

**EQUIPMENT LEASE/PURCHASE AGREEMENT<sup>1</sup>**  
**(ESCROW ACCOUNT)**

This Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of \_\_\_\_\_, \_\_\_\_\_, and entered into between Banc of America Leasing & Capital, LLC, a Delaware limited liability company (together with its successors, assigns and transferees, and as more particularly defined herein, “*Lessor*”), and the City of Moreno Valley, California, a city existing under the laws of the State of California (“*Lessee*”).

**WITNESSETH:**

WHEREAS, Lessee desires the Lessor to finance the acquisition, installation [and retrofitting of] certain Equipment (as such term is defined herein) to be leased by Lessee, subject to the terms and conditions hereof; and

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

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

**ARTICLE I**

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

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

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

**[“*Additional Lessee-Owned Streetlights*” means all streetlights and related fixtures owned by Lessee and located within the \_\_\_\_\_, described on Exhibit G attached hereto (as may be amended by a True-Up Amendment), and all replacements, repairs, restorations, modifications and improvements thereof or thereto; *provided that “Additional Lessee-Owned Streetlights” shall not include Lessee-Owned Streetlights or Retired Streetlights.*]**

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<sup>1</sup> This form is for Member Agencies that do not enter into an Implementation Agreement with WRCOG.

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

“*Closing Date*” has the meaning set forth in the Pole Agreement.<sup>2</sup>

“*Collateral*” has the meaning provided in Section 6.02.

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

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

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

“*Disposed Equipment Collateral Value*” means an amount equal to the product obtained by multiplying (A) the Prepayment Price shown on the Payment Schedule for the Rental Payment Date next preceding the Partial Prepayment Date (or if the Partial Prepayment Date occurs prior to the first Rental Payment Date for which the Prepayment Price is shown, then the product obtained by multiplying the then aggregate unpaid principal component of Rental Payments outstanding on the Partial Prepayment Date times 102%) times (B) a fraction (i) the numerator of which equals the cost of the Equipment (including any costs of installation or other related costs financed or refinanced under this Agreement) located in or on such property, facilities and buildings subject to demolition, disposition, damage, destruction, casualty, title defect or condemnation event, as the case may be, and (ii) the denominator of which equals the total cost of the Equipment financed under this Agreement.

“*Disposed Equipment Prepayment Amount*” means, as of a Partial Prepayment Date, an amount equal to the Disposed Equipment Collateral Value.

“*Equipment*” means [(a)] the property listed in the Equipment Schedule (as may be amended by a True-Up Amendment, if any) and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Article V or Section 8.01[, (b) the Lessee-Owned Streetlights and (c) the Additional Lessee-Owned Streetlights][; *provided that Equipment shall exclude any Retired Streetlights*]. Whenever reference is made in this Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

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

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<sup>2</sup> Confirm specific terminology in particular City’s PSA.

“*Equipment Schedule*” means the equipment schedule attached hereto as *Exhibit A* and made a part hereof.

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

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

“*Escrow Agreement*” means the Escrow and Account Control Agreement dated as of \_\_\_\_\_, 2018 in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which an Escrow Account is established and administered.

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

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

“*Excess Proceeds*” has the meaning provided in Section 4.05.

“*Inoperable Component*” has the meaning provided in Section 5.04.

“*[Inventory Inspection Period]*” has the meaning provided in the Pole Agreement.<sup>3</sup>

“*Lease Term*” means the Scheduled Term upon its expiration or as terminated as provided in Section 3.03.

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

“*Lessee-Owned Streetlights*” means the streetlights and related fixtures owned by Lessee, as identified in *Exhibit A* attached hereto, as may be amended with the prior written consent of Lessor in its discretion or upon the True-Up Process, and located within the \_\_\_\_\_, (x) which are to be acquired, constructed, furnished and installed with amounts to be disbursed pursuant to the Escrow Agreement (and thereby constituting Equipment hereunder) and/or (y) on, about and to which a portion of the Equipment is to be acquired, constructed, furnished and installed with amounts to be disbursed pursuant to the Escrow Agreement[; ***provided that “Lessee-Owned Streetlights” shall not include Retired Streetlights***].

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<sup>3</sup> Confirm specific terminology in particular City’s PSA. “Inventory, Planning and Inspection Period” in some PSAs.

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

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

“*Light Pole License Agreement*” means that certain No-Fee Light Pole License Agreement for Wireless Attachment between Southern California Edison and Lessee dated as of \_\_\_\_\_, including amendments and supplements thereto relating to the issuance of licenses thereunder to Southern California Edison in order for Southern California Edison to attach certain wireless equipment (the “*SCE Equipment*”) to the [Streetlights] and Lessee’s poles and facilities for the purpose of operating or managing the provision of electricity to the [Streetlights], all as further described therein. Nothing in this Agreement shall require Lessee to maintain such Light Pole License Agreement beyond the term of such agreement.

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

“*Material Adverse Effect*” means any event or occurrence which could (a) adversely affect the rights, interests, remedies or security of the Lessor under this Agreement or with respect to the Collateral, (b) impair the ability of the Lessee to perform its obligations under this Agreement and/or any Vendor Agreement or (c) have an adverse effect upon the legality, validity, binding effect or enforceability against the Lessee of this Agreement and/or any Vendor Agreement.

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

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

“*Partial Prepayment Date*” means a business day selected by Lessee that is the earlier of the next Rental Payment Date or 65 days after the casualty, title defect or condemnation event (or such other date approved in writing by Lessor), and shall be the date that Lessee exercises its right of partial prepayment following a partial casualty or condemnation event as provided in Section 10.01(b)(2). Lessee shall provide Lessor with at least 60 days prior written notice of the Partial Prepayment Date.

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

**[“*Phase Closing Date*” has the meaning set forth in the Pole Agreement.]<sup>4</sup>**

“*Pole Agreement*” means (i) that Purchase and Sale Agreement between Southern California Edison and Lessee dated as of \_\_\_\_\_, including amendments and supplements thereto, relating to, among other things, the purchase of certain Equipment from Southern California Edison and (ii) any such other agreements pursuant to which licenses are issued thereunder to Lessee in order for Lessee or its Vendor to attach certain Equipment to Pole Owner’s poles and facilities all as further described therein.

“*Pole Owner*” means Southern California Edison, its successors or assigns, or any other owner of the streetlights, brackets, photocells and poles to be acquired by Lessee.

“*Prepayment Price*” means the amount provided under the column titled “Prepayment Price” in the Payment Schedule *minus* the amount of any partial prepayment pursuant to Section 10.01(b) paid prior to the date of prepayment pursuant to Section 10.01(a).

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

“*Real Property*” means real estate where the Equipment is and/or will be located.

“*Real Property Issue*” has the meaning provided in Section 2.01(t).

“*Related Agreements*” means this Agreement, the Escrow Agreement and each Vendor Agreement.

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

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

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

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<sup>4</sup> Include for multi-phase PSAs. Confirm specific terminology in particular City’s PSA.

“*Replaced Equipment*” has the meaning provided in Section 8.01.

“*Replacement Equipment*” has the meaning provided in Section 8.01.

**[“*Retired Streetlights*” means in the aggregate over the Lease Term, the up to \_\_\_\_\_<sup>5</sup> Streetlights that are permitted, pursuant to Section 5.04(c) hereof, to be retired and removed from Equipment and not replaced.]**

“*Scheduled Term*” means the Original Term and all Renewal Terms, with a final Renewal Term ending on \_\_\_\_\_.

“*State*” means the State of California.

**[“*Streetlights*” means all Additional Lessee-Owned Streetlights and all Lessee-Owned Streetlights, in each case, subject to Lessor’s first priority Lien under this Agreement, but shall exclude any Retired Streetlights.]**

“*Surety Bond*” means a payment or performance bond.

“*True-Up Amendment*” means an amendment to this Agreement and the Equipment Schedule executed by Lessee and Lessor substantially in the form attached as *Exhibit J* hereto.

“*True-Up Process*” means, upon the expiration of the [final]<sup>6</sup> [Inventory Inspection Period] and following the Closing Date under the Pole Agreement, the execution of the True-Up Amendment by Lessee and Lessor to adjust the Equipment under this Agreement to add, delete or modify references to be consistent with the property, equipment and/or streetlights acquired under the Pole Agreement during and as a result of the [final]<sup>7</sup> [Inventory Inspection Period].

“*Vendor*” means the manufacturer, installer, contractor, supplier or provider of the Equipment or services (excluding Southern California Edison) with respect to the Equipment or any other person as well as the agents or dealers of the manufacturer, installer, contractor, supplier or provider with whom Lessee arranged Lessee’s acquisition, installation, operation, maintenance and/or servicing of the Equipment.

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment, and shall include, without limitation, \_\_\_\_\_.

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<sup>5</sup> Before closing, we will hard code the # of streetlights that can be permanently retired which cannot exceed 1% of the number of Lessee-Owned Streetlights under this Agreement. In connection with a True-Up Amendment this number can be recalibrated.

<sup>6</sup> Include for multi-phase PSAs.

<sup>7</sup> Include for multi-phase PSAs.

## ARTICLE II

*Section 2.01. Representations, Warranties and Covenants of Lessee.* For the benefit of Lessor, Lessee represents and warrants as of the Commencement Date (and such other dates as may be provided herein), and covenants at all times during the Lease Term as follows:

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

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

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

(d) Lessee will do or cause to be done all things, as legally permissible, necessary to preserve and keep in full force and effect its existence as a [city] [county] [special district] [body corporate and politic] of the State.

(e) Lessee has complied with such procurement and public bidding requirements as are applicable to this Agreement and the Related Agreements and the acquisition and installation by Lessee of the Equipment, under federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other governmental authority.

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

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within nine months of its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior five fiscal years or current

fiscal year or for the following fiscal year when approved but not later than thirty (30) days prior to the end of its current fiscal year. The financial statements described in subsection (g)(i) shall be accompanied by an unqualified opinion of Lessee's independent auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns. All financial statements and other information delivered to Lessor by the Lessee is correct as of the date thereof. Since [date of most recent audit], no material adverse change has occurred in the Lessee's financial condition that would adversely affect the Lessee's ability to perform its obligations hereunder.

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

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

(j) There is no pending litigation, tax claim, other proceeding or dispute (of which Lessee is aware, has notice or has been served), or to Lessee's best knowledge, threatened, litigation, tax claim, proceeding or dispute against Lessee that could materially adversely affect Lessee's financial condition or impairs its ability to perform its obligations under this Agreement or any Related Agreement. There is no public vote or referendum pending, proposed or concluded, the results of which could adversely affect Lessee's financial condition or impairs its ability to perform its obligations under this Agreement or any Related Agreement. Lessee will, at its expense, maintain its legal existence in good standing and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Equipment and the Escrow Account, and Lessor's rights and benefits under this Agreement and the Related Agreements.



