**EXHIBIT K**

**ESCROW AGREEMENT**

LESSOR:  
Metro Futures, Inc.  
12520 High Bluff Drive, Suite 345  
San Diego, California 92130

ESCROW AGENT:  
[\_\_\_\_\_]   
[\_\_\_\_\_]   
[\_\_\_\_\_]

LESSEE:  
[\_\_\_\_\_]   
[\_\_\_\_\_]   
[\_\_\_\_\_]   
[\_\_\_\_\_]

THIS ESCROW AGREEMENT (this “**Escrow Agreement**”) is made as of [\_\_\_\_\_] , between Metro Futures, Inc. (“**Lessor**”), the [\_\_\_\_\_] (“**Lessee**”), and [\_\_\_\_\_] (the “**Escrow Agent**”).

Lessor and Lessee have heretofore entered into that certain Equipment Lease-Purchase Agreement and Equipment Schedule both dated [\_\_\_\_\_] (the “**Lease Agreement**”). The Lease Agreement contemplates that certain Equipment described therein (the “**Equipment**”) is to be acquired from the vendor(s) or manufacturer(s) thereof.

After acceptance of the Equipment by Lessee, the Equipment is to be leased by Lessor to Lessee pursuant to the terms of the Lease Agreement.

The Lease Agreement contemplates that Lessor will deposit with the Escrow Agent cash in the amount of [\_\_\_\_\_] (the “**Deposit Amount**”), for deposit into the escrow fund (the “**Escrow Fund**”), to be held in escrow by the Escrow Agent and applied on the express terms and conditions set forth herein. Such deposit into the Escrow Fund, together with all interest and additions received with respect thereto, is to be applied from time to time to pay the vendor(s) or manufacturer(s) of the Equipment its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee). The Escrow Fund is to be held for the account and benefit of Lessee, and Lessee has granted to Lessor a first priority and perfected lien on and security interest in the Escrow Fund and any all proceeds, interest and other earnings thereon and investments therein to the Lessor by virtue of the execution of this Escrow Agreement and the Lease Agreement without the need for any additional filings or financing statements.

The parties desire to set forth the terms on which the escrow is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, the parties agree as follows:

1. The Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. The Escrow Agent agrees that the Escrow Fund shall be held irrevocably in trust for the account and benefit of Lessee and all interest earned with respect to the

Escrow Fund shall accrue to the benefit of Lessee and shall be applied as expressly set forth herein.

To the limited extent required to perfect the first, priority security interest granted by Lessee to Lessor in the cash and negotiable instruments from time to time held in the Escrow Fund, Lessor hereby appoints the Escrow Agent as its security agent, and the Escrow Agent hereby accepts the appointment as security agent, and agrees to hold physical possession of such cash and negotiable instruments on behalf of Lessor.

2. On such day as determined to the mutual satisfaction of the parties (the “**Commencement Date**”), Lessor shall deposit with the Escrow Agent cash in the amount of the Deposit Amount to be held by the Escrow Agent on the express terms and conditions set forth herein. The Escrow Agent agrees to accept the deposit of the Deposit Amount by Lessor with the Escrow Agent, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto in escrow on the express terms and conditions set forth herein.
3. The Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of the Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments held in the Escrow Fund from time to time shall be held or registered in the name of the Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lessor).
4. Lessee hereby directs the Escrow Agent to invest the cash held in the Escrow Fund from time to time in a [\_\_\_\_\_] non-interest bearing demand deposit account with no fees or costs or, in the event such fund is not at the time available, such other investments as Lessee may specify in writing, to the extent the same are at the time legal for investment of the funds being invested. Interest or other amounts earned and received by the Escrow Agent with respect to the Escrow Fund shall be deposited in and become a part of the Escrow Fund. No investment shall be made that would cause the Lease Agreement to be deemed to be an arbitrage bond within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended.
5. Lessor and Lessee hereby authorize the Escrow Agent to take the following actions with respect to the Escrow Fund:
  - a. From time to time, the Escrow Agent shall pay the vendor or manufacturer of the Equipment payments then due and payable, or reimburse Lessee for amounts that it has paid to the vendor or manufacturer of the Equipment, upon receipt of the following: (a) a duly executed Certificate of Acceptance and Payment Request in the form attached as Exhibit A hereto, (b) the vendor(s) or manufacturer(s) invoice(s) specifying the acquisition price of the Equipment described in the requisition request, and (c) any additional documentation required by Lessor.

