



DATE: September 25, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **ADOPT A RESOLUTION TO AUTHORIZE A LEASE/PURCHASE AGREEMENT TO RETROFIT STREET LIGHTS AND APPROVE A PROFESSIONAL SERVICES AGREEMENT FOR DESIGN-BUILD AND PROJECT MANAGEMENT SERVICES**

SYNOPSIS

Staff recommends that the City Council adopt a resolution to authorize a lease/ purchase agreement with Banc of America Public Capital Corp. in an amount not to exceed \$5,500,000 to retrofit street lights citywide; approve a professional services agreement with Southern Contracting of San Marcos in an amount not to exceed \$5,094,947 for design-build and project management services; and authorize the City Manager to execute the agreements and related lease documents.

BACKGROUND

In an effort to reduce energy consumption and maintenance costs while improving current lighting levels with an environment friendly product, staff proposes a citywide street light retrofit project to convert all street lights from high-pressure sodium to LED. The Public Works Department currently maintains approximately 8,400 street lights and the annual energy costs for these lights are approximately \$662,000.

Over the past few years, staff along with SDG&E and other cities in San Diego County has evaluated LED and induction fixtures from various manufacturers as part of an energy efficient street light evaluation program. Several cities have already begun retrofitting their fixtures and have found that there are substantial savings by utilizing the newer technologies. Product selection will be based on several factors including design, light coverage and color, energy efficiency and ease of maintenance. Staff anticipates approximately 50% energy savings in addition to tariff savings and savings from reduced maintenance costs due to longer lasting lamps. The project will include a reduction in energy of approximately 2.6 million kWh per year and a reduction in carbon dioxide of approximately 1.7 million pounds per year. In addition, SDG&E is offering rebates on the purchase of energy efficient fixtures from \$50 to \$125 per fixture depending on the wattage, and staff is projecting a total rebate of approximately \$450,000. Now is an ideal time to start the project as the cost of fixtures has steadily declined over the last few years while technology has significantly improved and interest rates are at historic lows. The project will include all street lights in the City except the

Rancho Del Oro neighborhoods due to failing light poles and some sections of Coast Highway which have already been retrofitted.

The new street light fixtures will also be equipped with a “smart” technology that includes adaptive controls which will allow staff to monitor energy consumption and provide the opportunity to dim lighting levels during off-peak traffic and pedestrian activity and automatically increase to full output during periods of peak activity. Other benefits of the controls will include:

- Reducing street light energy costs an additional 20% over cost-savings of LED fixtures.
- Signaling for location identification of 911 calls, designating evacuation routes, detours and other emergency uses.
- Ongoing maintenance savings by extending bulb replacement, eliminating quarterly night patrols and notification of lamp failures and day burning lamps.
- Real-time reporting of energy usage for energy billing.
- Controlling and adjusting light levels from remote location.
- Completing a system wide inventory with pole locations and fixture/pole attributes.
- Future metered billing will create opportunities to turn the network into revenue generator.

ANALYSIS

Banc of America Public Capital Corp. (BAPCC) provides financing for a wide range of energy efficiency and renewable energy projects such as plant retrofits, lighting, air handlers, controls, boilers, chillers, generators, solar and water meters to clients in local, state and federal government, education, special districts, utilities, facilities and healthcare markets. They have provided financing for street light retrofit projects in Chula Vista and San Diego. Staff consulted with a financial advisor who verified the terms of the lease purchase agreement were competitive for the current market.

Staff selected Southern Contracting based on the results of an RFP process conducted by the City of Chula Vista for similar services. Southern Contracting was also awarded multiple contracts for design-build and project management services by the City of San Diego for their retrofit projects. The City’s purchasing procedures allow for the City to piggyback on other public agency contracts in lieu of a full RFP process under the State of California’s “piggyback” procurement provision.

FISCAL IMPACT

The estimated total cost of the project is \$5,094,947 which includes a City controlled contingency amount of \$146,351. The professional services agreement with Southern Contracting is for an amount not to exceed \$5,094,947 which will be funded by the BAPCC loan currently estimated at \$4,644,557, and rebates from SDG&E. The loan proceeds will be placed into an escrow account from which City-approved invoices will be paid directly to Southern Contracting. If the full \$4,644,557 is not expended (due to unused contingencies or lower fixture costs), the excess loan proceeds will be used to

pay down the loan which will reduce the annual debt service payment.

The term of the loan is for 12.2 years at an interest rate of 3.15%. The annual energy and tariff savings of approximately \$476,220 will be used to offset the cost of debt service on the loan. The estimated loan amount of \$4,644,757 will yield an annual payment of \$476,219. The new LED lamps will have at least a 10-year manufacturer warranty with a design life of 25-30 years, whereas current HPS lamps only last 3-5 years. In addition, annual maintenance savings of approximately \$190,000 will be realized due to a longer lasting lamp life.

The City purchased the street lights from SDG&E in 1994 and the acquisition was financed through bonds. In 2004, the City refinanced the 1994 bonds at a lower interest rate to reduce debt service costs. The 2004 bonds were paid off in March, 2012 which eliminated the annual debt service payment of approximately \$250,000.

Staff is requesting budget appropriations for the project amount of \$5,094,947 to the Street Light Retrofit CIP project account in Fund 221 - Oceanside Lighting District 2-1991 and for a maximum loan amount of \$4,645,000 to account 1963.4405 (Loan Proceeds).

Annual debt service payments are estimated to be \$476,219, through semi-annual payments made in December and June. The loan will be budgeted in Fund 963-Oceanside Lighting District Debt Service. The revenue source will be lease payments made from Fund 221 - Oceanside Lighting District 2-1991 using special assessment revenues collected through annual property tax bills from residential and commercial/retail property owners. Staff is requesting a budget appropriation for the June 2014 debt service and lease payment as follows:

2013 Street Light Retrofit Lease Principal	1963.5651	\$225,691
2013 Street Light Retrofit Lease Interest	1963.5652	\$ 12,418
R&L-2013 Street Light Retrofit Lease	1963.4353	\$238,219
IACL-2013 Street Light Retrofit Lease	1221.5653	\$238,219

COMMISSION/COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

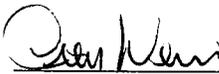
Staff recommends that the City Council adopt a resolution to authorize a lease/ purchase agreement with Banc of America Public Capital Corp in an amount not to exceed \$5,500,000 to retrofit street lights citywide; approve a professional services agreement with Southern Contracting of San Marcos in an amount not to exceed \$5,094,947 for design-build and project management services; and authorize the City Manager to execute the agreements and related lease documents.

PREPARED BY:

SUBMITTED BY:



H. Kiel Koger
Maintenance and Operations Manager



Peter A. Weiss
City Manager

Reviewed By:

Michelle Skaggs Lawrence, Deputy City Manager

Scott Smith, City Engineer

Michele Lund, Treasury Manager

Michael Blazenski, Interim Financial Services Director









- Exhibit A: Resolution
- Exhibit B: Tax-Exempt Equipment Lease/Purchase Agreement
- Exhibit C: Banc of America Public Capital Corp Term Sheet
- Exhibit D: Project Cost Estimate
- Exhibit E: Professional Services Agreement

EXHIBIT A

RESOLUTION NO.

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF OCEANSIDE, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ACQUISITION FUND AGREEMENT AND OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION

WHEREAS, the City of Oceanside (the "City"), a charter city duly organized and existing under the laws of the State of California, is authorized by the laws of the State of California to purchase, acquire and lease personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the City desires to lease and purchase certain equipment and other personal property with an aggregate cost not to exceed \$5,500,000 for LED replacement light fixtures for street lights and related improvements and equipment (the "Equipment") as part of City's energy efficient Municipal Street Lighting Retrofit Project; and

WHEREAS, in connection with the financing of the acquisition and installation of the Equipment, the City proposes to enter into that certain Equipment Lease/Purchase Agreement (the "Agreement") between the City and Banc of America Public Capital Corp (or one of its affiliates) (the "Lessor") and that certain Acquisition Fund and Account Control Agreement (the "Acquisition Fund Agreement") among the City, the Lessor and the Acquisition Fund Custodian therein identified, and the forms of the Agreement and the Acquisition Fund Agreement have been presented to the City Council of the City at this meeting; and

WHEREAS, the City Council of the City deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement and the Acquisition Fund Agreement (collectively, the "Financing Agreements") and the documentation related to the financing of the Equipment on the terms and conditions therein provided;

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

1 SECTION 1. Capitalized terms that are used, but not defined, in this Resolution shall have
2 the same meaning as when such terms are used in the preambles to this Resolution.

3 SECTION 2. The form, terms and provisions of the Financing Agreements are hereby
4 approved in substantially the forms presented at this meeting, subject to final approval as to form by
5 the City Attorney and the law firm of Stradling Yocca Carlson & Rauth, a Professional Corporation
6 (“SYCR”), with such insertions, omissions and changes as shall be approved by each of the Mayor,
7 the City Manager, the Director of Financial Services or their designees (together, the “Authorized
8 Officers”) of the City acting alone and executing the same, with the execution of each such
9 agreement being conclusive evidence of such approval. Each of the Authorized Officers is hereby
10 authorized and directed to execute, and the City Clerk of the City or any Deputy City Clerk is hereby
11 authorized and directed to attest, the Agreement (including any related Exhibits attached thereto) and
12 the Acquisition Fund Agreement and to deliver the Agreement (including such Exhibits) and the
13 Acquisition Fund Agreement to the respective parties thereto.

14 SECTION 3. The officers and employees of the City shall take all action necessary or
15 reasonably required by the parties to the Financing Agreements to carry out, give effect to and
16 consummate the transactions contemplated thereby (including the execution and delivery of
17 Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement)
18 and to take all action necessary in conformity therewith, including, without limitation, the execution
19 and delivery of any closing and other documents required to be delivered in connection with any of
20 the Financing Agreements.

21 SECTION 4. The City Manager and the Director of Financial Services are each authorized
22 to execute a contract with SYCR to act as Special Counsel to the City, which contract shall be in
23 substantially the form on file with the City Clerk, together with such changes as may be approved by
24 the City Manager and the Director of Financial Services, the City Attorney, or their designee, which
25 changes shall be deemed approved by the execution and delivery of such contract by any one of such
26 officers.

27 SECTION 5. Each of the Authorized Officers is hereby designated to act as authorized
28 representatives of the City for purposes of the Agreement and the Acquisition Fund Agreement until

1 such time as the City Council of the City shall designate any other or different authorized
2 representative for purposes of the Agreement and the Acquisition Fund Agreement.

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

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

9 SECTION 8. This Resolution shall take effect immediately upon its passage.

10 PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this
11 day of _____, 2013, by the following vote:

12 AYES:

13 NAYS:

14 ABSENT:

15 ABSTAIN:

16
17
18 _____
MAYOR OF THE CITY OF OCEANSIDE

19 ATTEST:

APPROVED AS TO FORM:

20
21 _____
City Clerk

22
23
24
25
26
27
28 _____
Robert Hamilton, A887.
City Attorney

EXHIBIT B

EQUIPMENT LEASE/PURCHASE AGREEMENT
(ACQUISITION FUND)
(CALIFORNIA ABATEMENT)

THIS EQUIPMENT LEASE/PURCHASE AGREEMENT dated as of October __, 2013 (this "Agreement"), is entered into by and between Banc of America Public Capital Corp, a Kansas corporation ("Lessor"), and the City of Oceanside, a charter city duly organized and existing under the laws of the State of California ("Lessee"),

WITNESSETH:

WHEREAS, Lessee desires to lease and acquire from Lessor certain Equipment (as such term is defined herein), 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 of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

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

"*Acceptance Date*" means, with respect to the items of Equipment identified in a Disbursement Request, the date that Lessee identifies to Lessor and the Acquisition Fund Custodian and certifies as the date on which Equipment Acceptance with respect to such items of Equipment has occurred and for which disbursement from the Acquisition Fund is then requested in accordance with such Disbursement Request pursuant to the Acquisition Fund Agreement.

"*Acquisition Amount*" means \$[4,644,757]. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose, to acquire and install the Equipment.

"*Acquisition Fund*" means the fund established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement.

"*Acquisition Fund Agreement*" means the Acquisition Fund and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Acquisition Fund Custodian, pursuant to which an Acquisition Fund is established and administered.

"*Acquisition Fund Custodian*" means the Acquisition Fund Custodian identified in the Acquisition Fund Agreement, and its successors and assigns.

EXHIBIT B

“*Acquisition Period*” means the period ending five (5) business days prior to _____, 2014, or such later date as is agreed to by Lessor and Lessee.

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

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

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

“*Disbursement Request*” means, with respect to the items of Equipment therein identified, a Disbursement Request substantially in the form attached as Schedule 1 to the Acquisition Fund Agreement.

“*Equipment*” means the property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V. Whenever reference is made in this Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“*Equipment Acceptance*” means, with respect to each portion of the Equipment that may operate for its intended purpose as a separate and independent functional unit, that the Equipment constituting such portion has been acquired and installed by the Vendor, is operating in a manner consistent with the manufacturer’s intended use and has been inspected and finally accepted by Lessee for all purposes of this Agreement.

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

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

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

“*Extended Lease Term*” means a period (and any successive period) during which the original Lease Term is extended pursuant to Section 3.03 and is equal in duration to any period during which Lessee does not pay Rental Payments (in whole or in part) when scheduled as a result of the occurrence of an event that results in abatement of Lessee’s obligation to make Rental Payments in accordance with the Payment Schedule.

“*Funding Date*” means October __, 2013, which is the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian in accordance with Section 3.04(c).

EXHIBIT B

“*Lease Term*” means the period that begins on the Funding Date and ends on the first business day after the last scheduled Rental Payment Date, subject to extension as provided in Section 3.03, including for any Extended Lease Term; *provided* that in no event shall any such extension result in the Lease Term extending past December 1, 2028.

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

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

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

“*Payment Schedule*” means the Rental Payments Schedule attached hereto as Exhibit B and made a part hereof and any revised Payment Schedule entered into pursuant to Section 3.03(c).

“*Prepayment Price*” means the amount that Lessee shall pay to Lessor to prepay its obligations under this Agreement as provided in Section 10.01.

“*Principal Component*” means, as of any date of calculation, the aggregate principal amount of the Rental Payments then unpaid, which equals \$[4,644,757] as of the Funding Date.

“*Rental Payment Commencement Date*” means the date on which all of the Equipment is substantially available for Lessee’s beneficial use and enjoyment or June 1, 2014, whichever is later, which is the date Lessee becomes obligated to commence payment of Rental Payments in accordance with the Payment Schedule pursuant to Section 4.01(a) hereof.

“*Rental Payment Date*” means each June 1 and December 1, commencing on the first June 1 or December 1, as applicable, that occurs on or after the Rental Payment Commencement Date, on which Lessee is required to make a Rental Payment under the Agreement as specified in the Payment Schedule.

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

EXHIBIT B

“*Special Tax Counsel*” means Stradling Yocca Carlson & Rauth, P.C. or any other nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions whose opinions are generally accepted by purchasers of tax-exempt obligations and who is reasonably acceptable to Lessee.

“*State*” means the State of California.

“*Taxable Rate*” means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“*Vendor*” means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessor arranged Lessee’s acquisition, installation, 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.

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

ARTICLE II

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

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

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

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

EXHIBIT B

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

(e) Lessee has complied or will comply with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment.

(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 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 240 days 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 proposed budget for the following fiscal year no later than 30 days prior to its then current fiscal year end and its annual final budget for the following fiscal year within 30 days after its approval. The financial statements described in subsection (g) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has a need for the Equipment and expects to make immediate use of the Equipment upon its installation. 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 Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not 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 government 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. Lessee shall not permit the Federal government to guarantee any Rental Payments. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

EXHIBIT B

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

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

(l) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No payment default has occurred under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years, and no non-payment default of a material nature has occurred during the past ten (10) years.