(k) With respect to the Real Property: (i) Lessee is the fee owner of the Real Property and has good and marketable title thereto, and there exists no mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such Real Property, (ii) the Equipment will be located on improvements within, a right-of-way that is dedicated to public use for a period that is longer than the Scheduled Term and/or (iii) to the extent neither (i) or nor (ii) is true with respect to any portion of the Real Property (“*Non-Lessee Real Property*”), then Lessee has the right to enter onto said Non-Lessee Real Property for the purposes of returning the Equipment to Lessor and/or exercising remedies under this Agreement on behalf of Lessor, including, without limitation (subject to the Light Pole License Agreement), the right to physically detach and remove the Equipment from the Non-Lessee Real Property and return the same to Lessor. Lessee is (or upon the acquisition of the Lessee-Owned Streetlight under the Pole Agreement, will be) the fee of owner with free and clear title to all the Lessee-Owned Streetlights on, about and to which a portion of the Equipment is or will be located. Lessee has the right to install, operate, maintain and remove Equipment on, to and from the Lessee-Owned Streetlights for a period that is longer than the Scheduled Term, and the right, upon Lessor’s request (subject to the Light Pole License Agreement), to physically detach and remove the Equipment from the Lessee-Owned Streetlights and return the same to Lessor. Lessee covenants and agrees that throughout the Lease Term and prior to the payment of the last scheduled Rental Payment and the payment of all other amounts due hereunder, Lessee shall not, to the extent it may legally agree to do so, transfer title to or control over, or encumber the Real Property to another entity or devote any portion of the Real Property to another entity. The Light Pole License Agreement does not and shall in no way impair, adversely affect or prime Lessor’s first priority Lien on any of the Equipment under this Agreement; *provided*, however, Lessor acknowledges that the Light Pole License Agreement may require the substitution of certain existing poles and/or provision of certain notices prior to the removal of the Equipment.

(l) The portion of the Equipment that is or will be subject to a Pole Agreement is and will be located on within a right-of-way that is dedicated to public use for a period that is longer than the Scheduled Term. Based solely on Southern California Edison’s representations in the Pole Agreement, Southern California Edison owns, operates and maintains overhead electric distribution facilities, including distribution poles on which the portion of the Equipment is to be installed, within the political jurisdiction of Lessee. Any streetlights (other than Lessee-Owned Streetlights[ **and Additional Lessee-Owned Streetlights**]) on, about and to which any portion of the Equipment is to be acquired, constructed, furnished and installed are all subject to the applicable Pole Agreement, which is currently in full force and effect. Lessee has obtained, or will have obtained prior to disbursement from the Escrow Account for the related Equipment, all necessary licenses, permits, approvals or other authorizations, if any, issued by any applicable governmental authority and/or the Pole Owner in accordance with the applicable Pole Agreement for the specific locations for the Equipment to be installed.

(m) [(i)] The portion of the Equipment that is and will be acquired and installed on Lessee-Owned Streetlights are and will be located on, or on improvements

within, a right-of-way that is dedicated to public use for a period that is longer than the Scheduled Term. Lessee is entitled to the benefit and use of such right-of-way for the Lessee-Owned Streetlights and has good and marketable title to the Lessee-Owned Streetlights on, about and to which a portion of the Equipment is or will be located. Subject to the Light Pole License Agreement, there exists no mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to the Lessee-Owned Streetlights, except under this Agreement. **[Subject to modification by a True-Up Amendment, the number of Lessee-Owned Streetlights subject to Lessor's Lien under this Agreement is and shall be at least equal to \_\_\_\_ at all times (unless any such Lessee-Owned Streetlights are permitted to be Retired Streetlights pursuant to Section 5.04(c) hereof, in which case the number \_\_\_\_ may be reduced by the number of such applicable Retired Streetlights).]**

**[(ii) Lessee is the fee owner with free and clear title to all the Additional Lessee-Owned Streetlights. The Additional Lessee-Owned Streetlights are and will be located on, or on improvements within, a right-of-way that is dedicated to public use for a period that is longer than the Scheduled Term. Lessee is entitled to the benefit and use of such right-of-way for the Additional Lessee-Owned Streetlights and has good and marketable title to the Additional Lessee-Owned Streetlights on, about and to which a portion of the Equipment is or will be located. Subject to the Light Pole License Agreement, there exists no mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to the Additional Lessee-Owned Streetlights, except under this Agreement. Subject to modification by a True-Up Amendment, the number of Additional Lessee-Owned Streetlights subject to Lessor's first priority Lien under this Agreement is and shall be at least equal to \_\_\_\_ at all times (unless any such Additional Lessee-Owned Streetlights are permitted to be Retired Streetlights pursuant to Section 5.04(c) hereof, in which case the number \_\_\_\_ may be reduced by the number of such applicable Retired Streetlights). The insured value of each Additional Lessee-Owned Streetlight shall equal or exceed the insured value of each Lessee-Owned Streetlight.]**

**(iii) At all times, Lessee shall ensure that the number of Additional Lessee-Owned Streetlights subject to Lessor's first priority Lien under this Agreement shall equal at least 10% of the number of Lessee-Owned Streetlights. The sum of (A) the aggregate number of Additional Lessee-Owned Streetlights subject to Lessor's first priority Lien under this Agreement plus (B) the aggregate number of Lessee-Owned Streetlights subject to Lessor's first priority Lien under this Agreement, is and shall be at least equal to \_\_\_\_ at all times (the "*Required Collateral Amount*") unless any such Streetlights are permitted to be Retired Streetlights pursuant to Section 5.04(c) hereof, in which case the number \_\_\_\_ may be reduced by the number of such applicable Retired Streetlights.]**

(n) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time during the past ten (10) years has been terminated by Lessee as a result of insufficient funds being

appropriated in any fiscal year. No event of default that Lessee did not cure during the applicable cure period has existed or occurred under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(o) In connection with Lessor’s remedies to obtain possession pursuant to Section 12.02 of the portion of the Equipment that is or will be subject to the Pole Agreement, Lessee has the authority to enter upon the premises where items of such Equipment are located for the purpose of disconnecting, de-installing and removing such items of Equipment from such premises, subject to compliance with the applicable Pole Agreement.

(p) Lessee represents to Lessor that that it has adopted a debt policy in compliance with SB 1029 and Section 8855 of the Government Code of California *et seq.* and covenants that it shall comply with Section 8855 of the Government Code of California *et seq.* throughout the Lease Term.

(q) Lessee has complied with the requirements of California Government Code Section 37350 and 37351 *et seq.* and all other applicable California law in connection with this Agreement and the Equipment.

(r) In connection with each request for a disbursement from the Escrow Account to pay all or any portion of the Purchase Price (as defined in the Pole Agreement) on **[each Phase Closing Date and]**<sup>8</sup> the Closing Date under the Pole Agreement, Lessee shall (i) complete and submit to Lessor a certificate setting forth the details of the property, equipment and/or streetlights acquired or adjusted under the Pole Agreement as a result of the **[related]**<sup>9</sup> **[Inventory Inspection Period]** in reasonable detail, substantially in the form attached hereto as *Exhibit K* and (ii) provide Lessor with invoices and bills of sale relating to all the property, equipment and streetlights purchased or reimbursed (or to be purchased or reimbursed) with the proceeds of such disbursement and the payment of such Purchase Price. If any of the property, equipment and/or streetlights acquired under the Pole Agreement differs from the Equipment described on the Commencement Date, then prior to requesting the disbursement from the Escrow Account to pay the **[final]**<sup>10</sup> Purchase Price (as defined in the Pole Agreement) on the **[final]**<sup>11</sup> Closing Date, Lessee shall request (pursuant to the form attached hereto as *Exhibit K*) that Lessor execute a True-Up Amendment to add to, delete some of or modify the Equipment under this Agreement to be consistent with the property, equipment and/or streetlights acquired under the Pole Agreement following the **[final]**<sup>12</sup> **[Inventory**

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8 Include for multi-phase PSAs.

9 Include for multi-phase PSAs.

10 Include for multi-phase PSAs.

11 Include for multi-phase PSAs.

12 Include for multi-phase PSAs.

**Inspection Period]**. Lessee shall provide Lessor with such other information that Lessor may reasonably request to substantiate the change in or status of the property, equipment and/or streetlights acquired under the Pole Agreement. Lessee and Lessor shall negotiate in good faith in determining any adjustment to the Equipment based on the changes in the property, equipment and/or streetlights acquired under the Pole Agreement and in connection therewith, Lessee and Lessor shall execute a True-Up Amendment prior to the expiration of the Acquisition Period (or such later period consented to by Lessor in its sole discretion). Lessee shall pay all of Lessor's reasonable costs and expenses (including reasonable legal fees) in connection with the execution and delivery of a True-Up Amendment and preparation and filing of amendments to financing statements (personal property and fixture filings) and other documents which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Equipment in connection with or following a True-Up Process. The True-Up Process may not occur more than once during the Lease Term.

(s) Lessee is in compliance with all Pole Agreements, Light Pole License Agreements and each Vendor Agreement. Lessee shall deliver, or cause to be delivered, to Lessor such information as Lessor shall request regarding the Pole Agreement, the Light Pole License Agreement and the Vendor Agreements to the extent Lessee is in possession of such information.

(t) Upon an Event of Default or an Event of Non-appropriation, Lessee shall at Lessor's direction (subject to compliance with the Light Pole License Agreement) enter onto the Real Property, including any Non-Lessee Real Property, and physically detach and remove the Equipment and return the same to Lessor pursuant to Section 3.03 hereof.

(u) Except as set forth in the Light Pole License Agreement, to the best knowledge of the Lessee, there exists no mortgage, pledge, Lien, security interest, reverter, charge or other encumbrance of any nature whatsoever on or with respect to the Real Property or the [Lessee-Owned] Streetlights that would adversely affect Lessor's first priority Lien on and security interest in, the Equipment. In the event any Lien, encumbrance, reverter, restriction, asserted encumbrance, claim, dispute or other issue exists or arises with respect to the Lessee's legal title to or valid and marketable, beneficial use and enjoyment of the Real Property or impairs or adversely impacts Lessor's right, title or interest in the Equipment or any of Lessor's rights or remedies under this Agreement with respect to the Equipment, (each of the foregoing referred to as a "*Real Property Issue*"), Lessee will take all steps necessary to promptly quiet, resolve and/or eliminate such Real Property Issue to the satisfaction of Lessor and ensure that Lessee and Lessor have adequate access to and use of (including beneficial use and enjoyment of) the Real Property for all purposes of the Equipment contemplated herein and Lessee shall, to the extent it may legally agree to do so, ensure that its fee interest in the Real Property and Lessor's right, title or interest in the Equipment and rights or remedies under this Agreement with respect to the Equipment remain free and clear of Real Property Issues.