- b. If Lessor provides to the Escrow Agent written notice of the occurrence of an Event of Default or an Event of Nonappropriation by Lessee under the Lease Agreement, the Escrow Agent shall thereupon promptly remit to Lessor the entire balance of the Escrow Fund.
  - c. Upon receipt by the Escrow Agent of a duly executed Certificate of Acceptance and Payment Request identified as the final such request, the Escrow Agent shall transfer the then remaining balance of the Escrow Fund to Lessee, upon the express condition that Lessee hereby agrees to use such excess amount solely for capital expenditures as shall be approved by Lessor or, at the written direction of Lessor, for application against the interest component of the Lessee's payment obligation under the Lease Agreement, as provided therein, unless otherwise agreed by Lessor.
6. The Escrow Agent shall have no liability for acting upon any written instruction presented by Lessee and Lessor in connection with this Escrow Agreement that the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own gross negligence, willful misconduct, or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investments made pursuant to Section 4.
7. To the extent authorized by law, Lessee hereby agrees to indemnify and save the Escrow Agent harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder and that are not due to the Escrow Agent's gross negligence or willful misconduct. No indemnification will be made under this Section or elsewhere in this Escrow Agreement for damages arising solely out of gross negligence, willful misconduct, or bad faith by the Escrow Agent, its officers, agents, employees, successors or assigns.
8. The Escrow Agent may at any time resign by giving at least 30 days' prior written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of the successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by instrument in writing executed by Lessor and Lessee. Such notice shall set forth the effective date of the removal. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent.

Upon the effective date of resignation or removal, the Escrow Agent will transfer the Escrow Fund then held by it to the successor Escrow Agent selected by Lessor and Lessee.

9. This Escrow Agreement shall terminate upon receipt by the Escrow Agent of the written notice from Lessor specified in Section 5(b) or Section 5(c) hereof.

10. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other party at its respective address shown on page 1 of this Escrow Agreement or at such other address as such party shall from time to time designate in writing to the other parties; and shall be effective on the date or receipt.
11. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of the Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor and Lessee.
12. This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification, or change of terms hereof shall bind any party unless in writing signed by all parties.
13. The Escrow Agent may employ agents, attorneys and accountants in connection with its duties hereunder and shall not be liable for any action taken or omitted in good faith in accordance with the advice of counsel, accountants, or other skilled persons.
14. This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the internal laws of the State of California.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

LESSOR: METRO FUTURES, INC.

LESSEE: [\_\_\_\_\_]

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

By: \_\_\_\_\_  
[\_\_\_\_\_] [\_\_\_\_\_] [\_\_\_\_\_]

ESCROW AGENT: [\_\_\_\_\_]

By: \_\_\_\_\_  
[\_\_\_\_\_] [\_\_\_\_\_]

**EXHIBIT A TO ESCROW AGREEMENT**

**CERTIFICATE OF ACCEPTANCE AND PAYMENT REQUEST**

The following payment request is directed to [\_\_\_\_\_] (the “**Escrow Agent**”), as escrow agent under that certain Escrow Agreement dated [\_\_\_\_\_] (the “**Escrow Agreement**”), between the [\_\_\_\_\_] (“**Lessee**”), Metro Futures, Inc. (“**Lessor**”), and the Escrow Agent. Because Metro Futures, Inc. has assigned all of its right, title, and interest in and to the Escrow Agreement to [\_\_\_\_\_], all references herein to “**Lessor**” shall mean [\_\_\_\_\_].