ARTICLE III

Section 3.01. Lease of Equipment. Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire and install the Equipment. Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment for the Lease Term.

Section 3.02. Continuation of Lease Term. Lessee intends, subject to Section 3.03, to continue the Lease Term and to pay the Rental Payments under this Agreement. Lessee affirms that sufficient funds are available for its current fiscal year to pay any Rental Payments when due during the current fiscal year and reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term can be obtained from legally available funds of Lessee.

Section 3.03. Abatement. (a) During any period in which, by reason of material damage or destruction or taking under the power of eminent domain (or sale to any entity threatening the use of such power) or material title defect with respect to any Equipment, there is substantial interference with the beneficial use and enjoyment by Lessee of such Equipment, the Rental Payments due under this Agreement shall be abated in the same proportion (including in whole) that the portion of such Equipment that is unavailable for Lessee's beneficial use and enjoyment bears to all of the Equipment. Lessee shall immediately notify Lessor upon the occurrence of any event causing substantial interference with Lessee's beneficial use and enjoyment of any Equipment and the portion of the Equipment that is so unavailable.

EXHIBIT B

(b) The amount of Rental Payments abated under this Agreement shall be such that the remaining Rental Payment obligation for each rental period represents fair consideration for the beneficial use and enjoyment of the portions of the Equipment that are not affected by such interference. Such abatement shall commence on the date that Lessee's beneficial use and enjoyment of the affected Equipment is restricted because of such interference and end on the earlier of (i) the date on which the beneficial use and enjoyment thereof are restored to Lessee, or (ii) the date on which Lessee either (x) replaces the affected Equipment, (y) uses the proceeds of insurance or condemnation award to pay the applicable Prepayment Price therefor or (z) elects to pay the applicable Prepayment Price for the affected Equipment pursuant to Section 10.01(b) if no insurance proceeds or condemnation award are available for purposes of the foregoing clause (y); *provided, however*, that the term of this Agreement shall automatically be extended for an Extended Lease Term and further extended successively for any additional Extended Lease Term as a result of the occurrence of any subsequent similar event; and *provided further, however*, that in no event shall any such extension result in the Lease Term extending past December 1, 2028. The date on which abatement ends as determined pursuant to the next preceding sentence is referred to in this Section 3.03 as an "*Abatement End Date*."

(c) The terms and conditions during any Extended Lease Term shall be the same as the terms and conditions during the original Lease Term, except that (i) the interest component of Rental Payments that becomes due during the Extended Lease Term shall be increased by an amount determined by Lessor (whose determination shall be binding on Lessee absent manifest error) that maintains the tax-exempt yield in effect during the original Lease Term and amortizes the then Principal Component on a level debt service basis over a period equal to the duration of the then remainder of the original Lease Term and such Extended Lease Term and with Rental Payments payable on each June 1 and December 1; (ii) Lessor shall prepare, and Lessor and Lessee shall execute and deliver, a revised Payment Schedule based on the factors described in the preceding clause (i); (iii) Lessee shall take such actions as may be reasonably necessary to maintain federal tax-exemption of the interest component of Rental Payments, including preparing, executing and filing an information reporting return in compliance with the Code in the event that the revised Payment Schedule may result in treatment of the revised Payment Schedule as a reissuance of this Agreement for federal income tax purposes; (iv) if the Extended Lease Term does not end on a Rental Payment Date, the final date for payment of Rental Payments shall be the last business day of the Extended Lease Term; and (v) the Extended Lease Term shall not exceed the earlier of December 1, 2028 or the latest date that would not adversely affect federal tax-exemption of the interest component of Rental Payments based upon the relationship of the reasonably expected average useful life of the Equipment and the weighted average maturity of the Principal Component under the revised Payment Schedule. In connection with the execution and delivery of a revised Payment Schedule as herein provided, Lessee shall deliver to Lessor, at Lessee's expense, a written opinion of Special Tax Counsel (selected by Lessee and reasonably acceptable to Lessor) with respect to the federal tax matters described in this subsection (c). Lessee shall direct the Special Tax Counsel to cooperate with Lessor in connection with federal tax matters that relate to the calculations that Lessor is required to make as provided in the first sentence of this subsection (c). Lessor shall establish the Extended Lease Term, calculate the increased interest component and revised amortization of the Principal Component and prepare the revised Payment Schedule, all as provided in the first sentence of this subsection (c), within thirty days after an Abatement End Date (as described in

EXHIBIT B

subsection (b) above). Once Lessor has prepared such revised Payment Schedule, Lessor shall promptly deliver such revised Payment Schedule to Lessee for execution and delivery by Lessee and return to Lessor; *provided* that the revised Payment Schedule prepared in accordance with this subsection (c) shall become immediately effective for the period from and after such Abatement End Date.

(d) Notwithstanding any such interference with Lessee's beneficial use and enjoyment of a portion of the Equipment, this Agreement shall continue in full force and effect with respect to any remaining Equipment. Lessee hereby waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate this Agreement by virtue of any interference with the use and possession of the Equipment.

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

(i) An Acquisition Fund Agreement in the form set forth in Exhibit H hereto, satisfactory to Lessor and executed by Lessee and the Acquisition Fund Custodian;

(ii) A certified copy of a resolution of Lessee's City Council, substantially in the form attached hereto as Exhibit C-1, authorizing the execution and delivery of this Agreement and the Acquisition Fund Agreement and performance by Lessee of its obligations under this Agreement and the Acquisition Fund Agreement;

(iii) A Certificate executed by the City Clerk or Deputy City Clerk of Lessee, in substantially the form attached hereto as Exhibit C-2, completed to the satisfaction of Lessor;

(iv) An opinion of counsel to Lessee in substantially 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 copy of a fully completed and executed Form 8038-G with respect to this Agreement;

(viii) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04; *provided, however*, that such delivery shall not be a condition precedent to Lessor's performance hereunder so long as any such Surety Bonds that satisfy the conditions under Section 7.04 are provided to Lessor prior to delivery of a Disbursement Request pursuant to the Acquisition Fund Agreement for Lessor's approval as therein provided; and

EXHIBIT B

(ix) Such other items reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Acquisition Fund Agreement shall be subject to: (i) no Material Adverse Change in the financial condition of Lessee since the date of this Agreement, and (ii) no Event of Default having occurred and continuing; *provided, however*, that nothing in this subsection (b) shall terminate Lessor's obligation under Section 5.02 with respect to the covenant of quiet enjoyment prior to the occurrence of an Event of Default.

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

ARTICLE IV

Section 4.01. Rental Payments. (a) Lessee agrees, subject to Section 3.03, to pay to Lessor beginning on the Rental Payment Commencement Date: (i) Rental Payments representing a principal component payable in the respective semiannual installments and on the respective Rental Payment Dates as indicated in the Payment Schedule under the column entitled "*Principal Component*" and (ii) Rental Payments representing an interest component in the respective semiannual installments and on the respective Rental Payment Dates as indicated in the Payment Schedule under the column entitled "*Interest Component.*"

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

(c) Interest on the Acquisition Amount shall begin to accrue as of the Funding Date. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date.

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

Section 4.03. Rental Payments to Constitute a Current Expense of Lessee. The Rental Payment payable on a particular Rental Payment Date shall be for the period from the immediately preceding Rental Payment Date (or the respective Acceptance Dates in the case of the first Rental Payment Date) to such particular Rental Payment Date. For each fiscal year or portion thereof during the Lease Term, Rental Payments and other amounts payable under this Agreement shall constitute the total rentals for such fiscal year or portion thereof and shall be paid by Lessee for and in consideration of the right of use and possession, and the continued

EXHIBIT B

quiet use and enjoyment, of the Equipment by Lessee for and during such fiscal year or portion thereof. Lessor and Lessee have agreed and determined that such rentals are not in excess of the fair rental value of the Equipment. In making such determination, consideration has been given to the costs of acquiring and installing the Equipment, the uses and purposes served by the Equipment and the benefits therefrom that will accrue to Lessee by reason of this Agreement and to the general public by reason of Lessee's use of the Equipment hereunder. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments and other amounts payable under this Agreement 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, disputes with the Vendor of any Equipment or Lessor, failure of the Vendor under any Vendor Agreement to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Vendor under any Vendor Agreement or any accident, condemnation or unforeseen circumstances.

Section 4.05. Tax Covenants . (a) Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes.

(b) In the event that Lessee does not spend sufficient moneys in the Acquisition Fund within six (6) months after the date the deposit is made pursuant to Section 3.04(c), Lessee will, if required by Section 148(f) of the Code to pay rebate: (i) establish a Rebate Account and deposit the Rebate Amount (as defined in Section 1.148-3(b) of the Federal Income Tax Regulations) not less frequently than once per year after the Funding Date; and (ii) rebate to the United States, not less frequently than once every five (5) years after the Funding Date, an amount equal to at least 90% of the Rebate Amount and within sixty (60) days after payment of all Rental Payments or the Prepayment Price as provided in Section 10.01(a) hereof, 100% of the Rebate Amount, as required by the Code and any regulations promulgated thereunder. Lessee shall determine the Rebate Amount, if any, at least every year and upon payment of all Rental Payments or the Prepayment Price and shall maintain such determination, together with any supporting documentation required to calculate the Rebate Amount, until six (6) years after the date of the final payment of the Rental Payments or the Prepayment Price.

EXHIBIT B

Section 4.06. Event of Taxability. Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

For purposes of this Section, “*Event of Taxability*” means a determination that the interest component is includible for federal income tax purposes in the gross income of the owner thereof due to Lessee’s action or failure to take any action.

Section 4.07. Payment of Equipment Costs from Acquisition Fund; Mandatory Prepayment from Unspent Acquisition Fund Moneys. (a) Amounts on deposit in the Acquisition Fund may be expended for the payment of Equipment Costs in accordance with the Acquisition Fund Agreement (subject to the last sentence of this subsection (a) below) to and including the earlier of (i) the expiration of the Acquisition Period or (ii) the date on which Lessee executes and delivers to Lessor the Final Acceptance Certificate pursuant to Section 5.01(a) hereof. All amounts remaining on deposit in the Acquisition Fund as of the earlier of such dates shall be applied by the Acquisition Fund Custodian as provided in the Acquisition Fund Agreement to pay the prepayment price determined pursuant to the next succeeding sentence. The prepayment price with respect to any such prepayment shall be equal to 102% of the principal portion of the Rental Payments to be prepaid (which includes a prepayment premium) plus accrued interest on such prepaid principal portion to the prepayment date. Notwithstanding anything in this Agreement to the contrary, an amount may not be disbursed from the Acquisition Fund to pay Equipment Costs relating to a portion of the Equipment prior to the date on which Lessee has certified in the related Disbursement Request that the Acceptance Date has occurred with respect to such portion of Equipment for which funds are requested for disbursement from the Acquisition Fund pursuant to the Acquisition Fund Agreement.

Lessee hereby acknowledges and agrees that prior to Equipment Acceptance any demands for payment of related Equipment Costs or any other amounts due to the Vendors shall be paid by Lessee from its own funds that are legally available for the purpose and not from funds held in the Acquisition Fund. Such funds so paid by the Lessee may be reimbursed as provided in this Agreement, subject to any limitations on any such reimbursement as otherwise provided in this Agreement.

(b) Lessee will give Lessor notice of any such prepayment in accordance with this Section 4.07 not less than 60 days in advance of the prepayment date.

Section 4.08. Covenant to Budget and Appropriate. Lessee hereby covenants to take such action as is necessary under the laws applicable to Lessee to budget for and appropriate and maintain funds sufficient and available to discharge its obligation to meet all Rental Payments and pay other amounts that are required to be paid under this Agreement in each of its fiscal years during the Lease Term; *provided* that such covenant shall not apply to payment obligations

EXHIBIT B

of Lessee that are payable only from funds (if any) that are subject to appropriation at the discretion of Lessee's City Council pursuant to Section 7.03, 7.05 or 8.02 hereof.

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

ARTICLE V

Section 5.01. Delivery, Installation and Acceptance of Equipment. (a) Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location or locations specified in the Equipment Schedule and pay any and all Equipment Costs and other delivery and installation costs in connection therewith. When items of Equipment have been delivered and installed and are available for Lessee's beneficial use and enjoyment, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor a Disbursement Request as provided in the Acquisition Fund Agreement. Upon the occurrence of Equipment Acceptance for all of the Equipment, Lessee shall execute and deliver to Lessor a Final Acceptance Certificate in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor original invoices (and proof of payment of such invoices if Lessee seeks reimbursement) relating to each item of Equipment accepted by Lessee pursuant to the related Disbursement Request; *provided* that each such original invoice shall contain a footnote inserted thereon by the Vendor (or by Lessee in the event that Lessee has paid such invoice and is seeking reimbursement) that states the amount of California State sales tax actually paid with respect to the Equipment that is subject to such invoice. Any such invoice that does not contain the required footnote as provided in this subsection (b) shall not be sufficient for purposes of submitting a Disbursement Request.

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. 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.

Section 5.04. Use and Maintenance of the Equipment. Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or

EXHIBIT B

judicial body; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights hereunder.

Lessee agrees that it will maintain, preserve and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases during the Lease Term and prior to return of Equipment to Lessor as provided in this Agreement, 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 herein.

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, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

ARTICLE VI

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

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 on (a) the Equipment, (b) moneys and investments held from time to time in the Acquisition Fund and (c) any and all proceeds of any of the foregoing. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Equipment, the Acquisition Fund, and the proceeds thereof, including such financing

EXHIBIT B

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, as and to the extent permitted by 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. 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 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, such consent shall not be unreasonably withheld.

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. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due; *provided* that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term. 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 additional insured 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 \$1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount satisfactory to Lessor; (c) worker's compensation coverage as required by the laws of the State and (d) rental interruption insurance naming Lessor as loss payee, with coverage equal to the maximum total Rental Payments payable by Lessee under the Lease for any consecutive 24-month period and insuring against abatement of Rental Payments payable by Lessee resulting from Lessee's loss of beneficial use or enjoyment of the Equipment

EXHIBIT B

or any substantial portion thereof and caused by any and all perils insured under the casualty insurance described in clause (a) above; *provided* that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a), (b) and/or (c). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached 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 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, except as otherwise provided in Section 3.03. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law) and subject to appropriation of moneys sufficient 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; *provided, however*, that any amount payable by Lessee pursuant to this Section 7.03 shall be payable solely from moneys appropriated for such purpose by Lessee's City Council in its discretion, and failure to appropriate such moneys shall not constitute an Event of Default under this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties. Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a payment and performance bond ("*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

EXHIBIT B

receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied first to amounts due Lessor under this Agreement, 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. 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 shall be paid to Lessor and applied against Lessee's obligations hereunder.

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 hereof, 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 Lease Term, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less; *provided, however,* that any amount payable by Lessee pursuant to this Section 7.05 shall be payable solely from moneys appropriated for such purpose by Lessee's City Council in its discretion, and failure to appropriate such moneys shall not constitute an Event of Default under this Agreement.

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 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 quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all

EXHIBIT B

claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment Date after the occurrence of a casualty event, or exercise its option to prepay in accordance with Section 10.01(b).

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

Section 8.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds (to the fullest extent permitted by applicable law, but only from legally available funds), or (b) pay or cause to be paid to Lessor the amount of the then applicable Prepayment Price for the Equipment, 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; *provided, however*, that any amount payable by Lessee pursuant to this Section 8.02 shall be payable solely from moneys appropriated for such purpose by Lessee's City Council in its discretion, and failure to appropriate such moneys shall not constitute an Event of Default under this Agreement. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing such Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

ARTICLE IX

Section 9.01. Disclaimer of Warranties. Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the 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. Vendor's Agreements; Warranties. Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact

EXHIBIT B

during the Lease Term, so long as Lessee shall not be in default under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendors of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Equipment.

