



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

RESOLUTION NO. 649

A RESOLUTION OF THE GOVERNING BODY OF CITY OF SAN LUIS, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT AND SEPARATE LEASE SCHEDULES WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, City of San Luis (the "*Lessee*"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Arizona, is authorized by the laws of the State of Arizona to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Master Equipment Lease-Purchase Agreement (the "*Agreement*") and separate Lease Schedules from time to time as provided in the Agreement with FIRST CAPITAL EQUIPMENT LEASING CORPORATION (the "*Lessor*"), the form of which has been presented to the governing body of the Lessee as this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the separate Lease Schedules as provided in the Agreement for the purchase, acquisition and leasing of the equipment therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND ITS IS HEREBY RESOLVED by the governing body of City of San Luis, Arizona as follows:

Section 1. Approval of Documents. The form, terms and provisions of the Agreement and the separate Lease Schedules as provided in the Agreement are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by the City Council of the Lessee or other member of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the City Administrator of the Lessee is hereby authorized and directed to execute, and the City Clerk of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and each Lease Schedule and any related Exhibits attached thereto and to deliver the Agreement and each Lease Schedule (including such Exhibits) to the respective parties thereto, and the City Mayor of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

Section 2. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement and each Lease Schedule to carry out, give effect to and consummate the transaction contemplated thereby (including the execution and delivery of the Acceptance Certificate contemplated in the Agreement and any tax certificate and agreement, each with respect to separate Lease Schedules, as provided in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and each Lease Schedule.

Section 3. No General Liability. Nothing contained in this Resolution, the Agreement, any Lease Schedule nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, any Lease Schedule or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under each Lease are special limited obligations of the Lessee as provided in such Lease.

Section 4. Appointment of Authorized Lessee Representatives. The City Mayor and City Administrator of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposed of the Agreement and each Lease Schedule until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposed of the Agreement and each Lease Schedule.

Section 5. Section 265(b) (3) Designation. Lessee hereby designates the Agreement 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.

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

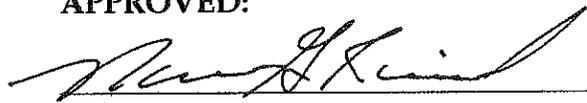
Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order resolution or ordinance or part thereof.

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

ADOPTED AND APPROVED by the governing body of the Lessee this 28th day of December, 2005.

LESSEE: CITY OF SAN LUIS, ARIZONA

APPROVED:



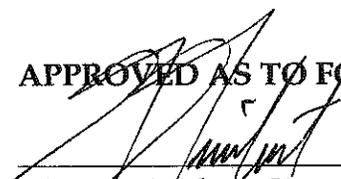
Nieves G. Riedel, Mayor

ATTEST:



Sonia Sanchez, City Clerk

APPROVED AS TO FORM:



Glenn J. Gimbut, City Attorney

MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT

AGREEMENT NO. 628-0578

DATE: DECEMBER 12, 2005

Lessee:
City of San Luis, Arizona
23222 1st Street
San Luis, AZ 85349

Lessor:
First Capital Equipment Leasing Corporation
32 Wolf Hill
E. Sandwich, MA 02537

For and in consideration of the mutual promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS:** Unless the context otherwise clearly requires, the following terms shall have the respective meanings set forth below for all purposes of this Agreement and of each Lease:

"Acceptance Certificate" means a certificate in substantially the form attached as *Exhibit A-1* to each Lease and which shall be delivered by Lessee to Lessor upon receipt and acceptance of the Equipment as provided therein

"Additional Payments" means any amounts (other than Rental Payments) required to be paid by Lessee pursuant to the terms of each Lease.

"Agreement" means this Master Equipment Lease-Purchase Agreement, as supplemented and amended from time to time as provided herein.

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

"Equipment" means (a) the equipment, vehicles and other personal property identified in *each Schedule*, (b) any property acquired in substitution, renewal, repair or replacement for or as additions, improvements, accessions and accumulations to any of such equipment and (c) any accessories, equipment, vehicles and other personal property, parts and appurtenances appertaining or attached to any of such equipment, vehicles and other personal property or from time to time incorporated therein or installed thereon.

"Event of Default" is defined in Paragraph 24 of this Agreement.

"Event of Nonappropriation" means a nonrenewal of the term of a Lease by Lessee, determined by the failure or refusal of the governing body of Lessee to appropriate moneys sufficient to pay the Rental Payments and reasonably estimated Additional Payments for the next succeeding Renewal Term as provided under the Lease.

"Fiscal Period" means the annual or biennial period used from time to time by Lessee for its financial accounting and budgeting purposes. Lessee's current Fiscal Period is identified in each Schedule.

"Initial Term" means, with respect to each Lease, the period determined as provided in Paragraph 3 hereof.

"Lease" means a Schedule and the terms of this Agreement which are incorporated by reference into such Schedule, together with the Exhibits attached to each such Schedule.

"Legally Available Funds" means funds that the governing body of Lessee duly appropriates or are otherwise legally available for the purpose of making Payments under each Lease.

"Lessee" means the entity referred to as Lessee in the heading of this Agreement.

"Lessor" means (a) the entity referred to as Lessor in the heading of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to any Lease (including Rental Payments and the Equipment thereunder) pursuant to Paragraph 27 hereof, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform under any Lease.

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

"Payments" means, with respect to each Lease, the Rental Payments and the Additional Payments thereunder, collectively.

"Prepayment Option Amount" means, with respect to each Lease for which a Prepayment Option Amount is identified under the column titled "PREPAYMENT OPTION AMOUNT" on the related Schedule, the amount determined pursuant to such Lease at which Lessee may prepay the aggregate principal component of Rental Payments thereunder on any Rental Payment date provided in such Lease prior to the scheduled payment of all Rental Payments to be paid thereunder for the Equipment identified therein.

"Purchase Price" means, with respect to each Lease, the total cost of the Equipment subject to such Lease, including all delivery charges, installation charges, capitalizable consulting and training fees, legal fees, financing costs, motor vehicle registration fees, recording and filing fees and other costs necessary to vest full, clear legal title to such Equipment in Lessee, subject to the security interest granted to and retained by Lessor as set forth in such Lease, and otherwise incurred in connection with the financing provided by the lease-purchase of the Equipment as provided in such Lease.

"Renewal Term" means, with respect to each Lease, each successive period, in addition to the applicable Initial Term, that is coextensive with Lessee's Fiscal Period and for which Lessee has extended the term of such Lease as provided therein.

"Rental Payments" means, with respect to each Lease, the amounts (allocable to a principal component and an interest component) payable by Lessee pursuant to such Lease, as payments for the installment financing of the Purchase Price for the Equipment as set forth in such Lease.

"Schedule" means a Lease Schedule in Substantially the form attached to this Agreement as Exhibit A that may be executed by Lessor and Lessee from time to time pursuant to this Agreement.

"State" means the State identified in a Schedule.

2. AGREEMENT TO LEASE-PURCHASE EQUIPMENT UNDER EACH LEASE: Lessee hereby agrees to acquire, purchase and lease all the Equipment identified in each of the Schedules that may from time to time be executed by Lessor and Lessee pursuant hereto, and Lessor hereby agrees to furnish the Equipment under each such Schedule to Lessee, all on the terms and conditions set forth in this Agreement. Each Schedule executed and delivered by Lessor and Lessee pursuant to this Agreement shall constitute a separate and independent Lease. The termination of a Lease as a consequence of an Event of Non-appropriation shall not terminate any other Lease.