The Escrow Agent is hereby requested to pay from the Escrow Fund established and maintained under the Escrow Agreement the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee). The equipment described below is part or all of the Equipment leased pursuant to that certain [\_\_\_\_\_] Equipment Lease-Purchase Agreement and Equipment Schedule both dated [\_\_\_\_\_] (the “**Lease Agreement**”), between Lessor and Lessee:

QUANTITY	DESCRIPTION OF UNITS OF EQUIPMENT	AMOUNT	PAYEE
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Lessee hereby certifies and represents to and agrees with Lessor as follows with respect to the Equipment described above: (i) the Equipment has been delivered to the location(s) set forth in the Lease Agreement; (ii) a present need exists for the Equipment, which need is not temporary or expected to diminish in the near future; (iii) the Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee’s authority; (iv) the estimated useful life of the Equipment based upon the manufacturer’s representations and Lessee’s projected needs is not less than the term of the Lease Agreement; (v) Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes as of the date of this Certificate; (vi) the Equipment is covered by insurance in the types and amounts required by the Lease Agreement; (vii) no Event of Default or Event of Nonappropriation, as those terms are defined in the Lease Agreement, and no event that with the giving of notice or lapse of time or both, would become an Event of Default or an Event of Nonappropriation, has occurred and is continuing on the date hereof; and (viii) sufficient funds have been appropriated by Lessee for the payment of all rental payments due under the Lease Agreement during Lessee’s current Fiscal Year.

Based on the foregoing, the Escrow Agent is hereby authorized and directed to fund the acquisition of the Equipment set forth above by paying, or causing to be paid, the manufacturer(s)/vendor(s) the amounts set forth on the attached invoices from the Escrow Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) Original Invoice(s) and (b) Copies of Certificate(s) of Ownership, designating Lessor as legal owner, and evidence of filing.

*[Remainder of page intentionally left blank]*

IF REQUEST IS FINAL REQUEST, CHECK HERE . The undersigned hereby certifies that the items of Equipment described above, together with the items of Equipment described in and accepted by Certificates of Acceptance and Payment Requests previously filed by Lessee with Lessor constitute all of the Equipment subject to the Lease Agreement.

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

**Approved:**

[\_\_\_\_\_] , as Lessor

[\_\_\_\_\_] , as Lessee

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

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

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

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

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

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

SCHEDULE A TO ESCROW AGREEMENT:

NOTICE AND ACKNOWLEDGEMENT OF  
ASSIGNMENT OF ESCROW AGREEMENT

Metro Futures, Inc. (“**Lessor**”), [\_\_\_\_\_] (“**Lessee**”), and [\_\_\_\_\_] (“**Escrow Agent**”) have entered into an Escrow Agreement dated [\_\_\_\_\_] (the “**Escrow Agreement**”), pursuant to which Lessor, or its Assignee (as defined below), has deposited cash into the Escrow Fund established thereunder, which funds are to be used by Lessee to acquire certain Equipment.

Escrow Agent is hereby notified that Lessor has assigned all of its right, title, and interest in and to, but not its obligations under, the Escrow Agreement to [\_\_\_\_\_] (“**Assignee**”), including, in particular, but without limitation, Lessor’s security interest in the Escrow Fund and Lessor’s right to approve all payment requests submitted by Lessee.

Date: [\_\_\_\_\_]

LESSOR: METRO FUTURES, INC.