(v) Lessee has obtained, or will have obtained prior to disbursement from the Escrow Account for the related Equipment, all necessary licenses, permits, approvals or other authorizations, if any, issued by any applicable governmental authority to acquire, construct, furnish and install the Equipment as contemplated by this Agreement.

(w) Lessee represents and warrants that as of the Commencement Date the Light Pole License Agreement encumbers and affects only \_\_\_ out of the \_\_\_\_\_ Streetlights. Lessee covenants and agrees that the Light Pole License Agreement is limited to permitting Southern California Edison to attach its wireless communicating device used solely in connection with Southern California Edison's utility operations together with associated ancillary equipment owned by Southern California Edison to serve the purpose of managing Southern California Edison's electrical grid and provision of electricity for Lessee's streetlights. Lessee covenants and agrees that the Light Pole License Agreement will not at any time encumber or affect more than 5% of the streetlights comprising the Equipment. To the extent the Light Pole License Agreement at any time encumbers or affects more than 5% of the streetlights comprising the Equipment, any and all restrictions on Lessor's rights and remedies hereunder being subject to the Light Pole License Agreement shall automatically and immediately be limited to only 5% of the streetlights comprising the Equipment and the parties shall enter into an amendment to this Agreement to reflect such limited impact of the Light Pole License Agreement, provided that such limited impact shall apply even if the parties fail to enter into such amendment.

(x) Lessee acknowledges and covenants that to the extent applicable to this Agreement and/or any Related Agreement, Lessee is solely responsible for and shall comply with the legal requirements under the California Government Code Chapter 11.5 §§ 8855-8859 *et seq.*, as amended (the "CDIAC Act"). Without limiting the generality of the foregoing, at the times and in the manner required by the CDIAC Act and the California Debt and Investment Advisory Commission ("CDIAC"), Lessee shall be solely responsible for (i) preparing, submitting and filing the report of the proposed debt issuance relating to this Agreement by the method required by CDIAC, (ii) preparing, submitting and filing the report of final sale (and accompanying documents) relating to this Agreement by the method required by CDIAC, (iii) submitting an annual report relating to the report of final sale for this Agreement by the method required by CDIAC, and (iv) paying all fees charged by CDIAC or the CDIAC Act relating to this Agreement, including, but not limited to the fee in an amount equal to one-fortieth of one percent of the Acquisition Amount, but not to exceed five thousand dollars (\$5,000) relating to this Agreement.

### ARTICLE III

*Section 3.01. Lease of Equipment.* Subject to the terms and conditions of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire the Equipment. Lessor hereby demises, leases, and transfers to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the

maximum Lease Term as set forth in the Payment Schedule. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee shall have terminated this Agreement pursuant to Section 3.03 or Section 10.01. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Payment Schedule.

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

*Section 3.03. Nonappropriation.* Lessee is obligated only to pay such Rental Payments as may lawfully be made during Lessee's then current fiscal year from funds budgeted and appropriated for that purpose. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the Scheduled Term beyond such Original Term or then current Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees to cease use of the Equipment and, subject to the Light Pole License Agreement, peaceably remove and deliver to Lessor at Lessee's sole expense the Equipment at the location(s) in the State of California to be specified by Lessor; *provided*, that Lessee shall pay month-to-month rent at the Contract Rate for each month or part thereof that Lessee fails to return the Equipment pursuant to this Section 3.03.

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

(i) An Escrow Agreement substantially in the form attached hereto as *Exhibit I*, satisfactory to Lessor and executed by Lessee and the Escrow Agent and Counterpart No. 1 of \_\_\_ manually executed and serially numbered counterparts of this Agreement;

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

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

(iv) An opinion of counsel to Lessee substantially in the form attached hereto as *Exhibit D* and otherwise satisfactory to Lessor;

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

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

(vii) A Certificate completed and executed by an officer of the Lessee certifying that (A) the Lessee is the fee owner of the real estate on which the Equipment is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate, (B) the Equipment will be located on improvements within a right-of-way that is dedicated to public use for a period that is longer than the Scheduled Term of this Agreement and/or (C) except as expressly disclosed in writing to the Lessor prior to the Commencement Date and consented to in writing by the Lessor, no person or entity other than Lessee has an interest in the real estate on which the Equipment is and will be located;

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

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

(x) Invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale as required by Section 5.01(b);

(xi) Fully executed copies of the Pole Agreement, the Light Pole License Agreement and each Vendor Agreement;

(xii) A “Summary of Expected Purchase Price and Facilities under Pole Agreement on Commencement Date” completed and executed by Lessee, substantially in the form attached hereto as *Exhibit M*, completed to the satisfaction of Lessor;

(xiii) To the extent applicable to this Agreement as provided by the CDIAC Act, evidence that Lessee has prepared, submitted and filed the report of the proposed debt issuance relating to this Agreement by the method required by CDIAC and the CDIAC Act; and

(xiv) Such other items reasonably required by Lessor.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lessor of any of its obligations under this Agreement and the Escrow Agreement shall be subject to: (i) no Material Adverse Change shall have occurred since the date of this Agreement, (ii) no Event of Default or Event of Non-appropriation shall have occurred and then be continuing and (iii) no event or condition has occurred which, with notice, the passage of time or any combination of the foregoing would constitute an Event of Default or Event of Non-appropriation under this Agreement.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Escrow Agent for deposit into the Escrow Account as provided in the Escrow Agreement.

#### ARTICLE IV

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

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

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



*Section 4.04. Rental Payments to be Unconditional.* Except as provided in Section 3.03, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, any disputes with the Lessor or any Vendor of any Equipment, or disputes under any Vendor Agreement, or failure of any Vendor to deliver any Equipment or otherwise perform any of its obligations for whatever reason under any Vendor Agreement, including dissolution, bankruptcy, insolvency, reorganization or any similar event with respect to any Vendor.

*Section 4.05. Mandatory Prepayment.* (A) Any funds not applied to Equipment Costs and remaining in the Escrow Account on the earlier of (1) the expiration of the Acquisition Period or (2) the date on which Lessee delivers to Lessor the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from the Escrow Account (such amounts remaining in the Escrow Account on the earlier of such dates, referred to as the “*Excess Proceeds*”) and/or (B) any Surety Bond Proceeds that are not applied to the payment and performance of the Vendor’s obligations in accordance with the related Vendor Agreement: shall be applied by Lessor on each successive Rental Payment Date thereafter to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining unpaid Principal Portion owing hereunder in the inverse order of Rental Payment Dates, on the following terms:

*first*, the portion of the Excess Proceeds or Surety Bond Proceeds, as the case may be, that is equal to 5% or less of the original aggregate principal component of all Rental Payments under this Agreement shall be applied to prepay principal components of Rental Payments at a price of 100% of such prepaid principal components *plus* accrued interest thereon at the Contract Rate to the prepayment date; and

*second*, any remaining Excess Proceeds or Surety Bond Proceeds, as the case may be, if any, shall be applied to further prepay the principal component of Rental Payments at a price of 102% of such prepaid principal components *plus* accrued interest thereon at the Contract Rate to the prepayment date.

In connection with any prepayment pursuant to this Section 4.05, Lessee shall pay the prepayment premium and interest portion of Rental Payments accrued to the prepayment date on such principal portion to be prepaid from funds other than the Excess Proceeds. In connection with any partial prepayment of Rental Payments, Lessor shall prepare a new Payment Schedule and deliver the same to the Lessee, which shall be binding, absent manifest error.

## ARTICLE V

*Section 5.01. Delivery, Installation and Acceptance of Equipment.* (a) Lessee shall order the Equipment to be acquired and financed hereunder, cause the Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith through a Disbursement

Request; *provided* that for costs in excess of the Acquisition Amount, Lessee shall pay such costs directly from its own legally available funds. Lessee shall conduct such inspection and testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering Disbursement Requests to the Lessor pursuant to the Escrow Agreement for the purpose of effecting disbursements from the Escrow Account to pay (or reimburse) Equipment Costs for the Equipment so acquired and installed. In connection with the execution and delivery by Lessee of the final Disbursement Request, Lessee shall deliver to Lessor an "Acceptance Certificate" in the form attached hereto as *Exhibit E*.

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

*Section 5.02. Quiet Enjoyment of Equipment.* So long as Lessee is not in default hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

*Section 5.03. Location; Inspection.* Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld[; ***provided that so long as Lessor has at all times a first priority Lien and security interest on the Required Collateral Amount of Streetlights, Lessee may temporarily or permanently move or relocate up to \_\_\_\_\_<sup>13</sup> Streetlights from time to time in order to address Lessee's governmental purposes; provided further, that (i) Lessor shall retain at all times its first priority security interest on such moved or relocated Streetlights, (ii) Lessee shall make and confirm all the representations, warranties and covenants set forth in Section 2.01(k) to Lessor with respect to such movement or relocation, and (iii) Lessee shall confirm in writing to Lessor that such movement and relocation does not result in any change in the Collateral or Equipment description, identifiers or ID number, and in the event such movement or relocation does result in a change in the Collateral or Equipment description, identifiers or ID number, Lessee shall pay all of Lessor's reasonable costs and expenses (including reasonable legal fees) in connection with the execution and delivery of an amendment and preparation and filing of amendments to financing statements (personal property and fixture filings) and other documents which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Collateral or Equipment in connection with such movement or relocation***]. No such consent will be required for repair and/or replacement of Equipment in accordance with Section 5.04 hereof if

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<sup>13</sup> Before closing, we will hard code the # of Streetlights that can be temporarily moved for that deal. Every deal using this provision must have 10% over-collateralization.

such Equipment is repaired or replaced and returned to the same original location. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment; *provided that*, unless an Event of Default or an Event of Non-appropriation (or event which with the passage of time or the giving of notice or both would constitute an Event of Default or an Event of Non-appropriation) has occurred, such inspection may be subject to Lessee's encroachment proceedings to the extent applicable for safety purposes. In the event of extreme weather-related events in which public safety is in jeopardy, the Lessee shall provide Lessor with notice as soon as practicable of such event and any known potential or actual impact to the Equipment, and the Lessor shall operate in good faith in taking such public safety concerns into consideration in exercising its rights and remedies under this Agreement. If in Lessee's reasonable determination any portion of the Equipment poses an imminent danger to public safety (i.e. immediate serious risk of death or serious physical harm), without prior consent of the Lessor the Lessee may temporarily remove or relocate the Equipment solely to prevent immediate serious risk of death or serious physical harm to the public; *provided that* (x) the Lessee shall provide Lessor with notice as soon as practicable of such event and any known potential or actual impact to the Equipment, and (y) once the immediate serious risk of death or serious physical harm to the public has reasonably abated Lessee shall promptly fully restore, replace, repair and maintain the Equipment pursuant to Section 5.04 hereof and as otherwise required under this Agreement.