This Agreement is not a commitment by Lessor to enter into any Lease not currently in effect, and nothing in this Agreement shall impose, or be construed to impose, any obligation upon Lessor to enter into any proposed Lease, it being understood that whether Lessor enters into any proposed Lease shall be a decision solely within Lessor's discretion.

Alternative Procedure: Escrow Agreement. Notwithstanding the provisions in this Paragraph 2, if upon the agreement of Lessor and Lessee as to any Equipment to be acquired and leased by Lessee under a Lease, Lessor and Lessee may enter into an escrow agreement in substantially the form attached as *Exhibit B* establishing a fund from which the Equipment cost is to be paid, and an amount equal to such cost is deposited therein by Lessor, Lessor and Lessee shall immediately complete and execute *Exhibits A and B* relating to the Equipment and the Payments relating to the Equipment shall be due and payable commencing upon the date of said deposit of funds as provided in *Exhibit A*.

3. TERM: The term of this Agreement begins as of the date set forth above and will continue so long as any amount remains unpaid under any Lease. The Initial Term of each Lease begins as of the date identified in such Lease and expires at midnight on the last day of the Fiscal Period during which such Lease is executed and delivered. Beginning at the expiration of its Initial Term, the term of each Lease shall automatically be extended upon the successive appropriation by Lessee's governing body of amounts sufficient to pay Rental Payments and reasonably estimated Additional Payments during the next succeeding Renewal Term, for the number of Renewal Terms, each coextensive with Lessee's Fiscal Period, as are necessary for all Rental Payments identified in the applicable Lease to be paid in full, unless such Lease is terminated as provided therein.

The term of each Lease will expire upon the first to occur of (a) the expiration of the Initial Term or any Renewal Term during which an Event of Nonappropriation occurs, (b) the day after the last scheduled Rental Payment under such Lease is paid in full, (c) the day after the Prepayment Option Amount under such Lease is paid in full, or (d) an Event of Default under such Lease and a termination of Lessee's rights thereunder as provided therein.

4. **RENTAL PAYMENTS:** Lessee hereby agrees to pay (but only from Legally Available Funds) Rental Payments for the Equipment identified in each Schedule. All Rental Payments shall be made to Lessor at Lessor's mailing address set forth above (or at such other address as may be designated from time to time pursuant to Paragraph 27 hereof) in the amounts and on the dates provided in the pertinent Schedule. Rental Payments made by check will be accepted subject to collection.

Lessee's obligation under each Lease to make Rental Payments and to pay any Additional Payments payable thereunder 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. Lessee has not pledged its full faith and credit or its taxing power to make any Rental Payments or any Additional Payments under any Lease. Lessee shall not permit any person or entity (including the federal government) to guarantee any Rental Payments under any Lease.

5. **AGREEMENT TO SEEK APPROPRIATIONS; NOTICE OF EVENT OF NONAPPROPRIATION:** Lessee agrees that its primary business official will do all things lawfully within such official's power (a) to include amounts to make Payments under each Lease in each annual or biennial budget (as appropriate) to be submitted to Lessee's governing body and (b) to use best efforts to obtain and maintain funds from which Payments under each Lease may be made.

Lessee hereby agrees to notify Lessor immediately (and in no case later than 30 days prior to the last day of its then current Fiscal Period) of the occurrence of an Event of Nonappropriation under any Lease.

6. **PREPAYMENT OPTION:** For each Lease for which a Prepayment Option is identified on a Schedule, Lessee is hereby granted the option to prepay the aggregate principal component of Rental Payments (in whole but not in part) identified in a Lease, prior to the scheduled payment of the Rental Payments in full pursuant to such Lease, with such prepayment permitted to be made on any Rental Payment date for which a Prepayment Option Amount is identified under the column titled "PREPAYMENT OPTION AMOUNT" in the applicable Schedule. Such prepayment amount shall equal the Prepayment Option Amount (assuming that all Rental Payments and Additional Payments due on and prior to the prepayment date have been paid) shown for the Rental Payment date on which such prepayment is to be effective under the column titled "PREPAYMENT OPTION AMOUNT" in the applicable Schedule. To exercise the option provided under this Paragraph 6 and granted in a Lease, Lessee shall give Lessor a written notice exercising such option and designating the affected Lease, the Rental Payment date on which such prepayment is to be effective and the applicable Prepayment Option Amount, which notice shall be delivered to Lessor at least thirty (30) days in advance of the proposed prepayment date. The prepayment option herein granted may be exercised by Lessee with respect to a Lease whether or not one or more Events of Default have occurred and are then continuing at the time of such exercise; *provided, however*, that the prepayment of such principal component of Rental Payments under the applicable Lease upon the exercise of such option during the continuance of an Event of Default thereunder shall not limit, reduce or otherwise affect liabilities or obligations that Lessee has incurred as a result of such Event of Default.

Immediately upon any such prepayment being made, Lessor shall execute all documents necessary to confirm in Lessee title in and to the Equipment under the affected Lease, free and clear of

any lien, encumbrance or other interest created by Lessor, but without warranties and in "where-is, as-is" condition, and release Lessor's security interest in such Equipment and shall deliver such documents to Lessee. Lessor shall further cooperate in providing for the filing of any necessary releases, termination statements or other similar documents and the release of certificates of title or certificates of origin to Lessee.

7. **ESSENTIALITY:** Lessee's present intention is to make Rental Payments and Additional Payments under each Lease for the Initial Term and all Renewal Terms applicable thereto as long as it has Legally Available Funds. In that regard, Lessee represents with respect to each Lease that at the time Lessee enters into each Lease (a) the use and operation of the Equipment under each Lease is essential to its proper, efficient and economic governmental operation and (b) the functions performed by the Equipment under each Lease 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 (including all Renewal Terms) scheduled to be paid under the pertinent Lease.

8. **NONSUBSTITUTION:** If Lessor terminates a Lease pursuant to Paragraph 25 or an Event of Nonappropriation, Lessee agrees, to the extent not prohibited by law, not to purchase, lease, rent or otherwise acquire equipment performing functions similar to those performed by the Equipment under the pertinent Lease or obtain from any source the services or information that the Equipment under such Lease was to perform or provide, in each case for a period equal to the shorter of (a) the longest period (if any) permitted by State law for such purpose or (b) 360 days after such termination or occurrence.

9. **DELIVERY AND INSTALLATION:** Lessee shall select the type, quantity and supplier of each item of Equipment designated in a Schedule. Once Lessor and Lessee have executed the related Lease, Lessee, as Lessor's agent for this purpose, shall then order the Equipment from such supplier. Any executed purchase order existing at the time of the execution of a Lease, and relating to any portion of the Equipment therein identified that has not as of such Lease execution date been delivered and shall be deemed to be executed by Lessee in its capacity as Lessor's agent for purposes of such Lease. Lessor shall have no liability for any delay in delivery or failure by the supplier to deliver any Equipment under any Lease or to fill any purchase order or meet the conditions thereof. Lessee, at its expense, will pay or cause the supplier to pay all transportation, packing, taxes, duties, insurance, installation, testing and other charges in connection with the delivery, installation and use of the Equipment under all Leases. As soon as practicable after receipt of the Equipment identified in a Lease, Lessee shall furnish Lessor with an executed Acceptance Certificate relating thereto. Execution of the Acceptance Certificate with respect to the Equipment identified in a Lease by any employee, official or agent of Lessee having authority in the premises or having managerial, supervisory or procurement duties with respect to equipment of the same general type as the Equipment described in such Acceptance Certificate shall constitute acceptance of such Equipment on behalf of Lessee. Regardless of whether Lessee has furnished an Acceptance Certificate pursuant to this Paragraph 9, by making a Rental Payment after its receipt of the Equipment pursuant to a Lease, Lessee shall be deemed to have accepted the Equipment on the date of such Rental Payment for all purposes of such Lease. All Rental Payments paid prior to delivery of the Acceptance Certificate with respect to the Equipment identified in a Lease shall be credited to Rental Payments as they become due under such Lease.