ARTICLE X

Section 10.01. Prepayment Option. Lessee shall have the option to prepay or satisfy all (or in the case of subsection (b) below, all or part) of its obligations hereunder, at the following times and upon the following terms:

(a) 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 30 days' prior written notice, and upon payment in full of the Rental Payments then due and all other amounts then owing under this Agreement plus the then applicable Prepayment Price, which may include a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of all or a portion (representing at least \$250,000 of the then aggregate Principal Component) of the Equipment, 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 Rental Payment Date or 60 days after the casualty event) upon payment in full to Lessor of the sum of (i) any Rental Payment then due (calculated in accordance with Sections 3.03 and 4.01 hereof) plus (ii) an amount equal to the lesser of the then applicable Prepayment Price or 102% of the aggregate unpaid principal portion of Rental Payments to be prepaid (or, in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of such amount determined as of the next preceding Rental Payment Date plus accrued interest to such prepayment date) plus (iii) all other amounts then owing hereunder; or

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

After payment of the applicable Prepayment Price and all other amounts owing hereunder, Lessor's security interests in and to such Equipment will be terminated and Lessee will own the Equipment free and clear of Lessor's security interest in the Equipment.

ARTICLE XI

Section 11.01. Assignment by Lessor. (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the

EXHIBIT B

Acquisition Fund Agreement, its security interest in the Equipment and the Acquisition Fund, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom Lessor reasonably believes is a “*qualified institutional buyer*” as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, and is purchasing the Agreement (or any interest therein) for its own account with no present intention to resell or distribute the Agreement (or interest therein), subject to each investor’s right at any time to dispose of the Agreement or any interest therein as it determines to be in its best interests, (ii) shall not result in more than 35 owners of Lessor’s rights and interests under this Agreement or the creation of any interest in this Agreement in an aggregate principal component that is less than \$100,000 and (iii) shall not require Lessee to make Rental Payments, send notices or otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in this Agreement are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single trustee, owner, servicer or other fiduciary or agent to act on their behalf with respect to the rights and interests of Lessor under this Agreement, including with respect to the exercise of rights and remedies by Lessor on behalf of such owners upon the occurrence of an Event of Default hereunder. 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 Lessor’s right, title and interest in, to and under this Agreement (or any interest therein).

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, 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 or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. 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 Acquisition Fund, or all rights in, to and under the Acquisition Fund 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 G attached hereto within five (5) business days after its receipt of such request.

EXHIBIT B

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 Acquisition Fund Agreement or the Acquisition Fund may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.**

ARTICLE XII

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

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

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

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

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregate amount in excess of \$1,000,000;

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

EXHIBIT B

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

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

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

(a) By written notice to Lessee, Lessor may without terminating this Agreement, take whatever action at law or in equity may appear necessary or desirable to collect each Rental Payment payable by Lessee and other amounts payable by Lessee hereunder as they become due and payable;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the 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 United States 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 or the Equipment that are payable by Lessee to the end of the Lease Term, 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 and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03; *provided*, that in no event shall Lessee be liable in any fiscal year for any amount in excess of the Rental Payments shown for such year in the Payment Schedule. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or the Equipment;

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

(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 Acquisition Fund Agreement or as a secured party in any or all of the Equipment or the Acquisition Fund; and

EXHIBIT B

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

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

ARTICLE XIII

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

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

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

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

Section 13.05. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

EXHIBIT B

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.

[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 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) 556-6977

LESSEE:

CITY OF OCEANSIDE, CALIFORNIA
300 North Coast Highway
Oceanside, California 92054
Attention: Peter Weiss
Fax No.: () -

By: _____
Terri Preston
Vice President

By: _____
Peter Weiss
City Manager

Counterpart No. _____ of 3 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.

EXHIBIT B

LIST OF EXHIBITS

Exhibit A	—	Equipment Schedule
Exhibit B	—	Rental Payments Schedule
Exhibit C	—	Form of Incumbency and Authorization Certificate
Exhibit D	—	Form of Opinion of Counsel Form
Exhibit E	—	Form of Final Acceptance Certificate
Exhibit F	—	Form of Self-Insurance Certificate
Exhibit G	—	Form of Notice and Acknowledgement of Assignment
Exhibit H	—	Form of Acquisition Fund and Account Control Agreement

EXHIBIT B

EXHIBIT A

EQUIPMENT SCHEDULE

The Equipment consists of: (A)(i) any and all of the Equipment now existing or hereafter acquired with proceeds of the Agreement consisting of LED replacement light fixtures for approximately ____ street lights and related improvements and equipment as part of Lessee's energy efficient Municipal Street Lighting Retrofit Project, and all replacements, repairs, restorations, modifications and improvements thereof, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto; (ii) any property acquired in substitution, renewal, repair or replacement for or as additions, improvements, accessions and accumulations to any of the property described in clause (i); and (iii) any accessories, parts and appurtenances appertaining or attached to any of such property or from time to time incorporated therein or installed thereon; (B) moneys and investments held from time to time in the Acquisition Fund; and (C) any proceeds of any of the foregoing.

EXHIBIT B

EXHIBIT C

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, the duly elected or appointed and acting City Clerk of the City of Oceanside, 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 that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease/Purchase Agreement dated as of October __, 2013, between Lessee and Banc of America Public Capital Corp ("*Lessor*"), the Acquisition Fund and Account Control Agreement dated as of October __, 2013, among Lessor, Lessee and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, and all documents related thereto and delivered in connection therewith (collectively, the "*Agreements*"), and the Agreements are each the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

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

Dated: October __, 2013

By: _____
Name: _____
Title: _____

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

EXHIBIT B

EXHIBIT D

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

October __, 2013

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

Re: Equipment Lease/Purchase Agreement
dated as of October __, 2013, between
Banc of America Public Capital Corp, as Lessor, and
City of Oceanside, California, as Lessee

Ladies and Gentlemen:

As legal counsel to the City of Oceanside, California ("*Lessee*"), we have examined (a) an executed counterpart of that certain Equipment Lease/Purchase Agreement, dated as of October __, 2013 (the "*Agreement*"), and Exhibits thereto, between Banc of America Public Capital Corp ("*Lessor*") and Lessee, which, among other things, provides for the lease of certain property (the "*Equipment*"), (b) an executed counterpart of that certain Acquisition Fund and Account Control Agreement dated as of October __, 2013 (the "*Acquisition Fund Agreement*") among Lessor, Lessee, and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, (c) a certified copy of the resolutions of Lessee with respect to the transaction contemplated by the Agreement, the Acquisition Fund Agreement and documents related thereto and (d) such other opinions, documents and matters of law as we have deemed necessary in connection with the following opinions. The Agreement, the Acquisition Fund Agreement and the documents relating thereto are referred to collectively as the "Transaction Documents."

Based on the foregoing, we are of the following opinions:

1. Lessee is a charter city duly organized and existing under the laws of the State of California and has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain and (c) police power.
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.

EXHIBIT B

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are 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. There is no proceeding pending or, to the best of our knowledge, threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, 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 Acquisition Fund or other collateral thereunder.

Notwithstanding anything stated to the contrary herein:

1. We expressly decline to render any opinion regarding the tax-exemption, taxability or tax effect (under both state and federal law) of the transactions which are the subject of this opinion letter.

2. This opinion is based on the existing laws of the State of California as of this date and we expressly decline to render any opinion as to any laws or regulations of other state or jurisdictions (including federal law and regulations) as they may pertain to the transactions that are the subject of this opinion letter, the Transaction Documents or the effect of noncompliance under any such laws or regulations of any other jurisdictions.

3. This opinion is furnished for you and is solely for your benefit and the benefit of your successors and assigns. Other than you and your successors and assigns, it may not be relied upon by any other person or entity however organized. No attorney-client relationship is created by the rendering of this opinion.

4. This opinion may be used only in connection with the transactions contemplated under the Transaction Documents.

5. This opinion is given as of this date, and we expressly decline any undertaking to advise you of any matters arising subsequent to the date hereof which would cause us to amend any portion of the foregoing in whole or in part.

6. The opinions set forth are subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the enforcement of creditors' rights generally. The enforcement of the Transaction Documents is subject to the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, and the

EXHIBIT B

possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public entities in the State of California and the application of California law relating to conflicts of interest to which public entities are subject. We express no opinion as to the enforceability of any provisions relating to indemnification or forum.

7. Our failure to enumerate any exclusion from our representations set forth above does not in any manner expand our opinion.

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

Sincerely,

EXHIBIT B

EXHIBIT E

FORM OF FINAL ACCEPTANCE CERTIFICATE

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

Re: Equipment Lease/Purchase Agreement
between Banc of America Public Capital Corp, as Lessor, and
City of Oceanside, California, as Lessee

Ladies and Gentlemen:

In accordance with Section 5.01 of the Equipment Lease/Purchase Agreement (the "Agreement"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. Equipment Acceptance for all of the Equipment (as such term is defined in the Agreement) has occurred as evidenced by the related Disbursement Requests heretofore or herewith delivered in accordance with the Acquisition Fund Agreement.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
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 (as defined in the Agreement) exists at the date hereof.

Date: _____

LESSEE: CITY OF OCEANSIDE, CALIFORNIA

By: _____
Name: _____
Title: _____

EXHIBIT B

EXHIBIT F

FORM OF SELF-INSURANCE CERTIFICATE

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

Re: Equipment Lease/Purchase Agreement
dated as of October __, 2013 (the "Agreement")
between Banc of America Public Capital Corp, as Lessor,
and City of Oceanside, California, as Lessee

In connection with the above-referenced Agreement, the City of Oceanside, California (the "Lessee"), warrants and represents to Banc of America Public Capital Corp 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:

EXHIBIT B

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

LESSEE:

CITY OF OCEANSIDE, CALIFORNIA

By: _____
Name: _____
Title: _____

EXHIBIT B

EXHIBIT G

FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

DATED _____

BANC OF AMERICA PUBLIC CAPITAL CORP ("*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 dated as of October __, 2013 (the "*Agreement*"), between Assignor and City of Oceanside, 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 Acquisition Fund and Account Control Agreement dated as of October __, 2013 (the "*Acquisition Fund Agreement*") by and among Lessee, Assignor and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, together with the Acquisition Fund related thereto (collectively, the "*Assigned Property*").

1. In accordance with the terms of the Agreement, Lessee hereby acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all remedies thereunder; and (ii) except as provided in 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.

EXHIBIT B

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 Acquisition Fund - \$ _____

4. The Agreement remains in full force and effect, has not been amended and no Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

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

ACKNOWLEDGED AND AGREED:

LESSEE: CITY OF OCEANSIDE, CALIFORNIA

By: _____
Name: _____
Title: _____

ASSIGNOR: BANC OF AMERICA PUBLIC CAPITAL CORP

By: _____
Name: _____
Title: _____

EXHIBIT B

EXHIBIT H

FORM OF ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement (this "*Agreement*"), dated as of October __, 2013, by and among Banc of America Public Capital Corp (hereinafter referred to as "*Lessor*"), the City of Oceanside, California (hereinafter referred to as "*Lessee*") and Deutsche Bank Trust Company Americas, a New York banking corporation (hereinafter referred to as "*Acquisition Fund Custodian*").

Reference is made to that certain Equipment Lease/Purchase Agreement dated as of October __, 2013, between Lessor and Lessee (hereinafter referred to as the "*Lease*"), covering the acquisition, installation and lease of certain Equipment described therein (the "*Equipment*"). It is a requirement of the Lease that the Acquisition Amount (\$[4,644,757]) be deposited into an escrow under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the acquisition and installation of and payment for the Equipment.

The parties agree as follows:

1. *Creation of Acquisition Fund.*

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

(b) Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments (as hereinafter defined in this subsection) in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, State and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither Acquisition Fund Custodian nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and Lessee agrees to and does hereby release Acquisition Fund Custodian and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. Acquisition Fund Custodian shall have no discretion whatsoever with respect to the management, disposition or investment of the Acquisition Fund and is not a trustee or a fiduciary to Lessee. Acquisition Fund

EXHIBIT B

Custodian shall not be responsible for any market decline in the value of the Acquisition Fund and has no obligation to notify Lessor and Lessee of any such decline or take any action with respect to the Acquisition Fund, except upon specific written instructions stated herein. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements of California Government Code Sections 53600 *et seq.*

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition and installation of the Equipment; *provided, however,* that any amount required for such purpose shall be payable solely from moneys appropriated for such purpose by the City Council of Lessee in its discretion, and failure to appropriate such moneys shall not constitute an event of default under this Agreement or the Lease. Any moneys remaining in the Acquisition Fund on or after the earlier of (i) the expiration of the Acquisition Period and (ii) the date on which Lessee executes and delivers to Lessor the Final Acceptance Certificate pursuant to Section 5.01(a) of the Agreement, shall be applied as provided in Section 4 hereof in accordance with Section 4.07 of the Lease.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lessor of the occurrence of a default under the Lease.

(e) Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as Acquisition Fund Custodian, and for the disposition of the same in accordance herewith. In the event of conflicting instructions as to the disposition of all or any portion of the Acquisition Fund are at any time given by Lessor and Lessee, Acquisition Fund Custodian shall abide by the instructions or entitlement orders given by Lessor without consent of Lessee.

(f) Unless Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify Acquisition Fund Custodian (to the fullest extent permitted by applicable law and subject to appropriation of moneys sufficient for

EXHIBIT B

such purpose by the City Council of Lessee in its discretion, and failure to appropriate such moneys shall not constitute an event of default under this Agreement or the Lease) and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this Agreement; and in connection therewith, does indemnify Acquisition Fund Custodian (to the fullest extent permitted by applicable law and subject to appropriation of moneys sufficient for such purpose by the City Council of Lessee in its discretion, and failure to appropriate such moneys shall not constitute an event of default under this Agreement or the Lease) against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by Acquisition Fund Custodian hereunder, Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. Acquisition Fund Custodian shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received; *provided*, that any such suspension of activities shall be subject to the terms, provisions and requirements of Section 6 hereof.

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

(i) Subject to Lessee's prior written approval of any costs and expenses related to extraordinary administration as herein provided prior to an Event of Default, Lessee shall reimburse Acquisition Fund Custodian for all reasonable costs and expenses, including those of Acquisition Fund Custodian's attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund and the performance of Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Acquisition Fund.

(j) Acquisition Fund Custodian or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation (the "*Effective Date*"), which shall be a date not less than 90 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor

EXHIBIT B

shall have been approved by the Lessee and Lessor. After the Effective Date, and subject to the terms, provisions and requirements of Section 6 hereof, Acquisition Fund Custodian shall be under no further obligation except to hold the Acquisition Fund in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Acquisition Fund.

(k) Acquisition Fund Custodian shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no fiduciary or implied duties responsibilities or obligations shall be read into this Agreement.

2. *Acquisition and Installation of Equipment.*

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

(b) *Authorized Acquisition Fund Disbursements.* Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment. **Lessee and Acquisition Fund Custodian hereby acknowledge and agree that prior to Equipment Acceptance any demands for payment of related Equipment Costs or any other amounts due to the Vendors shall be paid by Lessee from its own funds that are legally available for the purpose and not from funds held in the Acquisition Fund. Such funds so paid by the Lessee may be reimbursed as provided in the Lease, subject to any limitations on any such reimbursement as otherwise provided in the Lease.**

(c) *Requisition Procedure.* Prior to disbursement from the Acquisition Fund there shall be filed with Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1 (a "*Disbursement Request*"), stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due and certifying the Acceptance Date of Equipment Acceptance for the portion of Equipment for which disbursement is requested. Each such Disbursement Request shall be signed by an authorized representative of Lessee (an "*Authorized Representative*") and by Lessor, and shall be subject to the following:

EXHIBIT B

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:

(i) Equipment Acceptance has occurred as of the Acceptance Date identified therein with respect to the portion of Equipment for which disbursement is requested; (ii) an obligation in the stated amount has been incurred by Lessee, is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof); (iii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iv) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (v) the Equipment is insured in accordance with the Lease; (vi) no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default) has occurred and is continuing; (vii) the disbursement shall occur during the Acquisition Period; (viii) since the Funding Date, no Material Adverse Change (as such term is defined in the Lease) has occurred; (ix) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date thereof; and (x) each invoice delivered therewith contains the footnote required by Section 5.01(b) of the Lease.