LESSEE: [\_\_\_\_\_]

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

By: \_\_\_\_\_  
[\_\_\_\_\_] [\_\_\_\_\_] [\_\_\_\_\_]

ESCROW AGENT: [\_\_\_\_\_]

By: \_\_\_\_\_  
[\_\_\_\_\_] [\_\_\_\_\_]

**EXHIBIT L<sup>9</sup>**

**RESOLUTION OF THE GOVERNING BODY OF THE  
[\_\_\_\_\_] , AUTHORIZING THE EXECUTION AND  
DELIVERY OF A[N] [\_\_\_\_\_] AGREEMENT, AN  
ESCROW AGREEMENT AND [EQUIPMENT] SCHEDULE  
\_\_\_\_\_, 2019**

The undersigned, being the [governing body] of the [\_\_\_\_\_] (the “*Lessee*”), a body politic and corporate duly organized and existing as a [\_\_\_\_\_] and political subdivision of the State of [\_\_\_\_\_] , does hereby consent to the taking of the following actions by the Lessee as of the date hereof;

WHEREAS, the [governing body] desires to cause the Lessee and hereby authorizes the Lessee by the laws of the State of [\_\_\_\_\_] to [purchase, acquire, and lease personal property for the benefit of the Lessee and those it provides services to] and to enter into contracts with respect thereto;

WHEREAS, the [governing body] desires to cause Lessee to purchase, acquire and lease certain equipment constituting personal property (the “*Equipment*”) necessary for the Lessee to perform essential governmental functions as deemed necessary and/or desirable by its Designated Officers (defined below);

WHEREAS, the [governing body/Designated Officers] desires to cause Lessee to finance the Equipment in an amount not to exceed \$[\_\_\_\_\_] (the “*Financed Amount*”);

WHEREAS, in order to acquire such Equipment, the Lessee proposes to enter into one or more [\_\_\_\_\_] Agreements (together with the [Equipment] Schedules and all related exhibits, schedules, and certificates attached thereto, the “*Lease Agreements*”) with Metro Futures, Inc., a California corporation (the “*Lessor*”) for the Financed Amount secured in part by the Equipment, and one Escrow Agreement (together with the Disbursement/Payment Request Form and Acceptance Certificate, the “*Escrow Agreement*”) with the Lessor and an escrow agent (approved by Lessor), the forms of which have been presented to the governing body of the Lessee at this meeting;

WHEREAS, the Lessor has agreed to assign all of its rights, title and interest in and to the Equipment, the Lease Agreements and the Escrow Agreement and any other agreements or documents related thereto (collectively, the “*Transaction Documents*”) to [Investor] and the Lessee has consented and acknowledged to the foregoing;

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Transaction Documents for the purchase, acquisition, and leasing of the Equipment to be therein described on the terms and conditions therein provided;

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<sup>9</sup> NTD – Revise as applicable depending on source of authorization for transaction (i.e. may need to instead attach city council minutes etc.)

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Lessee as follows:

RESOLVED, that the governing body of the Lessee hereby approves the form, terms and provisions of the Transaction Documents in substantially the forms presented to the governing body on or about the date hereof;

RESOLVED FURTHER, that the governing body of the Lessee hereby authorizes and directs [\_\_\_\_\_], the [\_\_\_\_\_] of the Lessee, and such other persons as he/she/they may delegate (the "Designated Officers"), and each of them individually, on behalf of the Lessee, to execute and deliver the Transaction Documents

RESOLVED FURTHER, that the execution of the Transaction Documents by any Designated Officer shall constitute conclusive evidence of such officer's and the governing body's approval of any such changes, insertions, revisions, corrections, or amendments to the Transaction Documents;

RESOLVED FURTHER, that the officers and employees of the Lessee shall take all action necessary or reasonably required by the Transaction Documents to carry out, give effect to, and consummate the transactions contemplated thereby and to take all action necessary in conformity therewith;

RESOLVED FURTHER, that the Designated Officers and all other officers and employees of the Lessee are hereby directed and authorized to take and shall take all action necessary or reasonably required in order to select, purchase, and take delivery of the Equipment;