Lessee understands and agrees that neither the manufacturer, seller nor supplier of any Equipment under any Lease, nor any salesman or other agent of any such manufacturer, seller or supplier, is an agent of Lessor. No salesman or agent of the manufacturer, seller or supplier of any Equipment under any Lease is authorized to waive or alter any term or condition any such Lease, and no representation as to Equipment or any other matter by the manufacturer, seller or supplier of any Equipment under any Lease shall in any way affect Lessee's duty to pay the Rental Payments thereunder and perform its other obligations as set forth in such Lease. Lessee hereby acknowledges that it has or will have selected the Equipment identified in each Schedule using its own criteria and not in reliance on any representations of Lessor.

10. DISCLAIMER OF WARRANTIES: LESSOR, NOT BEING THE MANUFACTURER, SELLER OR SUPPLIER OF ANY OF THE EQUIPMENT UNDER ANY LEASE, NOR A DEALER IN ANY OF SUCH EQUIPMENT, HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY, REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE DESIGN OR CONDITION OF THE EQUIPMENT, THE QUALITY OR CAPACITY OF THE EQUIPMENT, THE WORKMANSHIP IN THE EQUIPMENT, COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, PATENT INFRINGEMENT OR LATENT DEFECTS. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for any direct, indirect, consequential, incidental or special damages or loss of any classification. Lessor shall have no obligation to install, erect, test, adjust, service or maintain any Equipment under any Lease. Lessee shall look solely to the manufacturer, seller and/or supplier for any and all claims related to the Equipment. **LESSEE ACQUIRES, PURCHASES AND LEASES THE EQUIPMENT "WHERE-IS, AS IS" AND "WITH ALL FAULTS."**

Lessor hereby acknowledges that, so long as no Event of Default or Event of Nonappropriation has occurred and is continuing under a Lease, the warranties, if any, of the manufacturer, seller and/or supplier of the Equipment under such Lease are for the benefit of Lessee.

11. TITLE TO EQUIPMENT: During the term of each Lease, title to the Equipment identified therein shall be vested in Lessee, subject to the rights of Lessor under such Lease, unless Lessor terminates such Lease pursuant to Paragraph 25 hereof or an Event of Nonappropriation occurs with respect to such Lease, in which event title to the Equipment identified in such Lease 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 title to the Equipment identified in each Lease and Lessor's rights and interests therein and will keep the Equipment under each Lease free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. All items of Equipment shall at all times be and remain personal property notwithstanding that any such Equipment may now or hereafter be affixed to realty.

12. TAX COVENANTS; TAX INDEMNITY PAYMENTS: Lessee agrees that it will not take any action that would cause the interest component of Rental Payments under any Lease to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in timely manner, any action, which omission

would cause the interest component of Rental Payments under any Lease to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes. Lessee agrees to (a) execute and deliver to Lessor with respect to each Lease, upon Lessor's request, a tax certificate and agreement in form and content acceptable to Lessor and Lessee, relating to the establishment and maintenance of the excludability from gross income of the interest component of Rental Payments under such Lease for federal income tax purposes, and (b) complete and file or cause to be filed in a timely manner an information reporting return (either I.R.S. Form 8038-G or I.R.S. Form 8038-GC, as appropriate) in the form attached as *Exhibit A-2* hereto with respect to this Agreement as required by the Code.

Lessee represents that neither Lessee nor any agency or unit of Lessee has on hand any property, including cash and securities, that is legally required or otherwise restricted (no matter where held or the source thereof) to be used directly or indirectly to purchase the Equipment under any Lease. Lessee has not and will not establish any funds or accounts (no matter where held or the source thereof) the use of which is legally required or otherwise restricted to pay directly or indirectly any Rental Payments under any Lease. If Lessee breaches the covenant contained in this Paragraph 12 as provided in a Lease, the interest component of Rental Payments under such Lease may become includable in gross income of the owner or owners thereof for federal income tax purposes. In such event, Lessee agrees to pay to Lessor, promptly after any such determination of taxability and on each Rental Payment date thereafter, an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludability (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Paragraph 12 as provided in a Lease shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that each Lease not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment under each Lease for federal income tax purposes.

13. USE OF EQUIPMENT, INSPECTION AND REPORTS: During the term of each Lease, Lessee shall be entitled to quiet enjoyment of the Equipment and may possess and use the Equipment in accordance with such Lease, provided that Lessee is in compliance in all respects with the terms of such Lease and that such possession and use are in conformity with all applicable laws, any insurance policies and any installation requirements (including environmental specifications) or warranties of the manufacturer, seller and/or supplier with respect to the Equipment identified in such Lease. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment under each Lease. Lessor shall have the right, upon reasonable prior notice to Lessee and during regular business hours, to inspect the Equipment at the premises of Lessee or wherever the Equipment may be located. Lessee shall promptly notify Lessor of any alleged encumbrances on the Equipment identified in any Lease or any accident allegedly resulting from the use or operation thereof or any claim relating thereto.

During the term of each Lease and at Lessor's request, Lessee shall provide Lessor, no later than ten days prior to the end of each Fiscal Period (commencing with the Lessee's current Fiscal Period), with current budgets or other proof of appropriation for the ensuing Fiscal Period and such

other information relating to Lessee's ability to continue the term of each Lease for the next succeeding Renewal Term as may be reasonably requested by Lessor.

During the term of each Lease, Lessee shall furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available and in any event not later than 180 days after the close of each Fiscal Period, the audited financial statements of Lessee as at the close of and for such Fiscal Period, all in reasonable detail, audited by and with the report of Lessee's auditor.

14. SECURITY AGREEMENT; FURTHER ASSURANCES: To secure the performance of all of Lessee's obligations under each Lease, Lessee hereby grants to Lessor, and Lessor shall have and retain, a security interest constituting a first and exclusive lien on (a) the Equipment delivered under each Lease, on all attachments, repairs, replacements and modifications thereto or therefor and on any proceeds therefrom and (b) moneys and investments held from time to time in any applicable Escrow Fund and any proceeds therefrom. Lessee agrees to execute and deliver such additional documents, including, without limitation, financing statements, certificates of title or certificates of origin (or applications therefor) noting Lessor's interest thereon, opinions of counsel, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment under each Lease and in the moneys and investments in any applicable Escrow Fund or for the confirmation or perfection of each Lease and Lessor's rights under each Lease. Upon the occurrence of an Event of Default or an Event of Nonappropriation under a Lease or in the event that Lessee refuses or is otherwise unwilling to execute and file financing statements to which Lessor is entitled in accordance with such Lease within ten days after Lessor's written request to Lessee therefor, Lessor is authorized to file financing statements signed only by Lessor in accordance with the applicable Uniform Commercial Code or signed by Lessor as Lessee's attorney-in-fact.