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

(b) Lessee agrees that it shall (1) use, operate, protect, maintain, preserve, and keep the Equipment in good repair, condition, appearance and operating order, in the same condition as when received, ordinary wear and tear excepted; (2) use, operate, protect and maintain the Equipment (i) consistent with prudent industry practice (but in no event less than the extent to which Lessee maintains other similar equipment in the prudent management of its assets and properties) and (ii) in compliance with California Public Utilities Commission Order 165 ("*Order 165*") and all applicable insurance policies, laws, ordinances, rules, regulations and manufacturer's recommended maintenance and repair procedures, to the extent such procedures are not in conflict with Order 165 to the extent Order 165 is in effect; (3) proceed promptly, at its expense, to protect its rights and exercise its remedies under any warranty then in effect with respect to the Equipment (although all such remedies shall be exercised by Lessee, the order of exercising remedies may be prioritized in the most efficient manner); and (4) replace or rebuild any component of the Equipment that becomes permanently unfit for normal use or inoperable during the Lease Term (herein, the "*Inoperable Component*") in order to keep the Equipment as

a whole in good repair and working order during the Lease Term. Lessee shall promptly notify Lessor in writing if at any time Equipment acquired (individually or in the aggregate) with five percent (5%) or more of the original Acquisition Amount (the “*Noticed Equipment*”) is reasonably expected within forty-five (45) days to be or become an Inoperable Component(s); *provided* if Lessee becomes aware that any Noticed Equipment is or will become an Inoperable Component in a shorter time period, Lessee shall notify Lessor in writing within five (5) business days of such receipt of knowledge. Lessee shall promptly replace or rebuild, or cause to be replaced or rebuilt, the Inoperable Component with a similar component of comparable or improved make and model that has at least the equivalent value and utility of the Inoperable Component, a remaining useful life of no less than the remaining Scheduled Term and such replacement or rebuilt component shall be in good operating condition. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. When and if available, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer’s maintenance upon the return of the Equipment to Lessor as provided for in Section 3.03 or 12.02(b), unless it is more cost effective for Lessee to replace the Equipment in accordance with Section 8.01.

(c) Notwithstanding anything herein to the contrary, so long as no Event of Default (or event which with the passage of time or the giving of notice or both would constitute an Event of Default) has occurred thereunder and no Event of Non-appropriation has occurred or is threatened, Lessee may retire and exclude from the Equipment up to \_\_\_\_<sup>14</sup> Streetlights in the aggregate over the course of the Lease Term (which number is subject to adjustment following modification by a True-Up Amendment) without prepayment or penalty or obligation to replace such Streetlights, *provided that* Lessee shall (i) provide Lessor with at least 30 days prior written notice substantially in the form of *Exhibit O* attached hereto, (ii) re-make and confirm all the representations, warranties and covenants set forth in this Agreement for the benefit of Lessor and (iii) confirm in writing to Lessor, (1) the number of Streetlights being retired at that time, (2) the cumulative number of Retired Streetlights under this Agreement taking into account the Streetlights then being retired, (3) the number of Streetlights that will remain subject to this Agreement, (4) the number of Lessee-Owned Streetlights that will remain subject to this Agreement [**and (5) the number of Additional Lessee-Owned Streetlights that will remain subject to this Agreement**] and provide such other information or confirmations with respect to the Retired Streetlights, the Equipment and the Collateral as Lessor may request.

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

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<sup>14</sup> Before closing, we will hard code the # of streetlights that can be permanently retired which cannot exceed 1% of the number of Lessee-Owned Streetlights under this Agreement. In connection with a True-Up Amendment this number can be recalibrated.

*Section 5.05. Obligations Under Pole Agreement.* Lessee hereby covenants and agrees to perform, or cause to be performed, its duties and obligations under each Pole Agreement strictly in accordance with the terms and provisions of each such Pole Agreement, for the purpose of maintaining the benefits thereunder for the installation, operation and maintenance of the portion of the Equipment subject to thereto during the Lease Term, including without limitation the timely removal of such Equipment if and when required by the applicable Pole Agreement in order to prevent such Equipment from becoming subject to any Lien or security interest in favor of Pole Owner. Lessee shall maintain in full force and effect during the Lease Term each applicable Pole Agreement until such time as full and marketable title in the streetlights, poles, related fixtures has passed to and vested in Lessee. Lessee shall not abandon any such Equipment or exercise its option, if any, to terminate the term of any Pole Agreement so long as any amount remains unpaid under this Agreement.

## ARTICLE VI

*Section 6.01. Title to the Equipment.* During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof. Subject to the Light Pole License Agreement, Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment and Lessor's first priority security interest constituting a first Lien on the Collateral from and against all claims, Liens and legal processes of its creditors, and keep all Equipment free and clear of all such claims, Liens and processes. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03, full and unencumbered legal title to the Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor (subject to the Light Pole License Agreement) shall deliver possession of the Equipment to Lessor in accordance with Section 3.03 or Section 12.02, as applicable. Upon payment of all amounts due and owing hereunder by Lessee pursuant to Section 10.01 (including upon payment of all Rental payments and other amounts payable under this Agreement), Lessor's security interest or other interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security interest in the Equipment (including applicable UCC-3 termination statements).

*Section 6.02. Security Interest.* As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first Lien (subject to the Light Pole License Agreement) on (a) the Equipment together with all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to this Agreement and all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment, and all substitutions, renewals, or replacements of and additions, improvements, accessions and accumulations to any and all of such Equipment, together with all the rents, issues, income, profits, proceeds and avails therefrom, (b) the Escrow Account and moneys and investments held from time to time therein,

(c) all accounts, chattel paper, deposit accounts, documents, instruments, general intangibles and investment property (including any securities accounts and security entitlements relating thereto) evidenced by or arising out of or otherwise relating to the foregoing collateral described in clauses (a) and (b) above, as such terms are defined in Article 9 of the California Commercial Code and (d) any and all proceeds of any of the foregoing (collectively, the “*Collateral*”). Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor’s security interest in the Equipment, the Escrow Account and the proceeds thereof, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as Lessee.

*Section 6.03. Personal Property, No Encumbrances.* Lessee agrees that, to the extent permitted by State law, the Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Other than the Light Pole License Agreement (if and to the extent applicable) and encumbrances existing on the Commencement Date that are consented to in writing by the Lessor and identified on Exhibit N hereto, Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate (each an “*Encumbering Instrument*”) without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect (which may be in the form of an acknowledgement in the Encumbering Instrument of Lessor’s purchase money first priority security interest and rights in the Equipment and a carve-out of the Equipment from the Lien of the Encumbering Instrument), such consent shall not be unreasonably withheld and Lessor’s response shall be provided within ten (10) business days of the request for such consent.

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* Lessee shall keep the Equipment free of all levies, Liens, and encumbrances except those created by this Agreement and in particular, Lessee shall not create, incur, assume, permit or suffer to exist Lien or encumbrance with respect to the Equipment that impairs Lessee’s use of the Equipment or has an adverse effect on Lessor’s rights, interests, security or remedies in and to the Equipment or under this Agreement. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such Lien or encumbrance, if the same shall arise at any time; *provided that* Lessee may in good faith contest any such Lien or encumbrance, if it provides reasonable security to Lessor against any loss or forfeiture upon Lessor’s request. Except as expressly limited by this Section, Lessee shall promptly pay (a) all utilities, sales and other taxes, special assessments and other charges of any kind that are at any time lawfully

assessed or levied against or with respect to the Equipment, the Rental Payments or any part of either thereof, or which become due during the Lease Term, whether assessed against Lessee or Lessor; and (b) the fee charged by the California Debt and Investment Advisory Commission with respect to this Agreement pursuant to Section 8856 (or any successor provision) of the California Government Code. Lessee shall also pay all utility and other charges incurred in the operation, use and maintenance of the Equipment. Lessee shall pay such taxes, assessments or charges as the same may become due; *provided* that, with respect to any such utilities, taxes, assessments or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term; *provided, further*, Lessee may, at Lessee's expense and in its name, in good faith contest any such taxes, assessments, or other charges in good faith by appropriate proceedings which prevent enforcement of the matter under contest and as to which adequate reserves have been established in accordance with generally accepted accounting principles, and, in the event thereof such taxes, assessments, or other charges so contested and reserved may remain unpaid during the period of such contest and any appeal therefrom. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section. During the Lease Term, Lessor will not claim ownership of the Equipment for the purposes of any tax credits, benefits or deductions with respect to the Equipment.

*Section 7.02. Insurance.* Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Prepayment Price of the Equipment or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$5,000,000 per occurrence for bodily injury and property damage coverage (such liability insurance coverage may be in a combination of primary general liability and/or excess liability umbrella coverage), and in all events in form and amount satisfactory to Lessor; and (c) worker's compensation coverage as required by the laws of the State; *provided* that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section 7.02, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as *Exhibit F*. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least thirty (30) days in advance of such cancellation or modification.

*Section 7.03. Risk of Loss.* Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to

make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this Section 7.03 shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

*Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* Lessee shall secure from the Vendor under each Vendor Agreement and any successor, assignee or replacement thereto, directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment from the proceeds of this Agreement, a Surety Bond executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond ("*Surety Bond Proceeds*") shall be applied in accordance with such Surety Bond to the payment and performance of the Vendor's obligations in accordance with the related Vendor Agreement and, if for whatever reason such proceeds are not so applied, then first to amounts due to Lessor under this Agreement pursuant to Section 4.05 hereof, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default, as applicable (although all such remedies shall be exercised by Lessee, the order of exercising remedies may be prioritized in the most efficient manner). Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing ("*Vendor Proceeds*") shall be paid to Lessor and applied against Lessee's obligations hereunder pursuant to the prepayment provisions in Section 10.01(b), unless otherwise approved in writing by Lessor.



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

## ARTICLE VIII

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

If Lessee elects to replace any item of the Equipment (the “*Replaced Equipment*”) pursuant to this Section, the replacement equipment (the “*Replacement Equipment*”) shall be new or of a similar quality, type, utility and condition at least as good as the Replaced Equipment and shall be of equal or greater value than the Replaced Equipment. Subject to the Light Pole License Agreement, if applicable, Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, Liens, security interests and encumbrances, excepting only those Liens created by or through Lessor, and the Light Pole License Agreement, if applicable, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor’s security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute “Equipment” for purposes of this Agreement. Lessee shall complete the aforementioned documentation relating to the Replacement Equipment (such as documentation evidencing Lessee’s title to the Replacement Equipment free and clear of all claims, Liens, security interests and encumbrances subject only to Lessor’s security interest in the Replacement Equipment), on or before the next Rental Payment Date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to the damaged Equipment in accordance with Section 10.01(b).

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

*Section 8.02. Insufficiency of Net Proceeds.* (a) If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall, to the extent permitted by law and in any event solely from legally available funds, either (i) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (ii) pay or cause to be paid to Lessor the amount of the then applicable Prepayment Price, and, upon such payment, the Lease Term shall terminate and Lessor’s security interest in the Equipment shall terminate as provided in Section 6.01 hereof.