2. Delivery to Lessor of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) as required by Section 5.01(b) of the Lease and any additional documentation reasonably requested by Lessor; *provided* that each such original invoice shall contain a footnote inserted thereon by the Vendor (or by Lessee in the event that Lessee has paid such invoice and is seeking reimbursement) that states the amount of California State sales tax actually paid with respect to the Equipment that is subject to such invoice and any such invoice that does not contain the required footnote as herein provided shall not be sufficient for purposes of submitting a Disbursement Request; and

3. The disbursement shall occur during the Acquisition Period.

4. No Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default) has occurred

EXHIBIT B

and is continuing under the Lease, and since the date of the Lease no Material Adverse Change has occurred.

Notwithstanding anything in this Agreement to the contrary, an amount may not be disbursed from the Acquisition Fund to pay Equipment Costs relating to a portion of the Equipment prior to the date on which Lessee has certified to Acquisition Fund Custodian in the related disbursement request that Equipment Acceptance has occurred with respect to such portion of Equipment for which funds are requested for disbursement from the Acquisition Fund.

3. *Deposit to Acquisition Fund.* Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited into the Acquisition Fund. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Acquisition Fund; *provided, however,* that any amount required for such purpose shall be payable solely from moneys appropriated for such purpose by the City Council of Lessee in its discretion, and failure to appropriate such moneys shall not constitute an event of default under this Agreement or the Lease.

4. *Excessive Acquisition Fund.* Any funds remaining in the Acquisition Fund on or after the earlier of (a) the expiration of the Acquisition Period or (b) the date on which Lessee executes and delivers to Lessor the Final Acceptance Certificate pursuant to Section 5.01(a) of the Agreement, or upon a termination of the Acquisition Fund as otherwise provided herein, shall be distributed by Acquisition Fund Custodian to the Lessor in order for the Lessor to apply such funds to the prepayment price owed by Lessee under the Lease in accordance with Section 4.07 of the Lease.

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

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

EXHIBIT B

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

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

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

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

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

EXHIBIT B

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

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

(h) Acquisition Fund Custodian and Lessee hereby agree that any property held in the Acquisition Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

(i) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 8 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to Lessee with respect to the Acquisition Fund.

7. *Information Required Under USA PATRIOT ACT.* The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to Acquisition Fund Custodian such information as it may request, from time to time, in order for Acquisition Fund Custodian to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

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

EXHIBIT B

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

If to Lessee: City of Oceanside
30 North Coast Highway
Oceanside, CA 92054
Attn: Treasury Manager
Fax: () ____ - ____

If to Acquisition
Fund Custodian: Deutsche Bank Trust Company Americas
60 Wall Street, 27th Floor
New York, NY 10005
Attn: Lisa McDermid
Phone: (212) 250-6674
Fax: (212) 797-8600

[Signature Page Follows]

EXHIBIT B

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

BANC OF AMERICA PUBLIC CAPITAL CORP,
as Lessor

CITY OF OCEANSIDE, CALIFORNIA
as Lessee

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Acquisition Fund Custodian

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SCHEDULE 1

TO THE ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

FORM OF DISBURSEMENT REQUEST

Re: Equipment Lease/Purchase Agreement dated as of October __, 2013 (the "Lease"), between Banc of America Public Capital Corp, as Lessor, and the City of Oceanside, California, as Lessee (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of October __, 2013 (the "Acquisition Fund and Account Control Agreement") by and among Banc of America Public Capital Corp ("Lessor"), the City of Oceanside, California ("Lessee") and Deutsche Bank Trust Company Americas (the "Acquisition Fund Custodian"), the undersigned on behalf of Lessee hereby (a) accepts for purposes of the Lease (described above) the Equipment described below as of the Acceptance Date identified below and (b) requests that the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement for the following purposes:

PAYEE'S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE

The undersigned hereby certifies as follows:

(i) The Acceptance Date on which Equipment Acceptance has occurred for the Equipment for which disbursement is hereby requested is _____, 20__.

(ii) An obligation in the stated amount has been incurred by Lessee, is a proper charge against the Acquisition Fund for costs relating to the Equipment identified above and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof). *Attached hereto is the original invoice with respect to each such obligation, each of which contains the footnote required by Section 5.01(b) of the Lease.*

EXHIBIT B

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

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

(v) The Equipment for which disbursement is hereby requested is insured in accordance with Section 7.02 of the Lease.

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

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

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

Dated: _____

CITY OF OCEANSIDE, CALIFORNIA

By: _____
Authorized Representative

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

BANC OF AMERICA PUBLIC CAPITAL CORP,
as Lessor under the Lease

By: _____
Name: _____
Title: _____

EXHIBIT C

Michael C. Brunzman
Senior Vice President
Energy Services



Banc of America Public Capital Corp
312 Walnut Street, Ste 2200
Cincinnati, OH 45202
michael.brunzman@bamf.com
Tel: (513) 929-5102
Fax: (312) 453-5331

July 23, 2013

VIA ELECTRONIC MAIL

Michele Lund
Treasury Manager
City of Oceanside
300 North Coast Hwy
Oceanside, CA 92054

Cc: Kiel Koger

Re: City of Oceanside, Approximately \$4,644,757 Non-Bank Qualified Tax-Exempt Equipment Lease/Purchase Agreement, California Abatement Structure

Banc of America Public Capital Corp ("BAPCC") is pleased to submit to City of Oceanside (the "Lessee") the Non-Bank Qualified Tax-Exempt Equipment Lease/Purchase Agreement proposal (the "Proposed Transaction") as described in the attached Summary of Terms and Conditions (the "Term Sheet"). Please review the Term Sheet and contact me if you have any questions.

This letter and the Term Sheet (collectively, the "Proposal" or the "Proposal Letter") include only a brief description of the principal terms of the Proposed Transaction, and are intended for discussion purposes only. Please understand that this Proposal is not a commitment or offer to purchase, and does not create any obligation for BAPCC. BAPCC will not be responsible or liable for any damages, consequential or otherwise, that may be incurred or alleged by any person or entity as a result of this Proposal Letter. BAPCC will notify you in writing of its decision to proceed with the Proposed Transaction after completing its review and analysis.

This Proposal must be accepted on or before August 2, 2013, in order for the BAPCC to proceed with its consideration of the Proposed Transaction. To accept this Proposal, please sign the enclosed copy of this Proposal Letter and return it to my attention at Banc of America Public Capital Corp, 312 Walnut Street, Ste 2200, Cincinnati, Ohio 45202, (513) 453-5331 fax.

Thank you for allowing us the opportunity to prepare this Proposal for City of Oceanside.

Very truly yours,

Bank of America Public Capital Corp

Michael C. Brunsman

By: Michael C. Brunsman
Title: Senior Vice President

The undersigned, by its authorized representative below, accepts the Proposal contingent upon proper approval at a meeting of City Council. The undersigned agrees to furnish BAPCC, its successors and assigns, any information relating to the business or financial condition of the Lessee or its affiliates, and authorizes the BAPCC, Bank of America, N.A. and their affiliates to disclose to, discuss with and distribute such information (and any information they may already have) to any other affiliates or proposed assignees or successors of BAPCC.

City of Oceanside

By: *Cathy Weiss*

Title: CITY MANAGER

Date: 7-31-12

Fed ID#: 95-1688570

Summary of Terms and Conditions

July 23, 2013

Michele Lund
Treasury Manager
City of Oceanside
300 North Coast Hwy
Oceanside, CA 92054

Cc: Kiel Koger

RE: City of Oceanside ("Lessee") Street Light Retrofit

Dear Michele:

Banc of America Public Capital Corp is pleased to submit the following financing proposal for consideration by City of Oceanside:

I. Lessor Information

Lessor Name: Banc of America Public Capital Corp
Address: 312 Walnut Street, Ste 2200
Cincinnati, OH 45202
Contact: Mike Brunsman
Telephone: (off) 513-929-5102; (mobile) 513-509-1312
Fax: 312-453-5331
Email: michael.brunsmann@baml.com

Lessor Counsel: Chapman and Cutler, LLP

II. Lease / Bond Structure

Purpose: Finance the street light retrofit project installed by Southern Contracting under a performance contract with City of Oceanside.

Structure: This transaction will be structured as a non-bank qualified tax-exempt Equipment Lease/Purchase Agreement between the Lessee and the Lessor. Rental Payments under the Agreement may be abated proportionately to the

extent that Equipment is unavailable for the Lessee's beneficial use and enjoyment upon certain events of damage, destruction or condemnation. Except for such abatement, the Lessee's obligation to make Rental Payments under the Agreement will be absolute and unconditional in all events, without abatement, diminution, deduction, set-off or defense, including (without limitation) failure of the Equipment to perform, disputes and other events with respect to the vendor. The Agreement will be a net financial contract of the Lessee, and all expenses (including, but not limited to, insurance, maintenance, and taxes) will be for the account of the Lessee.

The customary abatement provision in the equipment lease/purchase agreement ("ELPA") will provide that the term of the ELPA will automatically be extended for a period (the "Extended Lease Term") equal to the period during which the Lessee did not pay Rental Payments when scheduled as a result of the occurrence of an event that abated the Lessee's rental payment obligation. The terms and conditions during any Extended Lease Term will be the same as the terms and conditions (including Rental Payment Dates) during the original Lease Term, except that (a) the interest component of Rental Payments that become due during the Extended Lease Term shall be adjusted by an amount that maintains the tax-exempt yield in effect during the original Lease Term, (b) the Lessor and the Lessee will execute and deliver a revised Rental Payment Schedule based upon such adjustment, (c) the Lessee shall take such actions as may be reasonably necessary to maintain federal tax-exemption of the interest component of Rental Payments, (d) if the Extended Lease Term does not end on a Rental Payment Date, the final date for payment of Rental Payments shall be the last day of the Extended Lease Term and (e) the Extended Lease Term shall not exceed the earlier of December 1, 2028 or the latest date that would not adversely affect federal tax-exemption of the interest component of Rental Payments based upon the relationship of the expected useful life of the refinanced equipment and the weighted average maturity of the ELPA under the revised Rental Payment Schedule that includes the Extended Lease Term.

Security:

Lessor's security interest in the Equipment will be evidenced by filing of a UCC-1 Financing Statement (personal property) with respect to the Equipment with such office as is required by Article 9 of the California Commercial Code and recording a UCC-1 Financing Statement (fixture filing) in such office as is required by Article 9 of the California Commercial Code, and in all cases treating governmental transfers by the Lessee as subject to such Article 9.

Proceeds:

Approximately \$4,644,757

Term: 13 years plus 8 months construction

Interest Rate: 3.15% (NBQ)

Interest Rate Adjustment: The interest rate above will be held and is valid for a closing that occurs on or before October 15, 2013. The Interest Rate is based upon the 7-year U.S. Treasury Interest Rate Swap as reported on the Bloomberg Daily Summary (the "Index"), which is 2.14% as of July 23, 2013. If the closing does not occur on or before October 15, 2013, the Interest Rate may, at the discretion of Lessor, be adjusted prior to the Commencement Date by taking 65% of the difference between the Index on July 23, 2013, and the Index approximately 15 business days prior to the Commencement Date (the "Interest Rate Lock Date") times 65% and add that number to the Indicative Interest Rate. On that date, the Interest Rate will be fixed for the Agreement Term. For example, if the Index on the Interest Rate Lock Date was 2.39%, the interest rate for the Agreement Term would be 3.31% (65% of the difference between 2.39% and 2.14% = 0.16% + the original rate of 3.15% = 3.31%).

PLEASE BE ADVISED THAT THE PROPOSED INDICATIVE PRICING SET FORTH ABOVE IS ONLY AVAILABLE FOR TRANSACTIONS THAT ARE FULLY FUNDED OR FOR SPECIFIC EQUIPMENT THAT HAS COMMENCED FUNDING PURSUANT TO THIS PROPOSAL WITHIN 90 DAYS OF THE DATE OF THIS PROPOSAL LETTER. THEREAFTER, THE LESSOR MAY AT ITS DISCRETION ADJUST ITS PRICING TO REFLECT ADVERSE CHANGES IN ITS COST OF FUNDS OR CHANGES GENERALLY IN MARKET CREDIT MARGINS.

Payments: Please see the attached Sample Payment Schedule and Cashflow Analysis, which utilizes the Indicative Interest Rate and a Commencement Date of October 1, 2013.

Prepayment: Beginning with the 1st semiannual payment (June 1, 2014 in the attached sample amortizations) and continuing through maturity, Lessee will have the option to prepay its obligations under the Agreement in whole on any payment date with a prepayment premium of 2%.

Closing Costs: Lessor does not charge any closing costs or fees. The Lessee will be responsible for paying the costs of Lessor's Counsel, which is estimated not to exceed \$10,000, and will also responsible for its costs, including delivery of a validity opinion from the Lessee's Bond Counsel.

- Escrow Account:** At closing, proceeds from the Agreement will be deposited into an Acquisition Fund established pursuant to an Acquisition Fund and Account Control Agreement (the "*Escrow*") by and among the Lessee, the Lessor and the Acquisition Fund Custodian. The Acquisition Fund Custodian will be selected by the Lessee, subject to the Lessor's approval. The Lessor has a relationship with Deutsche Bank Trust Company Americas, under which acquisition fund custodian services for these types of transactions are provided at no charge to Lessee. During the installation period, the Lessee will requisition funds in the manner outlined in the Escrow. No funds will be disbursed without the written approval of the Lessee and approval of the Lessor. The Lessee will direct the investments in the Acquisition Fund and all interest earnings will accrue to the Lessee's benefit.
- Documents:** Documents shall be prepared by the Lessor's Counsel and will include all documents, certificates and opinions as are reasonably necessary to evidence and carry out the transaction. All documents must be acceptable to all parties.
- Rental Interruption Insurance:** The Lessee will be required to obtain rental interruption insurance in the event the Equipment is not available for use due to damage or destruction. Such insurance will provide for payments in an amount not less than the maximum aggregate lease payment amount over any 24-month period of the lease term.
- Payment and Performance Bonds:** The Lessor requires to be listed as dual obligee on the payment and performance bonds provided by Southern Contracting. No draws from Escrow will be permitted until such bonds are in place.
- Credit Approval:** This proposal is an indication of interest in the transaction, and not a commitment to provide financing by the Lessor. Consummation of this transaction is subject to credit approval by the Lessor and execution and delivery of documentation acceptable to all parties, including the Purchase Contract. All fundings are subject to no material adverse change in the financial condition of the Lessee from the time of credit approval.
- Est. Closing Date:** On or before October 15, 2013. The sample amortization schedule utilizes a closing date of October 1, 2013.
- Assignment:** The Lessor shall be entitled to assign its right, title and interest or any part thereof in the Agreement and Equipment, on a private placement basis to

qualified purchasers. In addition, the Lessor shall be entitled to assign its right, title and interest or any part thereof in the Agreement to a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in such Agreement, provided such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represent that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment (ii) such purchaser understands neither the Agreement or certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) that it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933. At any time, the Lessor may sell, assign or encumber all or any part of its right title and interest in the Agreement; however, in no event shall the Lessor assign this Agreement as a public offer of participation. The Lessee consents to a private placement transaction within the meaning of applicable federal securities laws.

Lessee's
Responsibilities:

All responsibilities imposed by the ownership or possession of the Equipment including, but not limited to, taxes, insurance and equipment maintenance, shall be borne by the Lessee.

USA Patriot Act
Compliance:

All financial institutions are required by Federal Law to obtain, verify and record information that identifies each customer who opens an account with us. When you open an account with us, we will ask you for your name, address and other information that will allow us to identify you, such as documents evidencing legal status and formation, taxpayer identification number and date of birth (if applicable).