15. RISK OF LOSS: All risk of loss, damage, theft or destruction to each item of Equipment under each Lease shall be borne by Lessee. No such loss, damage, theft or destruction of the Equipment under any Lease, in whole or in part, shall impair the obligations of Lessee under any Lease (including, but not limited to, the obligation to pay Rental Payments under each Lease when due), all of which shall continue in full force and effect subject to the terms of the applicable Lease. If (a) the Equipment or any portion thereof under a Lease 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 under a Lease 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 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 Prepayment Option Amount. Any balance of Net Proceeds remaining after completion of such work or payment of such Prepayment Option Amount 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 Prepayment Option Amount in full, Lessee shall, at Lessor's direction, either complete the work or pay the then applicable Prepayment Option Amount in full and in either case pay any cost in excess of the amount of Net Proceeds, but only from Legally Available Funds.

16. INSURANCE: In the event that Lessee is not self-insured as hereinafter provided, Lessee, at its expense, shall throughout the term of each Lease keep the Equipment thereunder insured against theft, fire, collision (in the case of vehicles) and such other risks as may be customary for each item of

Equipment in the amounts and for the coverage set forth in *Exhibit A-3* to each Lease, with carriers acceptable to Lessor, under a policy or policies containing a loss payable endorsement in favor of Lessor, and affording to Lessor such additional protection as Lessor shall reasonably require. Lessee shall further, at its expense, maintain in effect throughout the term of each Lease a policy or policies of comprehensive public liability and property damage insurance in the amounts and for the coverage set forth in *Exhibit A-3* to each Lease, with carriers satisfactory to Lessor. All such insurance shall name Lessor as an additional insured. The policies required hereby shall provide that they may not be canceled or materially altered without at least 30 days prior written notice to Lessor. Lessee shall deliver to Lessor copies or other evidence satisfactory to Lessor of each insurance policy and each renewal thereof. Failure by Lessor to request evidence of such insurance policies or renewals, or otherwise to verify the existence of such insurance, shall not constitute a waiver of the requirements hereof. Lessor shall have the right, on behalf of itself and Lessee, to make claim for, receive payment of and execute and endorse all documents, checks or drafts received in payment for loss or damage under said insurance policies. If Lessee is self-insured with respect to equipment such as the Equipment under a Lease, Lessee shall maintain during the term of this Agreement an actuarially sound self-insurance program in form satisfactory to Lessor and shall provide evidence thereof in form and substance satisfactory to Lessor.

17. **MAINTENANCE AND REPAIRS:** Lessee shall use the Equipment under each Lease in a careful and proper manner, in compliance with all applicable laws and regulations and, at its expense, keep and maintain the Equipment under each Lease in good repair and working order, performing all maintenance and servicing necessary to maintain the value and utility of the Equipment, reasonable wear and tear excepted. Without the prior written consent of Lessor, Lessee shall not make any alterations, modifications or attachments to the Equipment under any Lease which cannot be removed without materially damaging the functional capabilities, economic value or utility of the Equipment.

18. **TAXES:** Unless Lessee has provided Lessor with evidence necessary to sustain an exemption therefrom, Lessee shall timely pay all assessments, license fees, taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lessor or Lessee, now or hereafter imposed by any governmental body or agency on or relating to the Equipment under each Lease, any applicable Escrow Fund, the Rental Payments under each Lease or the use, registration, rental, shipment, transportation, delivery, ownership or operation of the Equipment under each Lease and on or relating to each Lease or any applicable Escrow Agreement; *provided, however*, that the foregoing shall not include any federal, state or local income or franchise taxes of Lessor.

19. **LESSOR'S PERFORMANCE OF LESSEE'S OBLIGATIONS:** If Lessee shall fail duly and promptly to perform any of its obligations under a Lease, Lessor may, at its option, perform any act or make any payment that Lessor deems necessary for the maintenance and preservation of the Equipment under such Lease and Lessor's interests therein, including, but not limited to, payments for satisfaction of liens, repairs, taxes, levies and insurance. All expenses incurred by Lessor in performing such acts and all such payments made by Lessor together with late charges as provided in Paragraph 20 below and as provided in each Lease, and any reasonable legal fees incurred by Lessor in connection therewith, shall be payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of Lessee.

20. **LATE CHARGES:** If Lessee fails to duly pay any part of any Rental Payment or other sum to be paid to Lessor under a Lease (including, but not limited to, any amounts due as a result of Lessor's exercise of its rights under Paragraph 25 hereof) on the date on which such amount is due hereunder, then Lessee shall pay to Lessor late charges on such delinquent payment from the due date thereof until paid at the rate of 12% per annum or the highest rate permitted by law, whichever is less.

21. **INDEMNIFICATION:** Lessee assumes liability for, agrees to and does hereby indemnify, protect and hold harmless Lessor and its agents, employees, officers, directors, parents, subsidiaries and stockholders from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorneys' fees), of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by Lessee or Lessor), operation, ownership, selection, delivery, storage, leasing or return of any item of Equipment, regardless of where, how and by whom operated, or any failure on the part of Lessee to accept the Equipment under any Lease or otherwise to perform or comply with any conditions of any Lease. Lessee is an independent contractor and nothing contained herein shall authorize Lessee or any other person to operate any item of Equipment so as to incur or impose any liability or obligation for or on behalf of Lessor. Notwithstanding anything in any Lease or this Agreement to the contrary, any indemnity amount payable by Lessee pursuant to this Paragraph 21 shall be payable solely from Legally Available Funds and only to the extent authorized by law.

22. **NO OFFSET; UNCONDITIONAL OBLIGATION:** Each Lease is "triple net" and Lessee's obligation to pay all Rental Payments and Additional Payments under each Lease shall be absolute and unconditional under any and all circumstances subject to the terms and conditions of each Lease. Without limiting the generality of the foregoing, Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of Lessee against Lessor under any Lease or otherwise; nor, except as otherwise expressly provided therein, shall any Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any failure of the Equipment under any Lease, to perform in the manner or to the extent that Lessee anticipated or to achieve cost or other savings that Lessee anticipated, any defect in or damage to or loss or destruction of all or any of the Equipment under any Lease from whatsoever cause, the taking or requisitioning of the Equipment under any Lease by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment under any Lease, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement or any Lease, or lack of right, power or authority of Lessor to enter into this Agreement or any Lease or any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessor or Lessee or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rental Payments and Additional Payments payable by Lessee under each Lease shall continue to be payable in all events unless the obligation to pay the same shall expire or be terminated pursuant such Lease (including upon the occurrence of an Event of Nonappropriation) or until the Equipment under a Lease has been returned to the possession of Lessor as therein provided (for all purposes of any Lease any item of Equipment under a Lease shall not be deemed to have been returned to Lessor's possession until all of Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, Lessee hereby waives any and all rights that it may now have or that at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or

surrender any Lease or any of the items of Equipment except in accordance with the express terms each Lease.

23. **REPRESENTATIONS AND WARRANTIES OF LESSEE:** Lessee hereby represents and warrants to and agrees with Lessor that:

(a) Lessee is a state or a political subdivision thereof within the meaning of Section 103(c) of the Code.