(b) If (x) at least 10% and no more than 50% of the Equipment under this Agreement is destroyed, or is damaged by fire or other casualty or title to, or the temporary use of, at least 10% and no more than 50% of the Equipment under this Agreement shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, and (y) the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement referred to in Section 8.01, then, no more than once during the Lease Term, in lieu of paying the full applicable Prepayment Price as described in Section 8.02(a)(ii) above, Lessee shall have the option of partially prepaying the related Rental Payments pursuant to Section 10.01(b)(2) hereof from legally available funds.

(c) The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after prepaying Rental Payments in full and purchasing such Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section 8.02 to complete such replacement, repair, restoration, modification or improvement, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

## ARTICLE IX

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

*Section 9.02. Amendments of Transaction Documents; Warranties.* (a) *Reserved.*

(b) Lessee covenants that prior to the satisfactory receipt by Lessor of the Acceptance Certificate (Exhibit E), without the prior written consent of the Lessor it shall not in any material respect amend, modify, rescind, waive or alter (or permit the assignment or transfer of) any Pole Agreement, any Light Pole License Agreement and/or any Vendor Agreement.

(c) Lessee covenants that after the satisfactory receipt by Lessor of the Acceptance Certificate, without the prior written consent of the Lessor it shall not amend, modify, rescind, waive or alter (or permit the assignment or transfer of) any Pole Agreement, any Light Pole License Agreement or any Vendor Agreement if doing so could result in a Material Adverse Change or a Material Adverse Effect.

(d) At all times after the satisfactory receipt by Lessor of the Acceptance Certificate, Lessee covenants to provide Lessor with at least fifteen (15) business days' prior written notice of any proposed amendment, modification, rescission, waiver, assignment, transfer or alteration (each a "Change") of any Pole Agreement, any Light Pole License Agreement and/or any Vendor Agreement, in each case that the Change will not result in a Material Adverse Change or a Material Adverse Effect.

(e) Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as no Event of Non-appropriation has occurred and Lessee shall not be in default under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against Southern California Edison under the Pole Agreement or Vendor under the Vendor Agreements. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against Southern California Edison under the Pole Agreement, if applicable, and the applicable Vendor of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments and other payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to any Equipment.

## ARTICLE X

*Section 10.01. Prepayment Option.* In addition to the prepayment provided by Section 4.05 hereof, Lessee shall have the option to prepay (or satisfy, pursuant to (c) below) its obligations hereunder at the following times and upon the following terms:

(a) *Optional Prepayment.* From and after the date specified (if any) in the Payment Schedule (the "*Prepayment Option Commencement Date*"), on the Rental Payment Dates specified in the Payment Schedule, upon not less than thirty (30) days' prior written notice, and upon payment in full of the sum of (i) the Rental Payments then due and all other amounts then owing hereunder *plus* (ii) the then applicable Prepayment Price, which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* (iii) all other amounts then owing hereunder; or

(b) *Casualty, Condemnation or Vendor Proceeds Prepayment.* (1) In the event of substantial damage to or destruction, title defect or condemnation of all or a majority of the Equipment (i.e. more than 50% of the Equipment) or in the event Lessee receives any Vendor Proceeds, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next applicable Rental Payment Date or sixty (60) calendar days after the casualty, title defect or condemnation event or receipt of Vendor Proceeds) upon payment in full to Lessor (A) in the event such prepayment occurs on a Rental Payment Date, the sum of (i) all Rental Payments then due *plus* (ii) the then applicable Prepayment Price, which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* (iii) all other amounts then owing hereunder or (B) in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of (i) of the applicable Prepayment Price shown on the Payment Schedule for the Rental Payment Date immediately preceding the prepayment date (or if such prepayment date occurs prior to the first Rental Payment Date, the earliest Prepayment Price shown on the Payment Schedule), which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* (ii) accrued interest at the Contract Rate on the Outstanding Balance as of the Rental Payment Date immediately preceding the applicable prepayment date from such Rental Payment Date (or if such prepayment date occurs prior to the first Rental Payment Date, the Commencement Date) to such prepayment date *plus* (iii) all other amounts then owing hereunder; or

(2) If (A)(x) at least 10% and no more than 50% of the Equipment is destroyed, or is damaged by fire or other casualty or title to, or the temporary use of at least 10% and no more than 50% of the Equipment shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, and (y) the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement referred to in Section 8.01, or (B) Lessee receives any Vendor Proceeds, then, no more than once during the Lease Term, in lieu of paying the full applicable Prepayment Price for the Equipment as described in Section 10.01(b)(1) above, Lessee shall have the option of partially prepaying the Rental Payments by paying or causing to be paid to Lessor on the Partial Prepayment Date the principal portion of Rental Payments that are then unpaid under this Agreement in the amount equal to the Disposed Equipment Prepayment Amount plus accrued interest on such amount from the Rental Payment Date next preceding the applicable Partial Prepayment Date to such date plus all other amounts then due and owing by Lessee under this Agreement. If a Partial Prepayment Date is also a Rental Payment Date, Lessee shall also pay any Rental Payment due as of such date and all other amounts then due and owing by Lessee hereunder. Upon Lessor's receipt of the Disposed Equipment Prepayment Amount on the applicable Partial Prepayment Date plus all other amounts then due and owing by Lessee under this Section 10.01(b)(2), Lessor shall adjust the Rental Payments to be paid by Lessee from and after the applicable Partial Prepayment Date to reflect credit for payment of the Disposed Equipment Prepayment Amount as directed by Lessor either in the inverse order

of the applicable Rental Payment Dates or on a pro rata basis (after giving effect to the application of such partial prepayment to remaining Rental Payments on an inverse or pro rata basis) for the remainder of the Scheduled Term will satisfy the proviso set forth above in this Section 10.01(b)(2); or

(c) *Payment in Full.* Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder to Lessor.

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

## ARTICLE XI

*Section 11.01. Assignment by Lessor.* **[Lessor is entering into this Lease Agreement for its own account without a present intention to sell, or transfer, however]**<sup>15</sup> (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Escrow Agreement, its security interest in the Collateral (collectively, the "*Assigned Rights*") may be assigned and reassigned by Lessor at any time, in whole or in part, to one or more assignees or sub-assignees, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom Lessor reasonably believes is a "*qualified institutional buyer*" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "*accredited investor*" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing the Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute such Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Assigned Rights (or any interest therein) as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000 and (iii) shall not require Lessee to make Rental Payments to more than one hereinafter defined Lease Servicer at a time, to send notices or otherwise to deal with respect to matters arising hereunder or under the Escrow Agreement with or to more than one Lease Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "*Lease Servicer*") to act on their behalf with respect to the

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<sup>15</sup> Confirm before closing each deal.

Assigned Rights, including with respect to the exercise of rights and remedies of Lessor on behalf of such owners upon the occurrence of an Event of Default or an Event of Non-appropriation under this Agreement. Lessor shall endeavor to provide written notice of any such assignment or reassignment at least three (3) business days prior to such assignment or reassignment, but in any event Lessor shall provide Lessee with such notice prior to any such assignment or reassignment (and such notice shall disclose the name and address of each such assignee and the Lease Servicer, if any). Lessor and Lessee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 11.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein). To the extent applicable, Lessor shall comply with Sections 5950-5955 of the California Government Code and any other applicable law in assigning the Assigned Rights, and Lessee shall not be responsible for Lessor's non-compliance with applicable law in connection with an assignment.

(b) Subject to Section 11.01(a), unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective as against Lessee until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee, identifies the new sole Lease Servicer, if applicable, and an investment letter in substantially the form attached as *Exhibit L* attached hereto (the "*Investor Letter*") from such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank, trust company or other entity that acts as the Lease Servicer and no *Investor Letter* is required; *provided further* that any such assignment, transfer or conveyance shall occur only on a private placement basis (and not pursuant to any "public offering"). Notices of assignment provided pursuant to this Section 11.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 11.01(a) hereof. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Lease Servicer last designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor, Southern California Edison or any Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of Lessor's security interest in and to the Escrow Account, or all rights in, to and under the Escrow Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of *Exhibit H* attached hereto within five (5) business days after its receipt of such request.

***Section 11.02. Assignment and Subleasing by Lessee. None of Lessee's right, title, and interest in, to and under this Agreement or any portion of the Equipment or the Escrow Agreement or the Escrow Account may be assigned, encumbered or subleased by Lessee***

**for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.**

## ARTICLE XII

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

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within ten (10) days after the date when due as specified herein, (ii) maintain insurance as required herein, or (iii) observe and perform any covenant, condition or agreement on its part to be observed or performed under Section 2.01(k), **[2.01(m)]** 2.01(r), 2.01(u), 2.01(w), **[5.03,]** 6.01 or 6.02 hereof;

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

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

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation for governmental funds (other than enterprise revenues specifically and solely pledged to the repayment of other obligations) under which there is outstanding, owing or committed an aggregated amount in excess of \$1,000,000 in each case under which the Lessee is an obligor, and such default remains uncured following the applicable cure period, if any, and either (1) arises from a failure to pay any amounts due with respect to such agreement for borrowing money, lease financing of property or provision of credit and/or (2) causes or permits amounts to become immediately due and payable in full as a result of such default. In event of a default under this 12.01(d), prior to exercising any remedies under Section 12.02 of this Agreement, the Lessor shall enter into good faith negotiations with Lessee to ensure the continued payment of Rental Payments and performance of Lessee's obligations under this Agreement;

(e) Lessee shall (i) apply for, or consent to, the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of

Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, moratorium or insolvency proceeding;

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

(g) Any Pole Agreement shall be terminated (whether by Lessee, the Pole Owner or otherwise) for any reason whatsoever prior to such time as full and marketable title in the Equipment purchased thereunder has passed to and vested in Lessee; or

(h) Any license granted pursuant to any Pole Agreement and relating to any Equipment shall be canceled, terminated, suspended, revoked or otherwise not in full force and effect at any time during the Lease Term.

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

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

(b) With or without terminating the Lease Term, but subject to the Light Pole License Agreement, Lessor may enter the premises where the Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the State of California as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment, any costs related to removal of equipment owned by Southern California Edison or other equipment, and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03 and *provided*, that to the extent that such net proceeds (after payment of costs) exceed the sum of the remaining Rental Payments and any other amounts due to



Lessor hereunder, Lessor shall promptly pay the amount of such excess to Lessee. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or with respect to the Equipment;

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

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

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

### **ARTICLE XIII**

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

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

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

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

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

*Section 13.06. Applicable Law; Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State. The parties hereto consent to jurisdiction in the State of California and venue in any state or Federal court located in the County of Riverside, California.