Market
Disruption:

Notwithstanding anything contained herein to the contrary, in the event any material change shall occur in the financial markets after the date of this Proposal Letter, including but not limited to any governmental action or other event which materially adversely affects the extension of credit by banks, leasing companies or other lending institutions, the Lessor may modify the indicative pricing described above.

Capitalized terms used but not defined herein shall have the meaning given such terms in the transaction documents (i.e. the Agreement, the Escrow).

This proposal letter and the Term Sheet include only a brief description of the principal terms of the Proposed Transaction and do not purport to summarize all of the conditions, covenants, representations, warranties and other provisions that would be contained in definitive documentation for the transaction contemplated hereby. The Lessor will not be responsible or liable for any damages, consequential or otherwise, that may be incurred or alleged by any person or entity, including the Lessee or Southern Contracting as a result of this Proposal Letter.

Thank you for the opportunity to provide this proposal. If you have any questions or would like to discuss this proposal in further detail, please let us know.

Sincerely yours,

Michael C. Brunsman

By: Michael C. Brunsman

Title: Senior Vice President

Sample Amortization Schedule

Financed Amount	\$4,644,757.00
Tax Exempt Interest Rate	3.15%
Final Maturity (yrs.)	13.17
Average Life (yrs.)	7.40
Closing/Funding Date (estimated)	10/1/13

Pmt. No.	Year No.	Paymeht Date	Tax-Exempt Payment Amount	Tax-Exempt Interest Portion	Tax-Exempt Principal Portion	Tax-Exempt Outstanding Balance
0	0	11/1/13	\$ -	\$ 12,192.49	\$ (12,192.49)	\$4,656,949.49
0	0	12/1/13	\$ -	\$ 12,224.49	\$ (12,224.49)	\$4,669,173.98
0	0	1/1/14	\$ -	\$ 12,256.58	\$ (12,256.58)	\$4,681,430.56
0	0	2/1/14	\$ -	\$ 12,288.76	\$ (12,288.76)	\$4,693,719.32
0	0	3/1/14	\$ -	\$ 12,321.01	\$ (12,321.01)	\$4,706,040.33
0	0	4/1/14	\$ -	\$ 12,353.36	\$ (12,353.36)	\$4,718,393.69
0	0	5/1/14	\$ -	\$ 12,385.78	\$ (12,385.78)	\$4,730,779.47
1	1	6/1/14	\$ 220,269.54	\$ 12,418.30	\$ 207,851.24	\$4,522,928.22
2	1	12/1/14	\$ 220,269.54	\$ 71,236.12	\$ 149,033.42	\$4,373,894.80
3	2	6/1/15	\$ 220,269.54	\$ 68,888.84	\$ 151,380.70	\$4,222,514.11
4	2	12/1/15	\$ 220,269.54	\$ 66,504.60	\$ 153,764.94	\$4,068,749.16
5	3	6/1/16	\$ 220,269.54	\$ 64,082.80	\$ 156,186.74	\$3,912,562.42
6	3	12/1/16	\$ 220,269.54	\$ 61,622.86	\$ 158,646.68	\$3,753,915.74
7	4	6/1/17	\$ 220,269.54	\$ 59,124.17	\$ 161,145.37	\$3,592,770.37
8	4	12/1/17	\$ 220,269.54	\$ 56,586.13	\$ 163,683.41	\$3,429,086.96
9	5	6/1/18	\$ 220,269.54	\$ 54,008.12	\$ 166,261.42	\$3,262,825.54
10	5	12/1/18	\$ 220,269.54	\$ 51,389.50	\$ 168,880.04	\$3,093,945.50
11	6	6/1/19	\$ 220,269.54	\$ 48,729.64	\$ 171,539.90	\$2,922,405.60
12	6	12/1/19	\$ 220,269.54	\$ 46,027.89	\$ 174,241.65	\$2,748,163.95
13	7	6/1/20	\$ 220,269.54	\$ 43,283.58	\$ 176,985.96	\$2,571,177.99
14	7	12/1/20	\$ 220,269.54	\$ 40,496.05	\$ 179,773.49	\$2,391,404.50
15	8	6/1/21	\$ 220,269.54	\$ 37,664.62	\$ 182,604.92	\$2,208,799.58
16	8	12/1/21	\$ 220,269.54	\$ 34,788.59	\$ 185,480.95	\$2,023,318.64
17	9	6/1/22	\$ 220,269.54	\$ 31,867.27	\$ 188,402.27	\$1,834,916.36
18	9	12/1/22	\$ 220,269.54	\$ 28,899.93	\$ 191,369.61	\$1,643,546.76
19	10	6/1/23	\$ 220,269.54	\$ 25,885.86	\$ 194,383.68	\$1,449,163.08
20	10	12/1/23	\$ 220,269.54	\$ 22,824.32	\$ 197,445.22	\$1,251,717.85
21	11	6/1/24	\$ 220,269.54	\$ 19,714.56	\$ 200,554.98	\$1,051,162.87
22	11	12/1/24	\$ 220,269.54	\$ 16,555.82	\$ 203,713.73	\$847,449.14
23	12	6/1/25	\$ 220,269.54	\$ 13,347.32	\$ 206,922.22	\$640,526.93
24	12	12/1/25	\$ 220,269.54	\$ 10,088.30	\$ 210,181.24	\$430,345.69
25	13	6/1/26	\$ 220,269.54	\$ 6,777.94	\$ 213,491.60	\$216,854.09
26	13	12/1/26	\$ 220,269.54	\$ 3,415.45	\$ 216,854.09	(\$0.00)

\$ 5,727,008.06 \$ 1,082,251.06 \$ 4,644,757.00

Exhibit D – Project Cost Estimate

Project Phase	Costs
Design	
Design & Engineering	\$31,000.00
Traffic Control Plans/Survey/GIS	\$51,000.00
	\$82,000.00
Construction (Labor and Materials)	
50W HPS Conversion -- 36 ea.	\$8,955.62
100W HPS Conversion -- 5,511 ea.	\$1,460,234.24
150W HPS Conversion -- 779 ea.	\$256,888.65
250W HPS Conversion -- 1,369 ea.	\$787,075.34
400W HPS Conversion -- 8 ea.	\$6,284.22
Installation	\$395,485.67
Traffic Control Allowance	\$141,487.50
Adaptive Controls	\$1,125,487.46
	\$4,181,898.70
Contingencies	
3% Contractor Contingency	
3% General Conditions	\$129,093.80
3% Overhead Recovery	\$129,093.80
	\$129,093.80
	\$387,281.40
Fixed – 6% Profit	
	258,187.59
Construction Total	
	4,909,367.68
Insurance, Bonds	
	39,227.87
City Controlled Contingency	
	\$146,351.03
Project Estimate	
	\$5,094,946.58
SDG&E Rebate	
	(450,190.00)
Estimated Loan Amount	
	\$4,644,756.58

CITY OF OCEANSIDE

PROFESSIONAL CONTRACTOR SERVICES AGREEMENT

PROJECT: CITY WIDE STREET LIGHT RETROFIT PROJECT

THIS AGREEMENT, dated _____, 2013 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Southern Contracting Company, hereinafter designated as "Design Builder" or "(D/B)."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows:
The D/B shall design, order, construct, install and provide surveying, testing and inspection for the City wide street light retrofit project in the City of Oceanside in accordance with Exhibit A, Attachment A and Attachment B. The project will include the replacement of approximately 7700 HPS street light fixtures to LED technology.
2. **INDEPENDENT CONTRATOR.** D/B'S relationship to the CITY shall be that of an independent contractor. D/B shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City. D/B shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. D/B shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the D/B hereby certifies that the D/B is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the D/B will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. D/B shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of D/B, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

CITY WIDE STREET LIGHT RETROFIT PROJECT

4.2 D/B shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
---------------------------------------	--------------

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of D/B under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the D/B to restore the required limits. The D/B shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the D/B resulting from any of the D/B'S work.

4.4 All insurance companies affording coverage to the D/B for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the D/B pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

CITY WIDE STREET LIGHT RETROFIT PROJECT

- 4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 D/B shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 D/B shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the D/B to provide such a substitution and extend the policy expiration date shall be considered a default by D/B and may subject the D/B to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the D/B as specified in this Agreement shall in no way be interpreted as relieving the D/B of any responsibility whatsoever and the D/B may carry, at its own expense, such additional insurance as it deems necessary.
5. **CONTRACT BONDS.** D/B shall provide two good and sufficient bonds in the amounts listed below:
- Performance Bond in a sum not less than one hundred percent (100%) of the GMP, to guarantee faithful and timely performance of all work, in a manner satisfactory to the CITY, and further to guarantee that all materials and workmanship will be free from original or developed defects.
 - Payment Bond that meets the requirements of California Civil Code section 9554, in a sum not less than one hundred percent (100%) of the hard construction costs, to satisfy claims of material suppliers, mechanics and laborers employed by D/B on the work that is the subject of tis Agreement.
6. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** D/B shall require that its engineer(s) of record keep in full force throughout the duration of this Agreement and four (4) years thereafter, professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000) per claim and Two Millions Dollars (\$2,000,000) annual aggregate.

D/B shall provide evidence of compliance with these insurance requirements by

CITY WIDE STREET LIGHT RETROFIT PROJECT

providing a Certificate of Insurance.

7. **D/B'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, D/B shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the D/B, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. D/B'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, D/B at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the D/B.

D/B'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the D/B.

8. **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the D/B under this Agreement shall be the property of the CITY. The CITY agrees to hold the D/B free and harmless from any claim arising from any use, other than the purpose intended, of the plans and specifications and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computation and other documents, prepared or provided by the D/B. D/B may retain a copy of all material produced under this Agreement for the purpose of documenting D/B's participation in this project.
9. **COMPENSATION.** See Article XI. Project Costs.
10. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the CITY. See Article IX. Project Schedule.
11. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and D/B concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

CITY WIDE STREET LIGHT RETROFIT PROJECT

12. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The D/B shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

13. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
14. **TERMINATION OF AGREEMENT.** Upon five (5) days' written notice to the D/B, the CITY may, without cause and without prejudice to any other of the CITY's rights or remedies, terminate this Agreement. Upon the service of a notice of termination, the D/B shall discontinue the work in the manner, sequence, and at such times as directed by the CITY's project manager. The D/B shall remain responsible for the quality and fitness of the work performed by the D/B before termination of the Agreement. All requirements of the Agreement pertaining to work completed or to be completed as of the time of termination shall survive the termination, including without limitation all indemnities, warranties, requirements for preparation of record drawings and completion of any "punch list" items directed by the CITY's project manager.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay D/B for any work completed up to and including the date of termination or abandonment of this Agreement. The City shall be required to compensate the D/B only for work performed in accordance with the Agreement up to and including date of termination. Notwithstanding the foregoing, the D/B shall not be entitled to recover any loss of anticipated profit or revenue or other economic loss arising out of or resulting from the termination, including without limitation any claim for anticipated profits on the work not performed or lost business opportunity.

15. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the D/B and the CITY.

CITY WIDE STREET LIGHT RETROFIT PROJECT

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

SOUTHERN CONTRACTING COMPANY

CITY OF OCEANSIDE

By: *Timothy R. McBride*
Timothy R. McBride, President

By: _____
Peter Weiss, City Manager

Darlene Y. McBride
Darlene Y. McBride, Secretary/Treasurer

95-2277179
Employer ID No.

APPROVED AS TO FORM:

Robert J. Hamilton, ASST.
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of San Diego

On 09/17/2013 before me, Lynn R. Murison-Eroles, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Timothy R. McBride and Darlene Y McBride
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ ~~she~~ they executed the same in ~~his~~ ~~her~~ their authorized capacity(ies), and that by ~~his~~ ~~her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lynn R. Murison-Eroles
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____

Corporate Officer — Title(s): _____

Individual

Individual

Partner — Limited General

Partner — Limited General

Attorney in Fact

Attorney in Fact

Trustee

Trustee

Guardian or Conservator

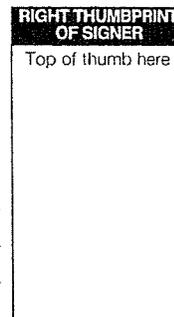
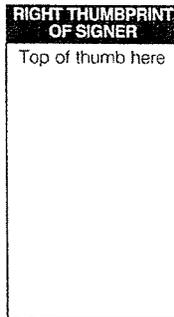
Guardian or Conservator

Other: _____

Other: _____

Signer Is Representing: _____

Signer Is Representing: _____



**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

ARTICLE I. DEFINITIONS

ADA: The Americans with Disabilities Act of 1990 and any amendments thereto.

Acceptance: Final approval by the City Inspection Team following the Final Inspection that Project Improvements are complete and work required on the Punch List has been finished.

As-Builts: Project Record Documents that are the Contract plans modified from the original concept of the design to reflect the actual product built.

CEQA: California Environmental Quality Act.

Calendar Day(s): All days of the week, holidays and weekends included.

Change Order: A written order, approved by City, authorizing a change in the work to be performed.

City: The City of Oceanside. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the City representative designated by the Agreement.

City Council: The City Council of the City of Oceanside.

City's Project Administration Costs: Charges that City incurs to: (i) administer the acquisition of the Property, (ii) review and approve the plans and specifications for the project improvements, and (iii) inspect the project improvements during construction, until completion and Acceptance of the Project.

Contract Documents: Including, but not limited to: Contract Addenda, Notice Inviting Bids, Instructions to Bidders, Bid (including documentation accompanying Bid and any post-bid documentation submitted prior to Notice of Award), the Bonds, the general conditions, the Special Provisions, the Plans, Standard Plans, Standard Specifications, Reference Specifications, and all modifications issued after the execution of this Agreement.

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

Contract Time: The number of Calendar Days permitted under this Agreement for D/B to achieve Substantial Completion.

Defective Work: All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the Contract documents is defective.

Design Build Team (D/BT): Those individuals designated as being a part of the Design Build Team; Contractors , Architects and Engineers.

Design Development Documents: First Phase drawings and specifications outlining in detail the project to the satisfaction of the owner. Used as a basis for the Construction Documents and the establishment of the GMP.

Estimated Cost: The total cost of the Project as estimated in preliminary cost estimates as shown in Section 11.1.

Extra Work: Any City additions, modifications, or deletions to work or D/B obligations under this Agreement not within the original Scope of Work contemplated by this Agreement.

Final Completion: The point at which the last of the following has occurred: (1) recordation of a Notice of Completion for the Project; (2) acceptance of the Project by the City; (3) submission of all documents required to be supplied by D/B to City under this Agreement, including but not limited to warranties, and operating manuals; and (4) and delivery to City of a Certificate of Completion duly verified by D/B.

Greenbook: The most recent edition of the Standard Specifications for Public Works Construction.

Guaranteed Maximum Price (“GMP”): The maximum compensation to which D/B may be entitled for the performance of all Services, Work, and obligations and the satisfaction of all conditions under this Agreement, which amount shall include all

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

authorized costs for labor, equipment, and material to design and build a fully functional Project in accordance with all applicable rules, regulations, and laws.

Hard Construction Costs: Direct construction costs incurred in performing the work, including taxes, delivery and installation. Hard Construction costs shall not include D/B markup, handling fees, overhead, or other charges, except as otherwise set forth in this Agreement.

Hazardous Materials: Hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). “Hazardous Materials” shall also include asbestos or asbestos containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

Holiday: The City-observed holidays.

Law: All Federal, State, or local laws, regulations, ordinances, and/or policies.

Milestones: Dates shown on the Project Schedule by which D/B shall complete major tasks either during design or construction of the Project.

NEPA: National Environmental Policy Act.

Notice to Proceed: City's written notice authorizing D/B to commence Work and/or Services on the Project.

Notice of Termination: A written notice from City to D/B terminating the Agreement.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

Project Site: All streets throughout the City of Oceanside.