(b) Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Agreement, each Lease and any Escrow Agreement and has been duly authorized to execute and deliver this Agreement, each Lease and any Escrow Agreement and to carry out its obligations hereunder and under each Lease and any Escrow Agreement. Attached to each Lease as *Exhibit A-4* is a full, true and correct copy or an original of a resolution or other appropriate official action of Lessee's governing body specifically authorizing Lessee to execute and deliver this Agreement, the applicable Lease and all other associated documents contemplated hereby. Attached to each Lease as *Exhibit A-5* is a full, true and correct copy or an original of an Incumbency Certificate relating to the authority of the officers who have executed and delivered this Agreement, the applicable Lease and all other associated documents contemplated hereby on behalf of Lessee.

Attached to each Lease as *Exhibit A-6* is a full, true and correct copy or an original of an opinion of Lessee's legal counsel regarding the legal, valid and binding nature of this Agreement, each Lease and all other associated documents contemplated hereby on Lessee and certain other related matters.

(c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement and each Lease, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Agreement and each Lease.

(d) Lessee is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Lessee from entering into this Agreement or any Lease or performing any of its obligations hereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement, any Lease or any other agreement or instrument to which Lessee is a party and which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement and or any Lease. All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement and each Lease or in connection with the carrying out by Lessee of its obligations hereunder and thereunder have been obtained, except with respect

to annual budgeting and appropriation procedures as required by State law relating to each Lease.

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

(g) The entering into and performance of this Agreement and each Lease will not violate any judgment, order, law or regulation applicable to 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 Lessee or on the Equipment under any Lease or any applicable Escrow Fund pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in each Lease with respect to the granting of security interests in and to the Equipment therein described.

(h) Lessee is acquiring the Equipment under each Lease for use within its geographical boundaries.

(i) The useful life of the Equipment identified in each Lease will not be less than the stated full term of the applicable Lease, including all contemplated Renewal Terms.

(j) Lessee has entered into, or will enter into, each Lease for the purpose of purchasing, acquiring and leasing the Equipment identified therein and not for the purpose of refinancing any outstanding obligation of Lessee more than 90 days in advance of its payment or prepayment date. The Purchase Price for the Equipment will be paid directly by Lessor to the manufacturer, seller or supplier thereof, and no portion of the Purchase Price for the Equipment under any Lease will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the execution and delivery of the applicable Lease.

(k) Lessee has made sufficient appropriations or has other Legally Available Funds to pay all Rental Payments due during the Initial Term under each Lease.

(l) Lessee has not previously failed (for whatever reason) to appropriate amounts sufficient to pay its obligations that are subject to annual appropriation.

24. EVENTS OF DEFAULT: Each of the following events constitutes an "Event of Default" with respect to a Lease:

- (a) Lessee fails to pay in full the Rental Payment due under such Lease on any date upon which such Rental Payment is due;
- (b) Lessee fails to maintain insurance as required herein and under any Lease;
- (c) Lessee fails to comply with any other agreement or covenant of Lessee hereunder or under such Lease for a period of 30 days following receipt of written notice of violation of such agreement or covenant and demand that such violation be remedied;
- (d) Lessee institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar officer is appointed for Lessee or any of its property;
- (e) any warranty, representation or statement made in writing by or on behalf of Lessee in connection with this Agreement or such Lease is found to be incorrect or misleading in any material respect on the date made; or
- (f) Lessee's actual or attempted sale, lease or encumbrance of any of the Equipment under such Lease or the making of any levy, seizure or attachment thereof or thereon.
- (g) any default occurs under any other Lease or agreement for borrowing money or receiving credit under which Lessee may be obligated as borrower, lessee or guarantor, if such default (i) consists of the failure to pay any indebtedness when due or perform any other obligation thereunder and (ii) gives the holder of the indebtedness the right to accelerate the indebtedness.

25. REPOSSESSION AND LESSOR'S OTHER RIGHTS UPON EVENT OF DEFAULT OR EVENT OF NONAPPROPRIATION: Immediately upon the occurrence of an Event of Default under a Lease or immediately after the expiration of the Initial Term or any Renewal Term during which an Event of Nonappropriation occurs, Lessor may terminate the affected Lease or Lessee's rights thereunder and in any such event repossess the Equipment thereunder, which Lessee hereby agrees, at its expense, to surrender promptly to Lessor at such location in the continental United States as Lessor shall direct. Such right of repossession and other rights as specifically provided in this Paragraph 25 shall constitute the sole remedies for Lessee's failure to make Payments or otherwise perform its obligations when required under a Lease. If Lessor is entitled to repossess the Equipment under a Lease, Lessee shall permit Lessor or its agents to enter the premises where the affected Equipment is then located. In the event of any such repossession, Lessee shall execute and deliver such documents as may reasonably be required to transfer title to and possession of the Equipment under the affected Lease to Lessor, free and clear of all liens and security interests to which the Equipment may have become subject.

Any termination of a Lease at Lessor's option as provided in this Paragraph 25 and as provided in the applicable Lease shall take effect at the end of the Initial Term or the Renewal Term then in effect under such Lease, unless Lessor (at its option) elects to terminate such Lease on an earlier date.

Upon repossession, if the Equipment under the affected Lease is damaged or otherwise made less suitable for the purposes for which it was manufactured than when delivered to Lessee (reasonable

wear and tear excepted), Lessee agrees, at its option, to: (a) repair and restore the Equipment to the same condition in which it was received by Lessee (reasonable wear and tear excepted) and, at its expense, promptly return the Equipment to Lessor (or to a location identified in a written notice to Lessee) or (b) pay to Lessor the actual costs of such repair, restoration and return.

If Lessor terminates this Agreement pursuant to this Paragraph 25 and as provided in the applicable Lease or an Event of Nonappropriation occurs under a Lease and Lessee continues to use the Equipment after the Initial Term or any Renewal Term under such Lease during which the Event of Default or Event of Nonappropriation occurs or if Lessee otherwise refuses to pay Rental Payments due during a Renewal Term for which Lessee's governing body has appropriated sufficient Legally Available Funds to pay such Rental Payments, Lessor shall be entitled to bring such action at law or in equity to recover damages attributable to such holdover period for the Equipment subject to such Lease that Lessee continues to use or to the remainder of such Renewal Term under such Lease for which such appropriations have been made.

Lessor shall also be entitled to exercise any or all remedies available to a secured party under the applicable Uniform Commercial Code and all other rights and remedies that Lessor may have at law or in equity, including the exercise of any rights and remedies to which Lessor is entitled with respect to any applicable Escrow Fund under any applicable Escrow Agreement and hereunder.

No right or remedy herein conferred upon or reserved to Lessor and as provided in each Lease is exclusive of any right or remedy herein or in any Lease or at law or in equity or otherwise provided or permitted, but each shall be cumulative of every other right or remedy given as described hereunder and as provided in each Lease or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

No waiver of or delay or omission in the exercise of any right or remedy as described herein and as provided in each Lease or otherwise available to Lessor shall impair, affect or be construed as a waiver of its rights thereafter to exercise the same. Any single or partial exercise by Lessor of any right hereunder or with respect to any Lease shall not preclude any other or further exercise of any right as described herein and as provided in each Lease. The exercise of any right or remedy herein provided with respect to a Lease shall not relieve Lessee of any other obligations under any other Lease or the Equipment identified therein.