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

*Section 13.08. Entire Agreement.* The parties agree that this Agreement constitutes the final and entire agreement between the parties superseding all conflicting terms or provisions of any prior proposals, term sheets, solicitation documents, requests for proposals, award notices, approval letters or any other agreements or understandings between the parties.

*Section 13.09. Benefits Limited to Parties.* Nothing in this Agreement, expressed or implied, is intended to give to any person or entity other than Lessee, Lessor (and permitted assigns and Lease Servicer, if any) any right, remedy or claim under or by reason of this Agreement.

*[Remainder of Page Intentionally Left Blank]*

*[Signature Page Follows]*

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

LESSOR:  
Banc of America Leasing & Capital, LLC

LESSEE:  
City of Moreno Valley, California

11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 541-3057

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

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

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

(Seal)

Attest:

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

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

## LIST OF EXHIBITS

Exhibit A	—	Equipment Schedule
Exhibit B	—	Payment Schedule
Exhibit C-1	—	Form of Authorizing Resolution
Exhibit C-2	—	Form of Incumbency and Authorization Certificate
Exhibit D	—	Form of Opinion of Counsel
Exhibit E	—	Form of Acceptance Certificate
Exhibit F	—	Form of Self-Insurance Certificate
Exhibit G	—	<b>[Description of Additional Lessee-Owned Streetlights]</b>
Exhibit H	—	Form of Notice and Acknowledgement of Assignment
Exhibit I	—	Form of Escrow and Account Control Agreement
Exhibit J	—	Form of True-Up Amendment
Exhibit K	—	Provision of Detail of True-Up Process [and Request for True-Up Amendment]
Exhibit L	—	Form of Investor Letter
Exhibit M	—	Form of Summary of Expected Purchase Price and Facilities under Pole Agreement on Commencement Date
Exhibit N	—	Permitted Encumbrances on Real Property
Exhibit O	—	Form of Notice of Retired Streetlights

**EXHIBIT A**

**EQUIPMENT SCHEDULE**

Location of Equipment:

Equipment Description (Scope of Work):

**EXHIBIT B**

**PAYMENT SCHEDULE**

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

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

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

LESSOR:  
Banc of America Leasing & Capital, LLC

LESSEE:  
City of Moreno Valley, California

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

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

**EXHIBIT C-1**

**FORM OF AUTHORIZING RESOLUTION**

RESOLUTION NO. \_\_\_\_\_

AUTHORIZING THE EXECUTION AND DELIVERY OF (1) EQUIPMENT LEASE/PURCHASE AGREEMENT WITH BANC OF AMERICA LEASING & CAPITAL, LLC; (2) ESCROW AND ACCOUNT CONTROL AGREEMENT WITH BANC OF AMERICA LEASING & CAPITAL, LLC, AND WILMINGTON TRUST, NATIONAL ASSOCIATION; (3) PAYING AGENT AGREEMENT WITH BANC OF AMERICA LEASING & CAPITAL, LLC, WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS AND WILMINGTON TRUST, NATIONAL ASSOCIATION; (4) IMPLEMENTATION AGREEMENT WITH WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS; AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of City of Moreno Valley, California (the “City”) is a municipal corporation duly organized and existing under and pursuant to the Constitution and laws of the State of California; and

WHEREAS, the City desires to finance certain improvements (the “Improvements”) consisting of the acquisition of certain street lights and the installation of certain energy savings equipment thereto as described in that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2017 (the “Purchase Agreement”) by and between the City and Southern California Edison, a California corporation; and

WHEREAS, the City desires to provide for financing in the approximate amount of \$\_\_\_\_\_ for the acquisition and installation of the Improvements; and

WHEREAS, Banc of America Leasing & Capital, LLC (“Banc of America”) has proposed a cost-effective lease purchase financing arrangement for the acquisition and installation of the Improvements, as set forth under the Equipment Lease/Purchase Agreement (the “Agreement”) between Banc of America and the City, the form of which has been presented to the City and is on file with the City Clerk; and

WHEREAS, in connection with the execution and delivery of the Agreement, it will be necessary for the City to enter into an Escrow and Account Control Agreement (the “Escrow Agreement”) among the City, Banc of America and Wilmington Trust, National Association, as escrow agent, the form of which has been presented to the City and is on file with the City Clerk; and

WHEREAS, the City has determined that this lease financing arrangement is the most economical means for providing the Improvements to the City; and

WHEREAS, as a condition of the Agreement, the City must properly maintain, repair and replace such streetlights (the “Services”) during the term of the Lease Agreement; and

NOW, THEREFORE, it is resolved by the City Council of the City of Moreno Valley, California as follows:

SECTION 1. CEQA. Based upon its review of the entire record before the City Council, the City Council in its role as a CEQA responsible agency hereby finds and determines that the proposed Agreement and Escrow Agreement, as part of the \_\_\_\_\_ **[DESCRIBE PROJECT]**, is categorically exempt from environmental review under CEQA pursuant to State CEQA Guidelines §§ 15301, 15302, 15303 and 15061(b)(3).

The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, and minor repair of existing public or private structures, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The lease financing arrangement will provide Improvements that require the maintenance on existing streetlights and does not involve an expansion of the floor area of the structures. The replacement of the bulbs to high-efficiency bulbs is a minor alteration. It does not change the use of the street lights, and is more beneficial in terms of reduced energy use and improved public safety. The Class 2 exemption specifically exempts from further CEQA review the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The Improvements will have the same purpose as the existing streetlights and the new LED bulbs will not exceed the capacity of the existing bulbs. The Class 3 exemption specifically exempts from further CEQA review the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made to the exterior of the structure. The Improvements include the installation of new LED bulbs in existing small structures and general maintenance in accordance with the Class 3 exemption.

None of the exceptions to the use of the Class 1, 2 or 3 categorical exemptions identified in State CEQA Guidelines section 15300.2 apply. The Improvements include the retrofitting of light poles within the City’s jurisdiction, but none are located in a particularly sensitive environment and therefore there would not be impacts on an environmental resource of hazardous or critical concern. The Improvements will not result in a cumulative impact from successive projects of the same type in the same place, over time, as they entail the upgrade of bulbs on all currently owned SCE fixtures within the City’s jurisdiction. There are no unusual circumstances surrounding the Improvements that result in a reasonable possibility of a significant effect on the environment, as there are no sensitive resources on the existing pole sites and the Improvements do not involve structural modifications. The replacement of bulbs and maintenance of existing structures will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources. The Improvements will not take place on any hazardous waste sites or cause a substantial adverse change in the significance of a historical resource as the existing poles are not considered historical resources. Thus, the categorical exemptions apply, and no further environmental review is required.



The Improvements to be provided as part of the lease financing arrangement are also exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3), which exempts a Project if “the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” The execution of the Agreement and Escrow Agreement regarding the Improvements project involves replacing existing light bulbs in City’s jurisdictions with LED technology bulbs. The Improvements do not involve an expansion of use or the bulbs’ capacity. Accordingly, there is no possibility that obtaining financing for the replacement of bulbs will have a significant effect on the environment.

SECTION 2. Authorization and Approval of Agreement and Escrow Agreement. The City Council hereby approves and authorizes the City to enter into (a) the Agreement in a principal amount which shall not exceed \$\_\_\_\_\_ in the form attached hereto as Exhibit A and incorporated hereby by reference, together with any changes therein or additions thereto which are deemed advisable by the City Manager and (b) the Escrow Agreement in the form attached hereto as Exhibit B and incorporated hereby by reference, together with any changes therein or additions thereto which are deemed advisable by the City Manager. The City Manager is authorized and directed to take all steps and actions which are necessary to accomplish execution of the Agreement and the Escrow Agreement pursuant to the authorization given by and the conditions specified in this resolution. The City Manager, or his designee, is authorized to execute the Agreement and the Escrow Agreement, for and on behalf of the City.

SECTION 3. Attestations. The City Clerk or other appropriate City officer is hereby authorized and directed to attest the signature of the City Manager or of such other person or persons as may have been designated by the City Manager, and to affix and attest the seal of the City, as may be required or appropriate in connection with the execution and delivery of the Agreement and the Escrow Agreement.

SECTION 4. Other Actions. The City Manager and his designees are each hereby authorized and directed, jointly and severally, to take any and all actions and to execute and deliver any and all agreements, documents and certificates which they may deem necessary or advisable in order to carry out, give effect to and comply with the terms of this Resolution, the Agreement and the Escrow Agreement. Such actions are hereby ratified, confirmed and approved.

SECTION 5. General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement nor any other instrument shall be construed with respect to the City, as Lessee, as incurring a pecuniary liability or charge upon the general credit of the City, as Lessee, or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City, as Lessee, or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are limited obligations of the City, as Lessee, subject to annual appropriation by its governing body, as provided in the Agreement

SECTION 6. Appointment of Authorized Lessee Representatives. The City Manager and her or his designees (the “Authorized Representatives”) are each hereby designated to act as authorized representatives of the City, as Lessee, for purposes of the Agreement and the Escrow Agreement until such time as the governing body of the City, as Lessee, shall designate any other or different authorized representative for purposes of the Agreement or the Escrow Agreement.

SECTION 7. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

SECTION 8. 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 9. Location and Custodian of Records. The documents and materials associated with the action that constitute the record of proceedings on which these findings are based are located at [insert address and name].

SECTION 10. CEQA Notice of Exemption. The City Council hereby directs staff to prepare and file a Notice of Exemption with the Riverside County Clerk within five (5) working days of the approval of the proposed project.

SECTION 11. Effect. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Approved: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest: \_\_\_\_\_  
\_\_\_\_\_, City Clerk



**EXHIBIT C-2**

**FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE**

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

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

B. The Resolution of Lessee’s City Council, No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, authorized the Officials, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease/Purchase Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ by and between Lessee and Banc of America Leasing & Capital, LLC (“*Lessor*”), the Escrow and Account Control Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ among Lessor, Lessee and Wilmington Trust, National Association, as Escrow Agent, and all documents related thereto and delivered in connection therewith (collectively, the “*Agreements*”).

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

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

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

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

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

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

**EXHIBIT D**

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

[Closing Date]

Banc of America Leasing & Capital, LLC

11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_,  
between Banc of America Leasing & Capital, LLC, as Lessor, and the  
City of Moreno Valley, California, as Lessee

Ladies and Gentlemen:

As legal counsel to the City of Moreno Valley, California (“*Lessee*”), I have examined (a) an executed counterpart of a certain Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_ and Exhibits thereto by and between Banc of America Leasing & Capital, LLC (together with its successors, assigns and transferees, and as more particularly defined in the Agreement, “*Lessor*”) and Lessee (the “*Agreement*”), which, among other things, provides for the lease of certain property (the “*Equipment*”), a certain Escrow and Account Control Agreement among Lessor, Lessee, and Wilmington Trust, National Association, as Escrow Agent, dated \_\_\_\_\_, \_\_\_\_\_ (the “*Escrow Agreement*”), and all documents related thereto and delivered in connection therewith, (b) an executed counterpart of the ordinances or resolutions of Lessee with respect to authorization of the transaction contemplated by the Agreement, the Escrow Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Escrow Agreement and the Vendor Agreements (as defined in the Agreement) are referred to collectively as the “Transaction Documents.”