Reimbursable Costs: All direct costs, including labor, materials, permit fees, insurance and bonds, general conditions, overhead and profit.

Services: Professional services, including design and construction management of the Project that are required to design and construct the Project in accordance with the Contract Documents. Services does not include Work.

Substantial Completion: That stage in the progress of the construction when all Work on the Project is sufficiently complete in accordance with the Construction Documents, so that City can fully utilize entire Project; Substantial Completion shall further mean that all goods, services and systems to be provided under the terms and conditions of the Construction Documents are in place, have been initially tested, and are operationally functional, subject only to final testing, balancing and adjustments and normal Final Completion punch list work.

Title 24: California Building Standards Code, California Code of Regulations, Title 24.

Work: All labor, materials, supplies, and equipment that are necessary to construct the Project in accordance with the Contract Documents.

Working Day(s): Monday through Friday, excluding City holidays.

ARTICLE II. SCOPE OF THE AGREEMENT

2.1 **General.** Except as expressly provided in this Agreement, D/B shall design and construct the Project in accordance with all the terms and conditions of this Agreement, Specifications, and the timeframes established by the Project Schedule, which will be verified at 90% construction documents, attached as Attachment A, delivering a complete and functional Project within the Contract Time for an amount not to exceed the GMP.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

ARTICLE III. TERM

3.1 **Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement following City Council approval. The term of this Agreement will extend from the date of execution until satisfaction of all terms and conditions herein, unless this Agreement is earlier terminated.

ARTICLE IV. GENERAL PROJECT PERFORMANCE OBLIGATIONS

4.1 **Standard of Care.** Throughout the performance this Agreement, D/B agrees that all Services and Work provided as part of this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent engineering, design and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

4.2 **Compliance with all Laws.** In the performance of this Agreement, D/B shall comply with all laws, including but not limited to:

- 4.2.1 All City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:
 - 4.2.1.1 Environmental Regulations (i.e. CEQA/ NEPA).
 - 4.2.1.2 The Americans with Disabilities Act (“ADA”) and Title 24 of the California Building Code. It is the sole responsibility of D/B to comply with all ADA and Title 24 regulations.
 - 4.2.1.3 The California Fair Employment and Housing Act and all other State, Federal and local laws including, but not limited to, those prohibiting discrimination on account of race, color, national origin, religion, age, sex or handicap.
 - 4.1.2.4 The Clean Air Act of 1970, the Clean Water Act (33 USC 1368)- Executive Order 11738, and the Stormwater Management and Discharge Control-Ordinance No. 0-17988.
 - 4.1.2.5 D/B shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
 - 4.1.2.6 D/B shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
 - 4.1.2.7 D/B shall obtain and comply with all permits necessary to complete the Project, including, but not limited to Development Services Department permits and hazardous material permits.
 - 4.1.2.8 Zoning, environmental, building, fire and safety codes and coverage,

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

density and density ratios and lien laws.

4.2.2 *Implied Knowledge of Laws.* D/B shall be responsible for all amendments or updates to standards and of all amendments or updates to standards, whether local, state, or federal, and such knowledge will be imputed to D/B to the extent allowed by law.

4.3 **Design and Construction Standards.** In the performance of the Services and Work covered by this Agreement, D/B shall comply with the most current versions of design and construction specifications, all of which shall be incorporated herein by this reference.

4.3.1 *Standard Specifications.*

4.3.1.1 Greenbook. The latest Edition of the Standard Specifications for Public Works Construction.

4.3.1.2 California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.

4.3.2 *City Specifications.*

4.3.2.1 The latest Edition of the Oceanside Engineers Design Manual.

4.3.2.2 The latest Edition of the Regional Standards.

4.3.2.3 The latest Edition of the Oceanside Construction Standards.

4.3.2.4 The City's Street Light Design Manual (2001)

4.3.3 *Energy Conservation Standards.*

4.3.4 *Materials Standards.* D/B shall use industrial grade, equipment and accessories for all facets of design and construction.

4.4 **Obtain City Approval.** For any and all actions under this Agreement that require City approval, including, but not limited to, changes or additions to Agreement, D/B shall obtain approval in writing from the designated City Representative, or when required by Law, from the City Council. D/B acknowledges that approval from any individual other than the designated City Representative or City Council, where required, shall not be valid.

4.4.1 *Failure to Obtain Approval.* Any costs or delays resulting from or associated with additions or modifications implemented without the written authorization of the City Representative shall be borne exclusively by D/B and not be grounds for an increase in GMP or Contract Time.

4.4.1.1 Emergency. In the event of an emergency, D/B shall take all reasonable actions necessary to protect public health, safety or property.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

Such action shall not require advance City approval; however, D/B shall notify the City immediately of the emergency and as soon as reasonably possible provide a written statement to the City explaining the emergency and the reasonable actions taken. Provided the emergency was not caused by or its creation contributed to by the D/B, its employees, agents, or subcontractors, D/B may be entitled to reasonable compensation for such actions.

- 4.4.2 *No Release From Obligations.* City approval shall be a general approval only, and such approval shall in no way release or relieve D/B of responsibility for complying with all applicable laws, codes, and good consulting, design, or construction practices.
- 4.5 **Decision Making.** D/B shall make decisions with reasonable promptness to avoid delay in the orderly progress of D/B's obligations under this Agreement and pursuant to the Project Schedule, which will be verified at 90% construction documents, attached as Attachment A.
- 4.6 **Perform Services and Work in Phases.** The Services and Work under this Agreement shall be performed in the manner and order described herein.

ARTICLE V. PHASE I – DESIGN DEVELOPMENT

- 5.1 **Design Team.** City has awarded this Agreement based on the specific qualifications of D/B to perform the design and standard specification services required under this Agreement. All such services shall be provided by D/B unless the City has approved of the use of subconsultants in the manner identified in Article VIII.
- 5.2 **Services.** In Phase I, D/B shall perform Services including, but not limited to, the following:
- 5.2.1 *Project Development.* Develop and refine Project requirements and Standard Specifications.
- 5.2.2 *DDD.* Prepare complete Design Development Documents (DDDs), such that the DDDs include, without limitation, the following:
- 5.2.2.1 *GIS Layers.* City wide GIS plan with pertinent billing identification layers, sections to be changed out, existing public streets and locations of existing light poles. As applicable to the project.
- 5.2.2.2 *Outline specifications,* written description of the project and components including site work.
- 5.2.2.3 *Traffic circulation and landscaping* should also be indicated at this

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

stage if applicable.

5.2.3 *Submittals.* Prior to proceeding with Phase II, D/B shall prepare and submit the following to the City for review and written approval.

5.2.3.1 *DDD.* Completed DDD not limited to; proposed Streetlight fixtures, main intersection and parkway Standard Specifications, lamp and photocell catalog cuts.

5.2.3.1.1 *Conditional Approval.* In the event that City grants conditional approval, D/B shall address all City comments or issues and make associated revisions in the next set of drawings developed and submitted.

5.2.3.1.2 *Delay/Costs.* Any delay or additional costs resulting from the re-submittal shall be borne exclusively by D/B and not be grounds for an increase in the GMP or Contract Time.

ARTICLE VI. PHASE II

6.1 **Phase II Services.** In Phase II of the Project, D/B's shall perform Services including, but are not limited to, the following:

6.1.1 *Project Development.* D/B shall diligently prosecute the development and refinement of Project requirements and review such requirements with City;

6.1.2 *Digital Documentation.* D/B shall prepare CD's which shall include, without limitation, the following:

6.1.2.1 *Architectural plans and details as applicable and necessary for the project., including:*

6.1.2.1.1 *GIS Layers.* City wide GIS plan with pertinent billing identification layers, sections to be changed out, existing public streets, verification of fixture quantity to be changed out and locations of existing light poles.

6.1.2.1.2 *Typical fixture cut sections sufficient to indicate materials, components and major features.*

6.1.2.2 *Electrical plans, calculations and details.*

6.1.2.3 *Technical specifications.*

6.1.2.4 *All other technical drawings, schedules, diagrams and specifications, to set forth in detail the requirements for construction of the Project which, at a minimum, include:*

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

- 6.1.2.4.1 Information customarily necessary for the use of those in the building trades.
- 6.1.2.4.2 Documents customarily necessary to obtain regulatory agency approvals.
- 6.1.2.5 Mechanical design documentation consisting of continued development and expansion of schematic mechanical design consisting of:
 - 6.1.2.5.1 Single line layouts and the approximate sizing of all equipment and capacities, preliminary equipment layouts.
- 6.1.2.6 Sections through critical areas showing coordination of architectural, structural, mechanical and electrical elements.
- 6.1.2.7 Final specifications, including but not limited to, the following: As applicable to the project:
 - 6.1.2.7.1 Electrical. Description of electrical services, including voltage; type and number of feeders; lighting systems, including lighting levels and audiovisual; security-fire alarms; and cable antenna television systems.
 - 6.1.2.7.2 Other. Such other documents to fix and describe the size, quality and character of the entire Project, its materials, and such other elements as shall be appropriate.
- 6.1.3 *Project Sequencing.* D/B shall determine and establish the sequence of construction, and if appropriate, identify separate bid packages to accomplish phased construction of the Project.
- 6.1.4 *Critical Path.* D/B shall prepare a detailed Critical Path Method schedule for all construction components of the Project ("Detailed Construction Schedule") utilizing Microsoft Project software, showing all major milestones, commencement of construction, sequence of construction, and completion of the Citywide Street Light Retrofit Project, all of which shall conform with the dates of Substantial Completion and Final Completion of Project.
- 6.1.5 *Governmental Review.* D/B shall review, as needed, the CD's with the governmental authorities having jurisdiction over the Project.
- 6.1.6 *Accounting System.* D/B shall provide a master accounting system and matrix on Microsoft Excel that will be updated, expanded, and provided to the City monthly as the Project develops.

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

- 6.1.7 *Project Management Plan.* D/B shall develop and implement a Project Management Plan and Procedures including:
- 6.1.7.1 Project status reports delivered to the City’s Project Manager.
 - 6.1.7.2 Coordination/interface with the City and its other consultants/contractors
 - 6.1.7.3 Initial Design kickoff meeting to be held no later than five (5) working days from the Effective Date of Agreement.
 - 6.1.7.4 Biweekly Design and Construction meetings
 - 6.1.7.5 Interface and communications with other agencies
 - 6.1.7.6 Vendors and subcontractors management
 - 6.1.7.7 Document control
 - 6.1.7.8 Schedule and budget control
 - 6.1.7.9 Quality assurance and quality control. D/B shall establish and maintain a quality control program with appropriate reviews and independent testing procedures to ensure compliance with the Construction Documents during the construction phase.
 - 6.1.7.10 Scheduling and cost control reports, which shall be provided monthly throughout the design phase.
- 6.1.8 *Construction Drawings and Specifications.* D/B shall prepare construction drawings and specifications suitable for obtaining City-approved permits and to allow construction.
- 6.1.9 *City Approval.* D/B shall submit Construction Documents and obtain City approval in writing of the Construction Documents at ninety percent (90%) completion.
- 6.1.9.1 Condition Precedent. City approval of the Construction Documents is a condition precedent to authorization to proceed with subsequent work on the Project.
 - 6.1.9.2 Notification, Modification, and Resubmittal. At 90% Completion, City will notify D/B in writing within the timeframes established in the Project Schedule following receipt of Construction Drawings of City approval, or of request for modifications. If modifications are requested, D/B shall modify and resubmit Construction Drawings for City approval.
 - 6.1.9.3 D/B Support. D/B shall provide support to a City Constructability Review Team for the review of the Construction Documents at all stages of required submission.
- 6.1.10 *Materials and Equipment Specifications.* D/B shall prepare technical materials and equipment specifications for pre-purchase.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

- 6.1.11 *Surveying and Testing.* D/B shall coordinate, perform, and complete all surveying, materials testing, and special testing for the Project at the Project site as required by this Agreement, the State Building Code, or any other law or regulation, in accordance with and considering the following:
- 6.1.11.1 DBT is responsible for identification and coordination to the City’s GIS System concerning the location of each fixture replaced. Reports shall be made weekly to SDG&E so that the City can take advantage of the Consumer Rate change immediately.
- 6.1.11.2 *No Reliance.* D/B shall not rely on City survey information as it is intended to be preliminary in nature and may not have sufficient accuracy or scope to support final design.
- 6.1.12 *Alternatives.* D/B shall evaluate alternative structural and construction approaches to ensure economical designs, which optimize constructability, yet meet all codes, architectural concepts, schematic designs, and standard specifications of the Project.
- 6.1.13 *Permits.* D/B shall obtain general building permit and all ancillary permits and licenses, including but not limited to, right-of-way permits, improvement permits and approved traffic control plans as needed. D/B shall be responsible for all permit fees from agencies other than the City of Oceanside.
- 6.1.14 *Updated Costs.* D/B shall provide updated construction cost estimates in conjunction with the submittals required in Section 6.1.9 to support Value Engineering (“VE”) and constructability reviews.
- 6.1.15 *Final Review and Approval of Plans and Specifications.* D/B shall deliver to City complete Construction Documents, including Construction Drawings, Plans and Specifications for the design and construction of the Project. City agrees to review the Construction Documents and provide City’s written comments to D/B within five (5) Business Days of the date such Construction Documents are delivered to City in accordance with the notice provisions in Article XXIV. Approval shall not be unreasonably withheld. If requested by City, D/B shall make changes to the Construction Documents.

ARTICLE VII. PHASE III. – CONSTRUCTION PHASE WORK AND SERVICES

- 7.1 **Phase III. Work and Services.** The D/B shall construct the Project in accordance with City specifications prepared by the D/B to meet or exceed all

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

requirements of the City provided program, schematic design and the performance criteria.

7.1.1 *Bidding.* D/B shall prepare and submit to the City for review separate bid packages, such bid packages shall be organized in the manner that D/B determines is appropriate to ensure the efficient and cost effective construction of the Project.

7.1.1.1 *Competitive Bidding.* D/B shall competitively bid the respective lighting packages for the construction of the Project.

7.1.1.2 *Pre-Bid Conferences.* D/B shall schedule and conduct pre-bid conferences to answer questions posed by bidders. Said answers and any other information required to provide clarification to the Construction Documents during the bidding process shall be issued as written addenda and provided to all prospective bidders.

7.1.1.3 *Scheduling.* D/B shall coordinate scheduling of bid packages, submittals.

7.1.1.4 *Bid Results.* D/B shall submit to the City a summary of bid results for each bid package.

7.1.1.5 *Bid Protests.* D/B shall hear and decide bid protests and shall develop and maintain bid protest procedures for that purpose. City shall be timely informed of all bid protests (prior to resolution) and the outcome of said protests.

7.1.1.6 *Equal Opportunity Contracting/Nondiscrimination.* D/B shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. D/B shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. D/B understands and agrees that violation of this Subsection shall be considered a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. The language of this Subsection shall be inserted in contracts between D/B and any subcontractors, vendors, or suppliers.

7.1.1.7 *Executing Contracts.* D/B shall be responsible for entering into subcontracts, in D/B's own name, with the bidder who in D/B's discretion and professional opinion best meets the monetary, time, and performance requirement of the Project. D/B shall be responsible for ensuring that these contracts fully comply with all applicable local, state and federal laws, some but not all of which are listed below.

7.1.2 *Meetings.* D/B shall conduct meetings identified below:

7.1.2.1 *Preconstruction Meeting.* D/B shall conduct a preconstruction meeting with its officers, agents and employees and City. The purpose of this meeting is to discuss: (i) the Agreement conditions, (ii) Scope of Work clarifications, and

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

(iii) City policies, inspection requirements, and procedures.

7.1.2.1.1 Attendance. D/B shall ensure that the preconstruction meeting is attended by D/B's project manager, all D/B's major subcontractors, the City's designated Representative, and all other persons necessary as determined by D/B or City.