26. NO SALE, ASSIGNMENT OR OTHER DISPOSITION BY LESSEE: Lessee agrees not to (a) sell, assign, transfer, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Agreement, any Lease, any Escrow Agreement (including any Escrow Fund thereunder) or the Equipment under any Lease, (b) remove the Equipment from its Equipment Location identified in the applicable Lease or (c) enter into any contract or agreement with respect to the use and operation of any of the Equipment under any Lease by any person other than Lessee, without Lessor's prior written consent in each instance. Lessee shall at all times remain liable for the performance of the covenants and conditions on its part to be performed, notwithstanding any assigning, transferring or other conveyance that may be made with such consent. Lessee shall take no action that may adversely affect the excludability from gross income for federal income tax purposes of any portion of the interest component of the Rental Payments under any Lease.

27. **ASSIGNMENT BY LESSOR:** Lessor may, at any time and from time to time without Lessee's consent, assign, transfer or otherwise convey all or any part of its interest in the Equipment under any Lease or in any Lease, any applicable Escrow Fund, this Agreement or any applicable Escrow Agreement, including Lessor's rights to receive the Rental Payments or any part thereof under any Lease (in which event Lessee agrees to make all Rental Payments under the affected Lease thereafter to the assignee designated by Lessor), to terminate any Lease or Lessee's rights under any Lease, to receive tax indemnity payments pursuant to Paragraph 12 hereof and as provided in each Lease and to repossess the Equipment and exercise Lessor's other rights and remedies under Paragraph 25 hereof and as provided in each Lease; *provided, however,* that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Paragraph 27 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust, interests in which are offered and sold in a private placement or limited offering only to investors whom Lessor reasonably believes are qualified institutional buyers or accredited investors within the meaning of the applicable federal securities law; *provided, however,* that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under any Lease with or to more than one individual or entity with respect to each Lease. No assignment, transfer or conveyance permitted by this Paragraph 27 with respect to a Lease shall be effective until Lessee's registration agent shall have received a written notice of assignment (in substantially the form attached as *Exhibit A-7* to each Lease) that discloses the name and address of each such assignee; *provided, however,* that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under any Lease, it shall thereafter be sufficient that a copy of the agency or trust agreement shall have been deposited with Lessee's registration agent until Lessee's registration agent shall have been advised that such agency or trust agreement is no longer in effect. During the term of this Agreement, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments with respect to each Lease in form necessary to comply with Section 149 of the Code. For this purpose, Lessee appoints Lessor to act as its registration agent, which appointment Lessor hereby accepts. Lessor agrees on Lessee's behalf to maintain such record of all assignments. Lessee agrees, if so requested, to acknowledge each such assignment in writing within 15 days after request therefor, but such acknowledgment shall in no way be deemed necessary to make any assignment effective. Lessee further agrees that any moneys or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

28. **COSTS:** Lessee shall pay to Lessor all costs and expenses incurred by Lessor in enforcing any of the terms, conditions or provisions of this Agreement and each Lease, including reasonable attorneys' fees and costs related to repossession of the Equipment under any Lease (including, without limitation, the costs and expenses to deliver possession of the Equipment under such Lease to such location as Lessor directs pursuant to Paragraph 25 hereof) and the exercise of remedies or the enforcement of any terms, conditions or provisions with respect to each Lease.

29. **SEVERABILITY:** If any provision of this Agreement or any Lease is or becomes invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other

provisions of this Agreement or any such Lease, which shall be valid and enforceable to the fullest extent permitted by law.

30. **NOTICES:** All notices, reports and other documents provided for in this Agreement or under any Lease shall be deemed to have been given or made when delivered (including by facsimile transmission) or three days after being mailed by certified mail, postage prepaid, addressed to Lessor or Lessee at their respective mailing addresses set forth above or such other addresses as either of the parties hereto may designate in writing to the other from time to time for such purpose.

31. **AMENDMENTS:** This Agreement, and each Lease (including the Exhibits attached thereto), constitute the entire agreement between Lessor and Lessee with respect to the Equipment therein described and the subject matter hereof and thereof. No term or provision of this Agreement or any Lease may be changed, waived, amended or terminated except by a written agreement signed by both Lessor and Lessee, except that Lessor may insert in any Schedule the serial number and additional description details of any item of Equipment after delivery thereof.

32. **CONSTRUCTION:** This Agreement and each Lease shall in all respects be governed by and construed in accordance with the laws of the State. The titles of the Paragraphs of this Agreement are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence of this Agreement and each Lease in each of their provisions.

33. **PARTIES; SURVIVAL OF CERTAIN OBLIGATIONS AND INDEMNITIES:** (a) The provisions of this Agreement and each Lease shall be binding upon, and (subject to the limitations of Paragraph 26 hereof) shall inure to the benefit of, the respective assignees and successors of Lessor and Lessee.

(b) The indemnities, assumptions of liabilities and obligations of Lessee provided for in Paragraphs 8, 12 and 21 of this Agreement and incorporated into each Lease shall continue in full force and effect notwithstanding the expiration or termination of the term of this Agreement or any applicable Lease.

34. **COUNTERPARTS:** This Agreement and each Lease may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same agreement; *provided however*, that only one counterpart shall constitute the original for each Lease for purposes of the sale or transfer of a Lease as chattel paper as provided in such Lease.

35. **INTEREST:** If under applicable law any part of the Rental Payments under any Lease is deemed or determined to be imputed interest, finance charges or time-price differential ("*Interest*"), Lessor and Lessee agree that the Rental Payments under such Lease shall be deemed to be level payments of principal and Interest, with such Interest accruing on principal amounts outstanding from time to time. The rate of such Interest is not intended to exceed the maximum rate or amount of interest permitted by applicable law. If the Interest exceeds such maximum, then at Lessor's option, if permitted by law, the Interest payable under such Lease will be reduced to the legally permitted maximum amount of interest, and any excessive Interest under such Lease will be used to reduce the principal amount of Lessee's obligation under such Lease or be refunded to Lessee.

36. **ESCROW AGREEMENT:** (a) If, in order to provide financing to pay the Purchase Price for the Equipment under a Lease, Lessor and Lessee execute and deliver an Escrow Agreement, substantially in the form of *Exhibit B* hereto, at the time of execution and delivery of the Lease, then;

(b) If an Event of Nonappropriation or an Event of Default occurs prior to Lessee's acceptance of all the Equipment, the amount then on deposit in the Equipment Acquisition Fund shall be applied to prepay the unpaid principal component of the Rental Payments in whole on the first business day of the month next succeeding the occurrence of either such Event plus accrued interest to the prepayment date; *provided, however*, that the amount to be prepaid by Lessee pursuant to this Paragraph 36 shall first be paid from moneys in the Equipment Acquisition Fund and then from Legally Available Funds and other moneys available for such purpose as a result of the exercise by Lessor of its rights and remedies under this Agreement. Any funds on deposit in the Equipment Acquisition Fund on the prepayment date described in this subparagraph (b) in excess of the unpaid principal component of the Rental Payments to be prepaid plus accrued interest thereon to the prepayment date shall be paid promptly to Lessee.

(c) To the extent that Lessee has not accepted all items of Equipment before the eighteen-month anniversary of the Date of Lease Schedule, or there otherwise remains a balance on deposit in the Equipment Acquisition Fund on the eighteen-month anniversary of the Date of Lease Schedule, the amount then on deposit in the Equipment Acquisition Fund shall be applied first to payment of the interest component of Rental Payments due on the next succeeding Rental Payment date and then, to the extent available, to the unpaid principal component of Rental Payments coming due on such next succeeding Rental Payment date and thereafter in the same manner until all such funds are exhausted.