The opinions expressed herein are based on an analysis of existing statutes, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions or events are taken or do occur. We express no opinion with respect to any indemnification, contribution, lien priority or choice of law provisions contained in the foregoing documents.

In our examination, we have assumed, without independent investigation, the authenticity of all documents submitted to us as originals, of all documents submitted to us as certified or photostatic copies and the authenticity of the originals of such latter documents and the accuracy of the statements and representations contained in such documents. In addition, we have assumed the authority of and due execution by each of the parties to the documents other than the Lessee.

As used in this opinion, the phrase "to our current actual knowledge" means knowledge as we have obtained from (i) the incumbency and signature certificate of the Lessee, (ii) the representations and warranties contained in each closing certificate of the Lessee, and (iii) knowledge of facts or other information currently known to lawyers in our firm who have performed legal services for the Lessee.

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

1. Lessee is a [city] [county] [special district] [body corporate and politic], duly organized and existing under the laws of the State.
2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.
3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents constitute legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms.
4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.
5. To our current actual knowledge there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined against the Lessee, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Equipment, the Escrow Account or other collateral thereunder.

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

Sincerely,

**EXHIBIT E**

**FORM OF ACCEPTANCE CERTIFICATE**

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

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_  
between Banc of America Leasing & Capital, LLC, as Lessor, and the  
City of Moreno Valley, California, as Lessee

Ladies and Gentlemen:

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

1. All of the Equipment has been delivered, installed, is operating in a manner consistent with the intended use and has been inspected and finally accepted for all purposes by Lessee and title thereto has transferred to Lessee and any security interest of Southern California Edison and Vendor therein has been released, subject to any Light Pole License Agreement permitted under the Agreement.

2. Lessee has conducted such inspection and testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment and hereby acknowledges that it accepts the Equipment for all purposes of the disbursement of funds pursuant to this Certificate, *provided that* such acceptance shall not serve to affect or diminish the Lessee's rights under any warranty by the manufacturer or any other entity with respect to the Equipment.

3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.

4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.

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

6. No Material Adverse Change has occurred since the date of the execution and delivery of the Agreement.

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

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

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

LESSEE:

City of Moreno Valley, California

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

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

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

(Seal)



**EXHIBIT F**

**FORM OF SELF INSURANCE CERTIFICATE**

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

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_  
(the "Agreement") between Banc of America Leasing & Capital, LLC, as  
Lessor, and the City of Moreno Valley, California, as Lessee

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

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

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

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

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources: \_\_\_\_\_. Amounts payable for claims from the such sources are limited as follows: \_\_\_\_\_.

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

LESSEE:

City of Moreno Valley, California

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

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

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

**EXHIBIT G**

**[DESCRIPTION OF ADDITIONAL LESSEE-OWNED STREETLIGHTS]**

## EXHIBIT H

### FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

DATED \_\_\_\_\_

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

1. For purposes of Section 11.01 of the Agreement, Lessee hereby acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignor, as Lease Servicer for Assignee, all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment. The Investor Letter is attached hereto. It is hereby acknowledged that Lessee has never reviewed the agreement or any other instrument pursuant to which the assignment was made (the “Assignment Agreement”), assumes that such Assignment Agreement is valid and binding as between the Assignor and the Assignee, and relies on the representation (which is made hereby) that such assignment has been done in compliance with all applicable law.

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

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

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

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

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

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

Banc of America Public Capital Corp  
 11333 McCormick Road  
 Hunt Valley II  
 M/C MD5-032-07-05  
 Hunt Valley, MD 21031  
 Attention: Contract Administration  
 Fax No.: (443) 541-3057

7. Except as stated above in Section 6 hereof, any inquiries and/or notices of the Lessee related to the Agreement should be directed to Assignee at the address listed below:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attention: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

LESSEE: CITY OF MORENO VALLEY, CALIFORNIA

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

ASSIGNOR:  
BANC OF AMERICA LEASING & CAPITAL, LLC

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

**EXHIBIT I**

**FORM OF ESCROW AND ACCOUNT CONTROL AGREEMENT**

See Item # \_\_ in Transcript

**EXHIBIT J**

**TRUE-UP AMENDMENT**

[Date]

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_  
(the “*Agreement*”) between Banc of America Leasing & Capital, LLC, as  
Lessor, and the City of Moreno Valley, California, as Lessee

(a) In connection with the above-referenced Agreement, the City of Moreno Valley, California (the “*Lessee*”), the Lessee warrants and represents to Banc of America Leasing & Capital, LLC (the “*Lessor*”) that:

(i) the **[final]**<sup>16</sup> **[Inventory Inspection Period]** and Closing Date has concluded under the Pole Agreement and some the property, equipment and/or streetlights acquired under the Pole Agreement differs from the Equipment described under the Agreement on the Commencement Date, and/or the Lessee actually acquired less Equipment than previously contemplated and/or Lessee actually acquired additional property, equipment and/or streetlights than previously contemplated;

(ii) Lessee has requested that Lessor execute this True-Up Amendment to **[add to][delete some of][modify]** the Equipment under the Agreement so that it is consistent with the property, equipment and/or streetlights acquired under the Pole Agreement following the **[final]**<sup>17</sup> **[Inventory Inspection Period]**; and

(iii) Lessee has provided Lessor with such information as Lessor has requested to substantiate the change in property, equipment and/or streetlights under the Pole Agreement.

(b) Lessee and Lessor desire to execute this True-Up Amendment to **[add to][delete some of][modify]** the Equipment under the Agreement, which following the **[final]**<sup>18</sup> **[Inventory Inspection Period]** consists of a total of \_\_\_\_ streetlights.

(c) Lessee and Lessor hereby agree that Section 2.01(m) of the Agreement is hereby amended and restated in its entirety as follows:

(m) **[(i)]** The portion of the Equipment that is and will be acquired and

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16 Include for multi-phase PSAs.

17 Include for multi-phase PSAs.

18 Include for multi-phase PSAs.



installed on Lessee-Owned Streetlights are and will be located on, or on improvements within, a right-of-way that is dedicated to public use for a period that is longer than the Scheduled Term. Lessee is entitled to the benefit and use of such right-of-way for the Lessee-Owned Streetlights and has good and marketable title to the Lessee-Owned Streetlights on, about and to which a portion of the Equipment is or will be located. Subject to the Light Pole License Agreement, there exists no mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to the Lessee-Owned Streetlights, except under this Agreement. **[The number of Lessee-Owned Streetlights subject to Lessor's Lien under this Agreement is and shall be at least equal to \_\_\_\_ at all times (unless any such Lessee-Owned Streetlights are permitted to be Retired Streetlights pursuant to Section 5.04(c) hereof, in which case the number \_\_\_\_ may be reduced by the number of such applicable Retired Streetlights).]**

**[(ii) Lessee is the fee owner with free and clear title to all the Additional Lessee-Owned Streetlights. The Additional Lessee-Owned Streetlights are and will be located on, or on improvements within, a right-of-way that is dedicated to public use for a period that is longer than the Scheduled Term. Lessee is entitled to the benefit and use of such right-of-way for the Additional Lessee-Owned Streetlights and has good and marketable title to the Additional Lessee-Owned Streetlights on, about and to which a portion of the Equipment is or will be located. Subject to the Light Pole License Agreement, there exists no mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to the Additional Lessee-Owned Streetlights, except under this Agreement. The number of Additional Lessee-Owned Streetlights subject to Lessor's first priority Lien under this Agreement is and shall be at least equal to \_\_\_\_ at all times (unless any such Additional Lessee-Owned Streetlights are permitted to be Retired Streetlights pursuant to Section 5.04(c) hereof, in which case the number \_\_\_\_ may be reduced by the number of such applicable Retired Streetlights). The insured value of each Additional Lessee-Owned Streetlight shall equal or exceed the insured value of each Lessee-Owned Streetlight.]**

**(iii) At all times, Lessee shall ensure that the number of Additional Lessee-Owned Streetlights subject to Lessor's first priority Lien under this Agreement shall equal at least 10% of the number of Lessee-Owned Streetlights. The sum of (A) the aggregate number of Additional Lessee-Owned Streetlights subject to Lessor's first priority Lien under this Agreement plus (B) the aggregate number of Lessee-Owned Streetlights subject to Lessor's first priority Lien under this Agreement, is and shall be at least equal to \_\_\_\_ at all times (the "*Required Collateral Amount*") unless any such Streetlights are permitted to be Retired Streetlights pursuant to Section 5.04(c) hereof, in which case the number \_\_\_\_ may be reduced by the number of such applicable Retired Streetlights.]**

(d) Lessee and Lessor hereby agree that Section 5.04(c) of the Agreement is hereby amended and restated in its entirety as follows:

(c) Notwithstanding anything herein to the contrary, so long as no Event of Default (or event which with the passage of time or the giving of notice or both would constitute an Event of Default) has occurred thereunder and no Event of Non-appropriation has occurred or is threatened, Lessee may retire and exclude from the Equipment up to \_\_\_<sup>19</sup> **[Streetlights]** in the aggregate over the course of the Lease Term without prepayment or penalty or obligation to replace such Streetlights, *provided that* Lessee shall (i) re-make and confirm all the representations, warranties and covenants set forth in this Agreement for the benefit of Lessor and (ii) confirm in writing to Lessor, (1) the number of **[Streetlights]** being retired at that time, (2) the cumulative number of Retired Streetlights under this Agreement taking into account the Streetlights then being retired, (3) the number of Streetlights that will remain subject to this Agreement, (4) the number of Lessee-Owned Streetlights that will remain subject to this Agreement **[and (5) the number of Additional Lessee-Owned Streetlights that will remain subject to this Agreement]** and provide such other information or confirmations with respect to the Retired Streetlights, the Equipment and the Collateral as Lessor may request.

(e) Lessee and Lessor hereby agree that Exhibit A of the Agreement is hereby amended and restated in its entirety as attached to this True-Up Amendment.

**[(f) Lessee and Lessor hereby agree that Exhibit G of the Agreement is hereby amended and restated in its entirety as attached to this True-Up Amendment.]**

The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

LESSOR:  
Banc of America Leasing & Capital, LLC

LESSEE:  
City of Moreno Valley, California

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

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

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<sup>19</sup> In connection with a True-Up Amendment this number can be recalibrated but it cannot exceed 1% of the number of Lessee-Owned Streetlights under the Agreement.