7.1.2.2 Progress Meetings. D/B shall conduct weekly progress meetings with the City and appropriate design and construction members.

7.1.2.3 Contractor Meetings. D/B shall conduct contractor meetings, as necessary, to provide technical input.

7.1.2.3.1 D/B shall provide interpretation of technical specifications and drawings.

7.1.2.4 Rescheduling. Progress Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and D/B has given no less than five (5) Calendar Days prior written notice of the rescheduled meeting.

7.1.2.5 Minutes. D/B shall take corresponding meeting minutes and distribute copies to all attendees.

7.1.2.6 Reporting. D/B shall monitor and report to the City on actual performance compared to the Project Schedule, provide updated GIS, and verify that the latest changes to the Project, if any, have been made.

7.1.3 *Construction Management.* During construction of the Project, D/B shall perform and be responsible for construction management, supervision, and administration services, including, but not limited to, tracking and reporting all expenses and all aspects of the construction and coordinating all construction means, methods, techniques, sequences and procedures to ensure the efficient and orderly sequence of the construction of the Project.

7.1.3.1 Resident Management. D/B shall provide resident management and contract administration, including specialists necessary for the functional, safe, on-budget and on-schedule completion of the Project, starting with the issuance of a Notice to Proceed, upon receipt of final construction drawings, from the City and extending through issuance of Notice of Completion and Acceptance. City staff will perform inspections to verify compliance with the plans, specifications and contract documents. The D/B resident staff shall ensure construction compliance with applicable local, state, and federal codes, building and environmental permit

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

requirements, construction mitigation documents and enforcement of the Contract Documents.

7.1.3.2 Records Management. D/B shall implement and maintain an internal records management and document control system as required to support project operations. The D/B shall provide records management and document control information in a manner consistent with the City's reporting system.

7.1.3.3 Cash Flow. D/B shall develop a project-specific Plan for defining, tracking and reporting cash flow activity requirements and submit such plan to the City for review and approval prior to implementation.

7.1.3.4 Reporting. D/B shall keep City informed of the progress and quality of the design and construction of the Project.

7.1.3.5 Documents On-Site. D/B shall maintain a complete and up-to-date set of Construction Documents in the Projects field office at all times during construction that reflect all changes and modifications.

7.1.4 *Site Safety, Security, and Compliance.* D/B shall be responsible for site safety, security, and compliance with all related laws and regulations.

7.1.4.1 Persons. D/B shall be fully responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by D/B to access the Project site.

7.1.4.2 Environmental. D/B shall administer and enforce the Environmental Mitigation Monitoring and Reporting Plan for the Project, if any. In addition, D/B shall report environmental issues to the City in a manner consistent with the City's reporting system. D/B shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including the Clean Air Act of 1970, the Clean Water Act, Executive Order number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988 and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the City of Oceanside Public Works Inspector responsible for this project. .

7.1.4.3 Risk of Loss. D/B is responsible for the Project, project site, materials, equipment, and all other incidentals until the Project has been Accepted by the City and shall bear any costs or expenses associated with the loss thereof or damage thereto, including by theft, fire, or other casualties.

7.1.5 *Public Right-of-Way.* All work, including, materials testing, special testing, and surveying to be conducted in the Public right-of-way shall be coordinated with the City.

7.1.5.1 Surveying. D/B shall pay for and coordinate with City's designated

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

representative all surveying required within the Public right-of-way.

7.1.5.2 Follow all Laws, Rules, and Regulations. D/B agrees to follow all City standards and regulations while working in the Public right of way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.

- 7.1.6 *Traffic Control.* D/B shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.
- 7.1.7 *Abatement.* D/B shall develop a mutually agreed upon program to abate and minimize noise, dust, and disruption to access for parking and services at all times for adjacent business entities and residences.
- 7.1.8 *Inspections.* D/B shall coordinate any and all required inspections, including special inspections, in such a manner that the progress of construction is not affected or impacted. The D/B shall provide surveying, and other contracted services as required to complete project construction inspection and testing tasks. The D/B will provide inspection, third party special inspection(if required), reinspection services, and periodic building inspections.
- 7.1.9 *Permits.* The Parties acknowledge that the construction work to be performed on the Project by D/B in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by D/B . In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then D/B is relieved from its obligation to construct those improvements covered by the denial of said permit(s). City shall, under such circumstances, pay D/B the reasonable costs, not to exceed the amounts identified in this Agreement, for all work completed up to the date of denial of said permit(s). All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City upon D/B's receipt of payment in full as described above.
- 7.1.10 *Maintenance.* D/B shall ensure Project is maintained in a clean, neat, sanitary and safe condition free from accumulation of waste materials or rubbish. Until Acceptance of the Project, D/B shall be responsible for on-going site maintenance. Prior to Final Completion, D/B shall cause to be removed from and about the Project all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and deliver the site to the City in a clean, neat, sanitary and safe condition.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

- 7.1.11 *Request for Information (“RFI”).* Parties acknowledge that the RFI process is solely for correspondence between D/B and the City. D/B shall submit copies of each RFI to City at the within twenty-four (24) hours of receipt. D/B shall issue responses to RFIs. Unless D/B specifically requests a City response, City will not respond to RFIs.
- 7.1.12 *Review and Approval.* D/B shall provide timely review and approve shop drawings, samples of construction materials, product data, schedule submittals, and other submittals for compliance with the Construction Documents. D/B shall keep the City advised of all such matters being reviewed and approved by D/B and forward copies of such documents to City for review.
- 7.1.13 *Royalties and Other Fees.* D/B shall pay royalties and license fees, if applicable. D/B shall defend suits or claims for infringement of patent rights and shall defend and hold City and City’s agents harmless from loss on account thereof.
- 7.1.14 Provide City with a Detailed Construction Schedule (DCS) on a CD within fifteen (15) working days after receiving Notice to Proceed, provide updated versions of DCS on a monthly basis, and provide immediate notice of any impact on critical path items.

ARTICLE VIII. SUBCONTRACTING

8.1 Subcontracting.

- 8.1.1 *Design Services.* D/B shall perform or obtain the prior written consent of the City to subcontract all design services for the Project utilizing qualified, licensed and sufficiently experienced architects, engineers and other professionals (herein jointly “Design Consultants”) as identified in list of design consultants. D/B shall not be permitted to substitute any Design Consultant unless authorized by City.
- 8.1.2 *Construction Services.* D/B shall perform all construction on the Project utilizing its own labor forces or subcontractors appropriately licensed by the California Contractors State License Board or other required agency.

ARTICLE IX. PROJECT SCHEDULE

- 9.1 **Project Schedule.** D/B shall perform and complete the Services and Work under this Agreement according to the timeframes set forth in the Project Schedule, attached hereto as Attachment A, or a subsequently revised Project Schedule in such

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

a manner that the GMP or Contract Time of the Project shall not be exceeded and that is consistent with the Standard of Care identified in Section 4.1.

9.1.1 *Project Schedule.* D/B has submitted, as part of its proposal, a Project Schedule based on its estimate of the time necessary to complete the Project.

9.1.2 *D/B's Obligation.* Subsequent to the effective date of this Agreement, D/B shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.

9.1.2.1 During the Project initiation and design phases, the D/B shall submit an updated Project Schedule to City monthly for approval.

9.1.2.2 During Construction, D/B shall submit an updated Project Schedule monthly to the City and shall include:

9.1.2.2.1 Forecast Data with the intended plan for the remainder of the contract duration.

9.1.2.2.2 Actual Data with indications of when and how much Work and/or Services was performed (% complete).

9.1.2.2.3 Logic changes or other changes required to maintain the Project Schedule.

9.1.3 *Detail and Format.* The Project Schedule shall be substantially similar in detail and form to Attachment A, or it shall be in the form subsequently agreed to by the Parties.

9.1.4 *Submittal.* Project Schedule shall be submitted to City on a computer disk in a version of Microsoft Project

9.2 **Project Completion.** D/B acknowledges that all work on the Project under this Agreement will be complete and ready for its intended use by the Project Completion Date stated in the Project Schedule (Attachment A).

9.3 **Changes in Project Schedule.** Changes in Project Schedule, whether to logic, definition, or relationship must be approved by the City in writing as a Change Order pursuant to the manner identified in Article XIII.

ARTICLE X. DELAY IN PERFORMANCE

10.1 **Time of Essence.** Time is of the essence for this Agreement and each provision of this Agreement, including the Project Schedule, Start Date, and Project Completion Date contained herein, unless otherwise specified in this Agreement. D/B shall perform all Services and Work as expeditiously as is consistent with standard of care identified in Section 4.1.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

- 10.2 **Notification of Delay.** If the D/B anticipates or has reason to believe that the performance of Services and/or Work under this Agreement will be delayed, the D/B shall immediately notify the City. A written notice of the delay must be delivered to the City within five (5) Calendar Days of the initial notification, unless the City allows an additional period of time to ascertain more accurate data in support of the request. The written notice shall include an explanation of the cause of the delay, a reasonable estimate of the length of the delay, and all supporting data. The D/B shall include a written statement that the time adjustment requested is the entire time adjustment to which D/B has reason to believe it is entitled as a result of the cause of the delay.
- 10.3 **Delay.** If delays in the performance of Services or Work required under this Agreement are caused by unforeseen events beyond the control of the Parties, such delay may entitle the D/B to a reasonable extension of time. Any such extension of time must be approved in writing by the City. The following conditions may justify such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the D/B's work; inability to obtain materials, equipment, or labor; required additional Professional Services; or other specific reasons agreed to between the City and the D/B; provided, however, that: (i) this provision shall not apply to, and the D/B shall not be entitled to an extension of time, additional costs, or expenses for, a delay caused by the acts or omissions of the D/B, its consultants, contractors, employees, or other agents.
- 10.3.1 *Caused by City.* If D/B reasonably believes that any action, inaction, decision or direction by City or agent for the City will likely result in the GMP or Contract Time being exceeded or the Project being completed late, D/B will notify City at Project Team meeting and in writing within five (5) calendar days of discovering such action, inaction, decision, or direction. Included in such notice will be an estimate of the cost and time impact resulting from such action, inaction, decision or direction. D/B shall provide complete and accurate pricing within ten (10) calendar days of said discovery.
- 10.4 **Costs of Delay/Liquidated Damages.** City and D/B recognize that time is of the essence in this Agreement and that City will suffer financial loss if the Project is not completed by the Substantial Completion Date identified in the Project Schedule or any extensions subsequently approved. As the exact amount of financial loss cannot be accurately forecasted, the Parties have used their best efforts to establish an estimate of such loss. In doing so, the Parties have examined all of the circumstances and factors associated with a delay and have determined an amount that is fair and reasonable as liquidated damages. City and D/B agree that D/B shall pay as liquidated damages (but not as a penalty) for each calendar day of delay beyond the

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

time specified for Substantial Completion of the Project, the following amounts which D/B expressly agrees are “not unreasonable under the circumstances” as defined in California Civil Code §1671(b): \$100 for each calendar day. Liquidated Damages shall not be assessed after the date on which Substantial Completion is achieved. In lieu of paying damages to the City, the Parties agree that City may choose to reduce the GMP by the amount of the liquidated damages.

ARTICLE XI. PROJECT COSTS

- 11.1 **Estimated Cost.** The Estimated Cost of Project is Five Million, Ninety Four Thousand, Nine Hundred Forty Seven Dollars (\$ 5,094,947). The City’s obligation under this Agreement shall not exceed the Estimated Cost; however, once a GMP is determined and approved, the GMP shall become the not to exceed amount of the City’s obligation. GMP is subject to change pursuant to methods established in this Agreement.
- 11.1.1 *Cost Schedule.* The GMP has been allocated among each activity or portion of the Project (“Itemized Cost(s)”). The Itemized Costs are included in Attachment B. The cost incurred by the D/B for a specific activity or portion of the Project shall not exceed the associated Itemized Cost.
- 11.2 **GMP.** At 90% complete construction documents, D/B shall establish a GMP and submit such GMP to the City for approval.
- 11.2.1 *Not to Exceed Amount.* The GMP shall not exceed \$ 5,094,947. Any costs incurred by D/B in excess of said GMP shall be the sole responsibility of the D/B, unless a Change Order is approved by the City pursuant to Article XIII of this Agreement.
- 11.2.1.1 **Included Costs.** In calculating the GMP, D/B shall include costs of the following:
- 11.2.1.1.1 All Design Consultants, including but not limited to electrical, lighting, and consultants.
 - 11.2.1.1.2 Estimating, value engineering and construction management.
 - 11.2.1.1.3 Construction supervision and project management personnel, including but not limited to superintendents, Project managers, Project secretaries, Project engineers, Project accountants, and all other D/B personnel wherever located.
 - 11.2.1.1.4 All on-site and off-site equipment, supplies and facilities, including but not limited to, computers, estimating, dictating, communication and accounting equipment, office space, trailers, field equipment and storage facilities.
 - 11.2.1.1.4.1 Option to Purchase. In no case shall the cumulative monthly rental charges to the Project for

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

equipment and small tools used by the D/B exceed 90% of the fair market value of any one piece of equipment or small tools. At City's option, the full price for equipment or small tools may be paid, and City may take possession upon completion of the Work.

- 11.2.1.1.5 All Hard Construction Costs. See Attachment B.
- 11.2.1.1.6 Contingency Fund, which shall be \$ 146,351 which shall be 3% of the Hard Costs and controlled by the City.
- 11.2.1.1.7 Reimbursable Costs. See Attachment B.
- 11.2.1.1.8 D/B Fixed Fee for the complete design and construction of the entire Project as specified in the 90% CD's.
- 11.2.1.1.9 No more than \$ 31,000 for Design Services.
- 11.2.1.1.10 All home-office and field overhead costs of any type including document control and retention;
- 11.2.1.1.11 All business license costs;
- 11.2.1.1.12 All profit D/B intends to earn under this Agreement.
- 11.2.1.1.13 All direct and incidental costs incurred by D/B, except for those specifically identified in the General Conditions section.
- 11.2.1.1.14 OTHER. The City agrees to hold only Five (5)% retention for the duration of the project.
- 11.2.1.2 Full Compensation. Unless otherwise expressly provided in this Agreement, GMP shall be the maximum amount of compensation due to D/B for all permitted costs of any type incurred by D/B in performing all services and obligations under this Agreement.
- 11.2.2 *Itemization.* D/B shall provide City with an itemization of the GMP that reconciles the GMP with the itemized costs. The itemization shall include the following:
 - 11.2.2.1 D/B Fixed Fees. The fees charged by the contractor for staff, equipment, office space and overhead during the term of the project not to exceed 15% of the Hard Costs.
 - 11.2.2.2 Hard Construction Costs. Hard Construction Costs broken down into categories for each of the major trades for the Project, which will include labor, material expenses, equipment costs, and a reasonable D/B Contingency Fund.
 - 11.2.2.3 Bonds, Permits and Insurance.
- 11.2.3 *Alternate Bid Items.* D/B shall prepare, with the cooperation of the City, alternate bid items to assure that the cost of the Project will not exceed the GMP.

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

11.2.4 *Adjustments to GMP Based on Approved Change Orders.* GMP may be changed, increased or decreased, based on Change Orders approved pursuant to Article XIII.

11.2.5 *Adjustments Based on Other Cost Increases.* GMP may be increased due to: (i) acts of God, acts of any governmental authority, the elements, war, litigation, shortages of material, labor strikes, inflation, later commonly accepted or adopted higher standards and specifications of construction, concealed or unknown conditions encountered in the completion of the Project, or other cause beyond D/B's control, (ii) actual bids received being greater than estimated, or (iii) other factors not the result of unreasonable conduct by D/B. The GMP may be increased by the amount of such increases; however, if GMP as proposed to be increased shall exceed the Estimated Costs, such change to GMP shall be subject to approval by City Council.