LESSEE HEREBY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Master Equipment Lease-Purchase Agreement to be duly executed and delivered as of the date first above written.

LESSEE: CITY OF SAN LUIS, ARIZONA

By: 

Printed Name: ROSIE CORDOVA

Title: CITY ADMINISTRATOR

LESSOR: FIRST CAPITAL EQUIPMENT LEASING CORPORATION

By: _____

Printed Name: Bob Arnowitz

Title: Vice President

EXHIBIT A

**First Capital Equipment Leasing Corporation
Lease Schedule**

MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT NO.: 628-0578
DATE OF MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT: DECEMBER 12, 2005
LEASE SCHEDULE NO.: _____
DATE OF LEASE SCHEDULE: _____
LESSEE: CITY OF SAN LUIS, ARIZONA

1. DESCRIPTION OF THE EQUIPMENT:

<u>SUPPLIER</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF UNITS OF EQUIPMENT</u>	<u>LOCATION</u>	<u>SERIAL NUMBERS¹ (IF AVAILABLE)</u>
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together with all accessories, attachments, substitutions and accessions.

2. EQUIPMENT LOCATION:

3. The Rental Payments shall be made for the Equipment as follows:

<u>DUE DATE</u>	<u>PRINCIPAL COMPONENT</u>	<u>INTEREST COMPONENT</u>	<u>TOTAL RENTAL PAYMENT DUE</u>	<u>PREPAYMENT OPTION AMOUNT²</u>
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4. For purposes of this Lease, "State" means the State of Arizona.

5. Lessee's current Fiscal Period extends from July 1, 2005 to June 30, 2006.

6. The Terms and provisions of the Master Equipment Lease-Purchase Agreement described above (other than to the extent that they relate solely to other Schedules or to Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

¹ Lessee authorizes Lessor to insert serial numbers and additional description details of Equipment when determined by Lessor as provided in Paragraph 31 of the Agreement.

² Assumes all Rental Payments and Additional Payments due on and prior to that date have been paid.

7. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in such Master Equipment Lease-Purchase Agreement (particularly Paragraph 23 thereof) are true and correct as though made on the date of execution of this Lease Schedule.

Lessee: City of San Luis, Arizona

Lessor: First Capital Equipment Leasing Corporation

By:  _____

By: _____

Printed Name: ROSIE CORDOVA

Printed Name: Bob Arnowitz

Title: CITY ADMINISTRATOR

Title: Vice President

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

**First Capital Equipment Leasing Corporation
Lease Schedule**

MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT NO.: 628-0578

DATE OF MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT: DECEMBER 12, 2005

LEASE SCHEDULE NO.: 001

DATE OF LEASE SCHEDULE: DECEMBER 12, 2005

LESSEE: CITY OF SAN LUIS, ARIZONA

1. DESCRIPTION OF THE EQUIPMENT:

<u>SUPPLIER</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF UNITS OF EQUIPMENT</u>	<u>LOCATION</u>	<u>SERIAL NUMBERS¹ (IF AVAILABLE)</u>
	One (1)	2006 Ford F150 XLT 4x4 Emergency Equipment	A	
	One (1)	2006 Ford Expedition 4x4 Emergency Equipment	A	
	Two (2)	2006 Ford F150 4x2	B	
	One (1)	2006 Ford Crown Victoria	B	
	One (1)	2006 Ford Ranger Supercab V6 4x4	C	
	One (1)	2006 Ford Ranger 4x4 w/6' Service Body and Ladder Rack	C	
	One (1)	2006 Ford F250 w/Ladder & Pipe Rack	C	
	Four (4)	2006 Ford Ranger Super Cab	C	
	Two (2)	John Deere Tractor	C	
	One (1)	Swimming Pool Filter	D	
	Two (2)	2006 Ford F250 Super Cab w/Service Body	E	
	Two (2)	2006 Ford Ranger Super Cab 4x2 Work Trucks	E	
	One (1)	2006 Ford F250 Super Cab w/Service Body	F	
	Three (3)	2006 Ford Ranger Super Cab 4x2 Work Trucks	F	
	One (1)	2006 Ford F150 Crew Cab 4x2 XLT w/Trailer Tow	G	

¹ Lessee authorizes Lessor to insert serial numbers and additional description details of Equipment when determined by Lessor as provided in Paragraph 31 of the Agreement.

<u>SUPPLIER</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF UNITS OF EQUIPMENT</u>	<u>LOCATION</u>	<u>SERIAL NUMBERS¹ (IF AVAILABLE)</u>
	Two (2)	2006 Ford Ranger Super Cab, 4x2 Work Trucks	G	
	One (1)	2006 Ford Ranger Super Cab 4x2	H	
	One (1)	2006 Ford Five Hundred SE	I	
	One (1)	Front Loader/Side Loader Sanitation Vehicle	J	

together with all accessories, attachments, substitutions and accessions.

2. EQUIPMENT LOCATION:

- A. FIRE DEPT., 720 N. 2ND AVENUE, SAN LUIS, AZ 85349
- B. FACILITIES DEPT., 707 N. FIRST AVENUE, SAN LUIS, AZ 85349
- C. PARKS DEPT., 4055 CESAR CHAVEZ STREET, SAN LUIS, AZ 85349
- D. RECREATION DEPT., 965 N. PARK AVENUE, SAN LUIS, AZ 85349
- E. WATER DEPT., 1311 N. 4TH AVENUE, SAN LUIS, AZ 85349
- F. WASTERWATER DEPT., 101 W. JUAN SANCHEZ BLVD., SAN LUIS, AZ 85349
- G. HIGHWAY USERS DEPT., 1311 N. 4TH AVENUE, SAN LUIS, AZ 85349
- H. UTILITIES DEPT., 788 E. B STREET, SAN LUIS, AZ 85349
- I. ADMINISTRATIVE SERVICES, 785 N. FIRST AVENUE, SAN LUIS, AZ 85349
- J. SANITATION DEPT., 707 N. FIRST AVENUE, SAN LUIS, AZ 85349

3. The Rental Payments shall be made for the Equipment as follows:

<u>DUE DATE</u>	<u>PRINCIPAL COMPONENT</u>	<u>INTEREST COMPONENT</u>	<u>TOTAL RENTAL PAYMENT DUE</u>	<u>PREPAYMENT OPTION AMOUNT²</u>
12/21/2005				932,571.37
12/21/2005	12,910.25	0.00	12,910.25	932,567.33
01/21/2006	9,469.18	3,441.07	12,910.25	922,820.04

¹ Lessee authorizes Lessor to insert serial numbers and additional description details of Equipment when determined by Lessor as provided in Paragraph 31 of the Agreement.

² Assumes all Rental Payments and Additional Payments due on and prior to that date have been paid.