**AMENDED EXHIBIT A TO TRUE-UP AMENDMENT**

**EQUIPMENT SCHEDULE**

Location of Equipment:

Equipment Description (Scope of Work):

**[AMENDED EXHIBIT G TO TRUE-UP AMENDMENT**

**DESCRIPTION OF ADDITIONAL LESSEE-OWNED STREETLIGHTS]**

**EXHIBIT K**

**PROVISION OF DETAIL OF TRUE-UP PROCESS [AND REQUEST FOR TRUE-UP AMENDMENT]**

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

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_  
(the “Agreement”) between Banc of America Leasing & Capital, LLC, as  
Lessor, and the City of Moreno Valley, California, as Lessee

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

1. (i) the **[Inventory Inspection Period] [relating to Phase \_\_]**<sup>20</sup> has concluded under the Pole Agreement and **[some][none]** of the property, equipment and/or streetlights acquired under the Pole Agreement differs from the Equipment described under the Agreement on the Commencement Date; **[and]**

**[(ii) Lessee hereby requests that Lessor execute a True-Up Amendment to [add to][delete some of][modify] the Equipment under the Agreement so that it is consistent with the property, equipment and/or streetlights acquired under the Pole Agreement as a result of the [final]<sup>21</sup> [Inventory Inspection Period]; and]<sup>22</sup>**

**[(ii)][(iii)]** Lessee has and will provide Lessor with such information as Lessor has requested to substantiate the **[change in][status of the]** property, equipment and/or streetlights under the Pole Agreement and the Equipment under the Agreement.

2. Lessee hereby certifies and represents to Lessor that following information is true, correct and complete:

		X	Y	
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<sup>20</sup> Include for multi-phase PSAs.

<sup>21</sup> Include for multi-phase PSAs.

<sup>22</sup> To be provided following final Inventory Inspection Period for multi-phase PSAs.

		Expected as of Commencement Date	As of Expiration of [Inventory Inspection Period] [relating to Phase __] <sup>23</sup>	Variance (X minus Y)
A.	Number of Poles to be purchased by Lessee from Southern California Edison	_____	_____	
B.	Number of Poles Subject to Light Pole License Agreement	SmartConnect = ____ NetComm = ____	SmartConnect = ____ NetComm = ____	
C.	Percentage of Poles Subject to Light Pole License Agreement (Line B divided by Line A) x 100	_____%	_____%	
D.	Is Line C Less than 5%?	Yes or No	Yes or No	
E.	Purchase Price of Poles @ \$____ per pole x ____ streetlights expected under Pole Agreement	\$_____	\$_____	
F.	Expected Final Purchase Price	\$_____	\$_____	
G.	Expected Final Transition Costs/Severance Costs	\$_____	\$_____	
H.	Expected Total due to SCE	\$_____	\$_____	

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**DRAFTING NOTE: For multi-phase PSAs, add additional columns based on actual Phase Closing Dates.**

	Acquisition Price * = (Line F plus Line G)			
I.	Retro-fit Cost \$___ per light (cost of LED fixture + cost to retrofit) x ___ streetlights under Pole Agreement	\$ _____	\$ _____	
J.	Retrofit Costs *	\$ _____	\$ _____	
K.	Expected Costs of Issuance	\$ _____	\$ _____	
L.	5% Contingency (*)	\$ _____	\$ _____	
M.	Total Financed Amount	\$ _____	\$ _____	
N.	Line H plus Line J plus Line K plus Line L	\$ _____	\$ _____	
O.	Variance (Line M minus Line N)	\$ _____	\$ _____	

3. [Lessee hereby requests that Lessor execute a True-Up Amendment to **[add to][delete some of][modify]** the Equipment under the Agreement so that it is consistent with the property, equipment and/or streetlights acquired under the Pole Agreement. Please identify any additional information that Lessor needs in order to approve execution of such a True-Up Amendment.] **[Lessee hereby represents to Lessor that a True-Up Amendment is not necessary as all of the Equipment under the Agreement is consistent with the property, equipment and/or streetlights acquired under the Pole Agreement, and vice versa.]<sup>24</sup>**

LESSEE:

City of Moreno Valley, California

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

<sup>24</sup> For multi-phase PSAs, this paragraph #3 would not be included until final Inventory Inspection Period has concluded.

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

## EXHIBIT L

### FORM OF INVESTOR LETTER

I, \_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_ (the “Purchaser”) do hereby certify for and on behalf of the Purchaser as follows with respect to that certain \$\_\_\_\_\_ Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_ (the “Agreement”) between Banc of America Leasing & Capital, LLC, as Lessor, and the City of Moreno Valley, California, as Lessee:

1. The Purchaser is a Qualified Institutional Buyer as defined in Rule 144A promulgated under the Securities Act of 1933, as amended or an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended. The Purchaser has such knowledge and experience in financial and business matters in general, and in transactions such as the financial arrangements contemplated by the Agreement in particular, that it is capable of evaluating and has evaluated the merits and risks of entering into the financial arrangements contemplated by the Agreement and the Purchaser understands the risks of its purchase of the Agreement.

2. The Purchaser has conducted its own investigation of the financial condition of the Lessee, the purpose for which the Agreement is being entered into and of the security for payment of the Rental Payments due under the Agreement, and has obtained such information regarding the Agreement and the Lessee and its operations, financial condition and financial prospects as the Purchaser deems necessary to make an informed investment decision with respect to its purchase of the Agreement.

3. The Purchaser is purchasing the Agreement for its own account and without a present intention to sell any portion thereof to any other person, *provided* that the Purchaser retains the right at any time to dispose of the Agreement or any interest therein as it may determine to be in its best interests and that any subsequent resale shall be made only in accordance with the Agreement and applicable securities laws.

4. The Purchaser acknowledges and agrees that the obligation of the Lessee to pay Rental Payments under the Agreement shall constitute a current expense of the Lessee and shall not in any way be construed to be a debt of the Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Lessee, nor shall anything contained in the Agreement constitute a pledge of the full faith and credit or taxing power of the Lessee.

5. Each of the Lessee, the Lessee’s financial advisor and placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters and compliance with legal requirements applicable to such parties) with respect to the Agreement from its own financial, legal, tax and other advisors (and not from the Purchaser or its affiliates) to the extent that the Lessee, the Lessee’s financial advisor [or the placement agent] desires, should or needs to obtain such advice. The Purchaser expresses no view regarding the legal sufficiency of its



representations for purposes of compliance with any legal requirements applicable to the Lessee, the Lessee's financial advisor or the placement agent or any other party, or the correctness of any legal interpretation made by counsel or counsels to any such entity or any other party with respect to such matters. The Purchaser is not responsible for any the Lessee, the Lessee's and financial advisor or the placement agent or any other party's compliance or noncompliance with any applicable law.

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

[PURCHASER/ASSIGNEE]

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

**EXHIBIT M**

**SUMMARY OF EXPECTED PURCHASE PRICE AND FACILITIES UNDER POLE AGREEMENT ON COMMENCEMENT DATE**

[Commencement Date]

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

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_ between Banc of America Leasing & Capital, LLC, as Lessor, and the City of Moreno Valley, California, as Lessee

Ladies and Gentlemen:

In accordance with the above-referenced Equipment Lease/Purchase Agreement (the “Agreement”), the Pole Agreement and the Light Pole License Agreement (each as defined in the Agreement), the undersigned Lessee hereby certifies and represents as true, correct and complete its expectations as of the date hereof to Lessor as follows:

A.	Number of Poles to be purchased by Lessee from Southern California Edison	_____
B.	Number of Poles Subject to Light Pole License Agreement	_____
		SmartConnect = __ NetComm = __
C.	Percentage of Poles Subject to Light Pole License Agreement (Line B divided by Line A) x 100	_____%
D.	Is Line C Less than 5%?	Yes or No
E.	Purchase Price of Poles @ \$_____ per pole x _____ streetlights expected under Pole Agreement	\$ _____
F.	Expected Final Purchase Price	\$ _____
G.	Expected Final Transition Costs/Severance Costs	\$ _____
H.	Expected Total due to SCE Acquisition Price * = (Line F plus Line G)	\$ _____
I.	Retro-fit Cost \$_____ per light (cost of LED fixture + cost to retrofit) x _____ streetlights under Pole Agreement	\$ _____
J.	Retrofit Costs *	\$ _____
K.	Expected Costs of Issuance	\$ _____
L.	5% Contingency (*)	\$ _____
M.	Total Financed Amount	\$ _____

N.	Line H plus Line J plus Line K plus Line L	\$ _____
O.	Variance (Line M minus Line N)	\$ _____

LESSEE:

City of Moreno Valley, California

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

**EXHIBIT N**

**PERMITTED ENCUMBRANCES ON REAL PROPERTY**

**EXHIBIT O**

**FORM OF NOTICE OF RETIRED STREETLIGHTS**

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

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_  
(as amended, the “*Agreement*”) between Banc of America Leasing &  
Capital, LLC, as Lessor, and the City of Moreno Valley, California, as  
Lessee

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

(i) Pursuant to Section 5.04(c) of the Agreement, on \_\_\_\_\_, 20\_\_<sup>25</sup> (the “*Retirement Date*”) Lessee intends to retire \_\_\_\_ number of Streetlights and exclude them from Equipment and the Agreement.

(ii) No Event of Default (or event which with the passage of time or the giving of notice or both would constitute an Event of Default) has occurred thereunder and no Event of Non-appropriation has occurred or is threatened with respect to the Agreement. All representations, warranties and covenants set forth in the Agreement are hereby reaffirmed for the benefit of Lessor and remain true and correct.

(iii) Subject to the satisfaction of the requirements in Section 5.04(c) of the Agreement, Lessee may retire and exclude from the Equipment up to \_\_\_\_<sup>26</sup> Streetlights in the aggregate over the course of the Lease Term (which number is subject to adjustment following modification by a True-Up Amendment) without prepayment or penalty or obligation to replace such Streetlights.

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<sup>25</sup> This should be a date that is at least 30 days following the date of this Notice.

<sup>26</sup> Before closing, we will hard code the # of streetlights that can be permanently retired which cannot exceed 1% of the number of Lessee-Owned Streetlights under this Agreement. In connection with a True-Up Amendment this number can be recalibrated.

(iv) The cumulative number of Retired Streetlights under the Agreement, including the Streetlights proposed to be retired in (i) above, will be \_\_\_\_ on the Retirement Date, which is less than or equal to the maximum amount of Streetlights permitted to be required under the Agreement (and described in (iii) above).

(v) After the proposed retirement of the Streetlights on the Retirement Date, the number of Streetlights that will remain subject to the Agreement will equal \_\_\_\_, consisting of \_\_\_\_ Lessee-Owned Streetlights [**and \_\_\_\_ Additional Lessee-Owned Streetlights**].

Please let us know if Lessor requires any other information or confirmations with respect to the Retired Streetlights, the Equipment and the Collateral.

LESSEE:

City of Moreno Valley, California

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

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

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