RESOLVED FURTHER, that Nothing contained in this Resolution or the Transaction Documents shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any provision contained in this Resolution or the Transaction Documents impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the rental payments payable under the Transaction Documents are special limited obligations of the Lessee as provided therein;

RESOLVED FURTHER, that the Designated Officers are each hereby designated to act as authorized representatives of the Lessee for purposes of the Transaction Documents until such time as the governing body of the Lessee shall remove such designation;

RESOLVED FURTHER, that any actions authorized pursuant to the authority given hereunder and heretofore taken by the Lessee, or any Designated Officer on behalf of the Lessee, in connection with the transactions contemplated by the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects

This Written Consent may be executed in multiple counterparts, and all such executed counterparts shall constitute the same instrument.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF the undersigned has executed this Resolution as of the date set forth above and this Resolution was duly passed and adopted at a meeting of the governing body of the Lessee held on [\_\_\_\_\_] by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Presiding Officer

ATTEST:

By: \_\_\_\_\_  
Secretary/Clerk

**EXHIBIT M**  
**IRS FORM 8038-G**

**EXHIBIT N**

**CLOSING MEMORANDUM**

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\$[\_\_\_\_\_] .00] LEASE FOR [\_\_\_\_\_] ]  
PURSUANT TO THAT [\_\_\_\_\_] ] EQUIPMENT LEASE-PURCHASE AGREEMENT AND  
EQUIPMENT SCHEDULE THERETO BOTH DATED [\_\_\_\_\_] ]  
BETWEEN [\_\_\_\_\_] ], AS LESSEE, AND  
METRO FUTURES, INC., AS LESSOR

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**Pre-Closing:** Pre-Closing will be held at the Lessee's convenience, on or before [\_\_\_\_\_]. All documents will be executed and two originals will be overnighted to Metro Futures, Inc., Attn.: Brad Chapman 12520 High Bluff Drive, Suite 345, San Diego, California 92130, for delivery no later than 9:00 am on the morning of [\_\_\_\_\_] and held in trust until such time as the wires and original documents are released by the Parties.

**Closing:** (1) By internal funds transfer and pending receipt of original, executed Lease Documents, on the morning of [\_\_\_\_\_], the Escrow Agent is authorized by Lessee to transfer via internal credit the Total Equipment Cost (as set forth below) to Escrow Agent, pursuant to a general ledger credit to the Escrow Account as follows:

Bank Name: [\_\_\_\_\_] ]  
ABA No: [\_\_\_\_\_] ]  
Account No [\_\_\_\_\_] ]  
Account Name: [\_\_\_\_\_] ]

(2) By [wire][internal funds]<sup>10</sup> transfer and pending receipt of original, executed Lease Documents, on the morning of <Date>, the Escrow Agent is authorized by Lessee to transfer via wire the Issuance Costs (as defined below) to Lessor as follows:

Bank Name: [\_\_\_\_\_] ]  
ABA Number: [\_\_\_\_\_] ]  
Account Number: [\_\_\_\_\_] ]  
Account Name: [Metro Futures, Inc.]

Metro Futures, Inc. will confirm disbursement of funds to the Lessee's escrow account and then release all of the original documents held in trust to the investor and forward a copy to the Lessee. [Upon conformation by Escrow Agent of the Lease Proceeds, Lessee will wire closing costs, legal fees and other amounts to the parties in accordance with the invoices attached hereto.]<sup>11</sup>

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<sup>10</sup> NTD – confirm how transfer will be completed.

<sup>11</sup> NTD – this sentence is only applicable if closing costs are paid directly by Lessee.

**Sources and Uses of Funds:**

Principal Amount of Lease [\_\_\_\_\_]

**TOTAL SOURCES** [\_\_\_\_\_]

Total Equipment Cost: [\_\_\_\_\_]

Issuance Costs: \$10,000.00

**TOTAL LEASE PROCEEDS** [\_\_\_\_\_]

**Attest:**

[\_\_\_\_\_]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]