<u>DUE DATE</u>	<u>PRINCIPAL COMPONENT</u>	<u>INTEREST COMPONENT</u>	<u>TOTAL RENTAL PAYMENT DUE</u>	<u>PREPAYMENT OPTION AMOUNT²</u>
02/21/2006	9,504.62	3,405.63	12,910.25	913,039.69
03/21/2006	9,540.18	3,370.07	12,910.25	903,226.17
04/21/2006	9,575.87	3,334.38	12,910.25	893,379.36
05/21/2006	9,611.70	3,298.55	12,910.25	883,499.15
06/21/2006	9,647.67	3,262.58	12,910.25	873,585.43
07/21/2006	9,683.77	3,226.48	12,910.25	863,638.09
08/21/2006	9,720.00	3,190.25	12,910.25	853,657.01
09/21/2006	9,756.37	3,153.88	12,910.25	843,642.08
10/21/2006	9,792.87	3,117.38	12,910.25	833,593.18
11/21/2006	9,829.52	3,080.73	12,910.25	823,510.20
12/21/2006	9,866.29	3,043.96	12,910.25	813,393.02
01/21/2007	9,903.21	3,007.04	12,910.25	803,241.53
02/21/2007	9,940.27	2,969.98	12,910.25	793,055.61
03/21/2007	9,977.46	2,932.79	12,910.25	782,835.14
04/21/2007	10,014.79	2,895.46	12,910.25	772,580.01
05/21/2007	10,052.26	2,857.99	12,910.25	762,290.09
06/21/2007	10,089.87	2,820.38	12,910.25	751,965.27
07/21/2007	10,127.63	2,782.62	12,910.25	741,605.44
08/21/2007	10,165.52	2,744.73	12,910.25	731,210.47
09/21/2007	10,203.56	2,706.69	12,910.25	720,780.24
10/21/2007	10,241.74	2,668.51	12,910.25	710,314.64
11/21/2007	10,280.06	2,630.19	12,910.25	699,813.54
12/21/2007	10,318.52	2,591.73	12,910.25	689,276.82
01/21/2008	10,357.13	2,553.12	12,910.25	678,704.37
02/21/2008	10,395.88	2,514.37	12,910.25	668,096.06
03/21/2008	10,434.78	2,475.47	12,910.25	657,451.77
04/21/2008	10,473.82	2,436.43	12,910.25	646,771.38
05/21/2008	10,513.01	2,397.24	12,910.25	636,054.76
06/21/2008	10,552.35	2,357.90	12,910.25	625,301.80
07/21/2008	10,591.83	2,318.42	12,910.25	614,512.37
08/21/2008	10,631.47	2,278.78	12,910.25	603,686.34
09/21/2008	10,671.24	2,239.01	12,910.25	592,823.59
10/21/2008	10,711.17	2,199.08	12,910.25	581,924.00
11/21/2008	10,751.25	2,159.00	12,910.25	570,987.44
12/21/2008	10,791.48	2,118.77	12,910.25	560,013.79
01/21/2009	10,831.86	2,078.39	12,910.25	549,002.92
02/21/2009	10,872.39	2,037.86	12,910.25	537,954.70
03/21/2009	10,913.07	1,997.18	12,910.25	526,869.01
04/21/2009	10,953.90	1,956.35	12,910.25	515,745.72
05/21/2009	10,994.88	1,915.37	12,910.25	504,584.71
06/21/2009	11,036.02	1,874.23	12,910.25	493,385.84
07/21/2009	11,077.32	1,832.93	12,910.25	482,148.99
08/21/2009	11,118.76	1,791.49	12,910.25	470,874.03
09/21/2009	11,160.37	1,749.88	12,910.25	459,560.83
10/21/2009	11,202.13	1,708.12	12,910.25	448,209.26
11/21/2009	11,244.04	1,666.21	12,910.25	436,819.19
12/21/2009	11,286.11	1,624.14	12,910.25	425,390.49
01/21/2010	11,328.34	1,581.91	12,910.25	413,923.02
02/21/2010	11,370.73	1,539.52	12,910.25	402,416.66

² Assumes all Rental Payments and Additional Payments due on and prior to that date have been paid.

<u>DUE DATE</u>	<u>PRINCIPAL COMPONENT</u>	<u>INTEREST COMPONENT</u>	<u>TOTAL RENTAL PAYMENT DUE</u>	<u>PREPAYMENT OPTION AMOUNT²</u>
03/21/2010	11,413.27	1,496.98	12,910.25	390,871.27
04/21/2010	11,455.98	1,454.27	12,910.25	379,286.73
05/21/2010	11,498.84	1,411.41	12,910.25	367,662.89
06/21/2010	11,541.87	1,368.38	12,910.25	355,999.63
07/21/2010	11,585.05	1,325.20	12,910.25	344,296.81
08/21/2010	11,628.40	1,281.85	12,910.25	332,554.30
09/21/2010	11,671.91	1,238.34	12,910.25	320,771.96
10/21/2010	11,715.58	1,194.67	12,910.25	308,949.66
11/21/2010	11,759.42	1,150.83	12,910.25	297,087.26
12/21/2010	11,803.42	1,106.83	12,910.25	285,184.63
01/21/2011	11,847.58	1,062.67	12,910.25	273,241.63
02/21/2011	11,891.91	1,018.34	12,910.25	261,258.12
03/21/2011	11,936.41	973.84	12,910.25	249,233.97
04/21/2011	11,981.07	929.18	12,910.25	237,169.04
05/21/2011	12,025.90	884.35	12,910.25	225,063.19
06/21/2011	12,070.90	839.35	12,910.25	212,916.28
07/21/2011	12,116.06	794.19	12,910.25	200,728.17
08/21/2011	12,161.40	748.85	12,910.25	188,498.72
09/21/2011	12,206.90	703.35	12,910.25	176,227.79
10/21/2011	12,252.57	657.68	12,910.25	163,915.25
11/21/2011	12,298.42	611.83	12,910.25	151,560.95
12/21/2011	12,344.44	565.81	12,910.25	139,164.74
01/21/2012	12,390.62	519.63	12,910.25	126,726.49
02/21/2012	12,436.99	473.26	12,910.25	114,246.05
03/21/2012	12,483.52	426.73	12,910.25	101,723.28
04/21/2012	12,530.23	380.02	12,910.25	89,158.04
05/21/2012	12,577.11	333.14	12,910.25	76,550.18
06/21/2012	12,624.17	286.08	12,910.25	63,899.56
07/21/2012	12,671.41	238.84	12,910.25	51,206.04
08/21/2012	12,718.82	191.43	12,910.25	38,469.46
09/21/2012	12,766.41	143.84	12,910.25	25,689.69
10/21/2012	12,814.18	96.07	12,910.25	12,866.57
11/21/2012	12,862.10	48.15	12,910.25	0.00
	932,571.37	151,889.63	1,084,461.00	

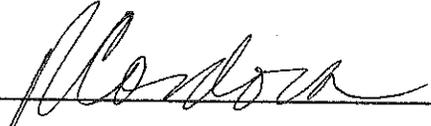
4. For purposes of this Lease, "State" means the State of Arizona.
5. Lessee's current Fiscal Period extends from July 1, 2005 to June 30, 2006.
6. The Terms and provisions of the Master Equipment Lease-Purchase Agreement described above (other than to the extent that they relate solely to other Schedules or to Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

² Assumes all Rental Payments and Additional Payments due on and prior to that date have been paid.

7. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in such Master Equipment Lease-Purchase Agreement (particularly Paragraph 23 thereof) are true and correct as though made on the date of execution of this Lease Schedule.

Lessee: City of San Luis, Arizona

Lessor: First Capital Equipment Leasing Corporation

By: 

By: _____

Printed Name: ROSIE CORDOVA

Printed Name: Bob Arnowitt

Title: CITY ADMINISTRATOR

Title: Vice President

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