11.3 **Use of Project Contingency.** Project Contingency shall not be used without prior, written City approval and shall not be used for: (i) work required due to D/B's, its officers', agents' or employees' failure to perform Work or Services according to the terms of this Agreement, in compliance with the Construction Documents, and/or Law; or (ii) uninsured losses resulting from the negligence of D/B, its officers, agents, or employees.

11.4 **Notification of Increased Costs.** If, at any time, the D/B anticipates that the amount expended on the Project will exceed the Estimated Cost or the GMP, when established, the D/B shall immediately, not more than ten (10) Working Days from becoming aware of the potential increase, notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions that the D/B believes will bring the Project cost to within the Estimated Cost or GMP. Following the delivery of the Notice, D/B shall assist the City in reviewing the itemized cost breakdown and adjusting the Scope of Work and establishing a revised Project, the cost of which will not exceed the Estimated Cost or GMP, once establish.

11.4.1 *City Action.* Following consultation with the D/B, the City may choose to: (i) approve an increase in the amount authorized for the Project; (ii) delineate a project, which may be constructed for the budget amount; (iii) any combination of (i) and (ii); or terminate the Project.

ARTICLE XII. PRODUCTS

12.1 **Submittals.** Prior to the bidding process, D/B shall submit for City approval a list

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

of products intended for use in the Project. Upon D/B's completion of plans and specifications, City will review and approve products specified therein. D/B shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of D/B's receipt of submittal. Approval is general approval only and in no way relieves D/B of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations.

12.2 **Substitutions.** D/B shall submit all requests for product substitutions to City in writing within thirty (30) Calendar Days after the date of award of the construction contract. After expiration of the thirty (30) Calendar Days, City will allow substitution only when a product becomes unavailable due to no fault of D/B's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. D/B agrees that City requires the Engineer of Record's input and as such D/B shall coordinate a five (5) Working Day review by the Engineer of Record.

12.2.1 *Substantiate Request.* D/B shall include with each substitution request complete data substantiating that the proposed substitution conforms to requirements of the Contract Documents.

12.2.2 *D/B Representations.* By submitting a substitution request, D/B is representing to City all of the following: (i) D/B has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (ii) D/B is providing the same warranty for the proposed product as was available for the specified product; (iii) D/B shall coordinate installation and make any other necessary modifications which may be required for work to be complete in all respects; and (iv) D/B shall waive any claims for additional costs related to the substituted product, unless the specified product is not commercially available.

12.2.3 *Separate Written Request.* City will not consider either substitutions that are implied in the product data submittal without a separate written request or substitutions that will require substantial revision of construction contract documents.

12.3 **Samples.**

12.3.1 *Review.* D/B shall furnish to City for review, prior to purchasing, fabricating, applying or installing,
(2) two samples (other than field samples) of each required material with the required finish.

12.3.2 *Not a Release of Liability.* City's review of samples in no way relieves D/B of D/B's responsibility for construction of Project in full compliance with all

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

Contract Documents.

- 12.4 **Observe Testing.** When appropriate, D/B shall witness testing and review materials and equipment testing results and provide comments regarding conformance with specification requirements.

ARTICLE XIII. CHANGE ORDERS

- 13.1 **When Required.** Change Orders shall be required in the following instances:
- 13.1.1 *GMP.* Any adjustment in GMP.
 - 13.1.2 *Contract Time.* Any adjustment in Contract Time of Completion Date.
 - 13.1.3 *Use of Contingency Fund.* At any time D/B seeks to use the Contingency Fund, irrespective of impact on the GMP or Contract Time.
 - 13.1.4 *City Requests.* The City directs D/B to perform Additional Services; work that is not covered in the construction documents and /or specifications.
 - 13.1.5 *Other.* Any other instance for which this Agreement expresses that a Change Order shall be used.
- 13.2 **Process for Approval of Change Orders.** Within five (5) Calendar Days of any event that gives rise to the need for a Change Order, the D/B shall provide the City with written notice of the need for the same. The Change Order must indicate whether the change will affect, in any way, by increasing or decreasing, the GMP, Project Schedule, or project quality established during the design and submittal review process. In addition, it shall be accompanied by a detailed and complete estimate of cost impact associated with the Change Order, including all appropriate direct and indirect costs and credits. All such costs and credits shall be accurately categorized into D/B Fixed Fee, Reimbursable Costs or Hard Construction Costs. D/B shall also provide City with a realistic estimate of the impact, if any; the Change Order will have on the Contract Time.
- 13.2.1 *Project Manager Approval.* If the Change Order request does not result in an increase in the Estimated Cost, the City Representative shall either approve or reject the Change Order in writing within ten (10) Working Days of receiving D/B's written notice, provided D/B has submitted complete documentation substantiating the need for such Change Order. If City fails to respond to D/B's written notice within the ten (10) Working Days, the Change Order request shall be deemed denied.
 - 13.2.2 *City Council Approval.* For Change Orders not subject to section 13.2.1, City Council approval is required. The City Council may approve, reject, or approve in part such Change Orders. Council Approval shall not be subject to the ten (10) Working Day response time provided for in section 13.2.1.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

- 13.3 **Written Approval of Change Orders.** D/B shall not proceed on work requested under a Change Order, absent written approval from the appropriate authority. Any Services or Work, which require the approval of a Change Order, perform by D/B prior to approval shall not be reimbursed.
- 13.4 **Failure to Agree on Cost of Change Order or Time.** In the event there is any disagreement or dispute between the Parties as to whether the D/B is entitled to a Change Order, the amount of the Change Order or any increase in Contract Time requested through the Change Order, the dispute shall be resolved in accordance with Section 24. The parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement. D/B shall not have the right to stop or delay in the prosecution of any services or work, including services or work that is the subject of the Change Order (if directed by the City), pending final resolution. Instead, D/B shall continue diligently prosecuting all such services and work.
- 13.5 **Full Compensation.** Payment to D/B for Change Orders shall provide full compensation for all equipment, materials, labor, field and home office overhead, mark-ups, and profit necessary to complete the work. By executing a Change Order, the D/B or D/B's representative acknowledges that no additional compensation or claims for items of work listed in the Change Order will be allowed.
- 13.6 **Errors and Omissions.** D/B shall not be reimbursed for any costs or expenses of a Change Order resulting from a design error or omission, D/B's negligence, or the negligence of any of D/B's agents or subagents. D/B shall be reimbursed for any costs or expenses of a Change Order resulting from a design error or omission that is the direct result of a City request for such design or omission. The City reserves the right to seek reimbursements for any funds used due to errors or omissions of the Design Consultants, D/B's negligence, or the negligence of any of D/B's agents, or subcontractors.
- 13.7 **City Refusal to Approve Change Order.** D/B shall not have the right to terminate this Agreement for the City's refusal to approve a Change Order pursuant to Sections 13.2.1 and/or 13.2.2

ARTICLE XIV. EXTRA WORK

- 14.1 **City Authority to Order Extra Work.** City may at any time prior to Project Completion order Extra Work on the Project. The sum of all Extra Work ordered shall not exceed five percent (5%) of the Estimated Cost at the time of the bid award, without invalidating this Agreement and without notice to any surety.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

- 14.1.1 *Requests in Writing.* All requests for Extra Work shall be in writing, shall be treated as, and are subject to the same requirements as Change Orders. D/B shall not be responsible for failure to perform Extra Work, which was requested in a manner inconsistent with this section.
- 14.2 **Bonds Required for Extra Work.** D/B's and its agents' bonds shall cover any Extra Work provided that the Extra Work is paid for by the Project Budget
- 14.3 **Reimbursement for Extra Work.** Work performed by D/B as Extra Work is reimbursable in the same manner described in Article XIV. The Project contingency as described in Article XI, will be used first to cover the costs of Extra Work.
- 14.4 **Markup.** D/B will be paid a reasonable allowance for overhead and profit for Extra Work. The allowance shall not exceed fifteen percent (15%) of the approved costs for the Extra Work.

ARTICLE XV. CHANGED CONDITIONS

- 15.1 **Changed Conditions.** Changed Conditions shall be addressed under the Greenbook section 3-4; however, Parties acknowledge that even if Changed Conditions are found to be present, the Project shall not exceed the GMP without express City Council approval of an increase to the Project Budget. Absent such express approval of additional funds, D/B shall provide City with value engineering and Parties will return Project to within the total Project cost.

ARTICLE XVI. PAYMENT TERMS

16.1 **Payment**

- 16.1.1 *Funds for Payment.* D/B shall only be entitled to payment for Services and Work performed under this Agreement from the funds appropriated for the Project. The estimated total cost of the project is \$5,094,947 which includes a City controlled contingency amount of \$146,351. The professional services agreement with Southern Contracting will be funded by a lease/purchase agreement through Bank of America and rebates from SDG&E assigned to Southern Contracting once the lights are installed. This amount could be significantly reduced due to contingencies not being used and fixture prices dropping further.
- 16.1.2 *Maximum Payment.* D/B shall be entitled to payment in an amount not to exceed the GMP or subsequently approved increase in GMP. D/B is not entitled to payment for unapproved expenses, unapproved increases in costs, or other increases caused by D/B negligence, omissions, or failure to seek approval for additional or increased costs.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

- 16.1.3 *Application for Payment.* D/B shall submit to City a certificate and application for payment on or before the 5th day of each calendar month (“Payment Application”). The Payment Application shall be based upon the percentage of completion of the Schedule of Values plus any Reimbursable Costs, less any payments previously made by the City, incurred or advanced for the Project for which D/B has not previously received payment. The Payment Application must include all relevant documents in accordance with Section 16.1. If the City determines that all relevant documents have not been submitted, City shall request that D/B provide additional documentation. D/B shall provide additional documentation within ten (10) Working Days of request. City is not obligated to make payment to D/B until City has received all relevant documentation to support Reimbursement Request. After all appropriate cost documentation has been received and City approves the Payment Application, City shall make payment to D/B of all uncontested charges within thirty (30) Calendar Days of receipt of a complete Payment Application.
- 16.1.3.1 *Withholding.* From each payment, five percent (5%) will be deducted and retained by the City, and the remainder will be paid in accordance with the terms and conditions of this Agreement. No payment made to D/B or its sureties will constitute a waiver of any rights the City has under this Agreement. This section is not intended to limit any rights the City may have under the Performance or Payment Bond.
- 16.1.3.2 *Payment of Withholding.* The City will pay the D/B for the amounts withheld forty-five (45) Calendar Days from recordation of the Notice of Completion, providing that no Stop Notices or Mechanic’s Liens have been filed since the recordation of the Notice of Completion.
- 16.1.3.2.1 *Where a Stop Notice or Mechanic’s Lien has been filed following the recordation of the Notice of Completion, the amount in controversy shall continue to be withheld until a fully executed release of Stop Notice or Mechanic’s Lien has been filed and a conformed copy delivered to the City.*
- 16.1.4 *Contested Charges.* In the event City contests any charges contained in the Payment Application, the dispute shall be resolved in the manner identified in Section 24.
- 16.1.5 *Cutoff for Submission of Reimbursement Requests.* D/B shall submit all Reimbursement Requests within six (6) months of the date on which Final Completion occurs and City accepts the Project. Any Reimbursement Request

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

submitted after the Cutoff Date shall not be reviewed or included in Reimbursable Cost.

16.1.6. *Verification of Reimbursement Request.* D/B shall supply documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents showing that payment has been made in connection with the Reimbursement Request in the following manner:

16.1.6.1 D/B shall submit two (2) copies of a Reimbursement Request (cover letter, invoice, and documentation) to the City.

16.1.6.2 After review and approval, the City shall prepare a memorandum to the Financing Department that the invoice is appropriate to pay. The memorandum shall indicate any costs to be disallowed and the reason for the disallowance.

16.1.6.3 Prior to the approval of the Reimbursement Request, City has the right to verify whether or not the materials and work for which reimbursement is being requested have been installed and performed as represented in the Reimbursement Request.

16.1.7 *Non-reimbursable Costs.* Except to the extent that City expressly assumes the risk of loss under this Agreement, City shall exclude from the amounts payable to D/B the fair value, as determined by City, of property that is destroyed, lost, stolen, or damaged rendering it undeliverable or unusable for City. In addition, D/B is not entitled to reimbursement for any cost or expenditure that has not been approved by the City in the manner required by this Agreement or the City Charter and rules, regulations, or laws promulgated there-under.

16.1.8 *Prepayment for Stored Material.* The Project Manager may authorize payment for certain materials, prior to its incorporation into the work. Upon request, the D/B may be paid 100% of the cost of the material, less retainage, provided the quantity of stored material does not exceed the total estimated quantity required to complete the project and does not exceed 70% of the contract amount. The cost of the material is that amount to be paid by the D/B as evidenced by invoices. Payment for stored material will not be authorized until the material has been delivered to the City Operations Center at 4927 Oceanside Boulevard and is inspected by the Project Manager to assure the material is in a satisfactory condition and of sufficient quantity, is stored in an approved manner, and meets the

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

requirements of this section. Only end product manufactured material or fully fabricated products that are awaiting installation and/or incorporation into the finished work are eligible for prepayment. The D/B shall assume full control and responsibility for the protection of the stored material from the elements and against loss or damage by any cause. In the event any stored material becomes lost, stolen, impaired, or damaged while stored, the monetary value of the lost, stolen, impaired, or damaged material as may have been paid for in a current invoice will be deducted from the next invoice. The City of Oceanside shall retain the title to the prepaid material until issuance of the acceptance certificate. Surplus stored material is the property of the D/B who shall remove and dispose of this surplus material from the project in a satisfactory manner. The D/B shall provide evidence of payment upon request.

ARTICLE XVII. INSPECTION

- 17.1 **Inspection Team.** The Project shall be inspected by a team composed of, at a minimum, the following: i) City Public Works Inspectors and /or Project Manager, ii) representative from D/B's Design Team, iii) the Construction Manager, iv) Representative, (v) D/B's Consultant(s), and (vi) the D/B's construction superintendent [Inspection Team]
- 17.2 **Inspection Stages.** The Project shall be inspected by the Inspection Team at minimum during the following stages: (i) when required by code, (ii) as directed by the "Special Inspections" provision, (iii) bi-weekly.
- 17.3 **Access.** City, its consultants, subcontractors, independent testing laboratories as well as other governmental agencies with jurisdictional interests will have access at reasonable times with the City Project Manager's approval for this observation, inspecting and testing. D/B shall provide them proper and safe conditions for such access and advise them of D/B's safety procedures and programs so that they may comply.
- 17.4 **Additional Inspections.** City will make, or have made, such inspections and tests, as the City deems necessary to see that the Work is being accomplished in accordance with the requirements of the Construction.
- 17.5 **Notice.** D/B shall give City timely notice of readiness of the Work for all required on and off-site inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. D/B shall give at least 24 hours notice for on-site inspection and five (5) days notice for off-site inspection.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

- 17.6 **Costs of Inspection.** Unless otherwise specified, the cost of inspection and testing will be borne by the City. Any expenses associated with re-inspection shall be borne by D/B.
- 17.7 **Concealing Work.** Prior to concealing work, D/B shall obtain approval of work from the City and as required by all State Building Codes. City has the right to stop or suspend Work activities which will conceal or cover up D/B Work product which is to be inspected or tested, or which will interfere with the inspection or testing activities, for a reasonable time and D/B will have no right to additional cost or time it may incur as a result of the Work stoppage.
- 17.8 **Defective Work.** In the event such inspections or tests reveal non-compliance with the requirements of the Construction Documents or defective work, the provisions and process of Article XXII shall apply.
- 17.9 **Not a Waiver of Obligations.** Neither observations by the City nor inspections, tests, or approvals by City or others shall relieve D/B from D/B's obligations to perform the Work in accordance with the Construction Documents. This approval is general approval only and in no way relieves D/B of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations.

ARTICLE XVIII. PROJECT COMPLETION

- 18.1 **Notice to City.** When D/B determines that the Project is complete, D/B shall notify the City in writing of the Projects status within seven (7) Calendar Days of the D/B's determination. The notice shall certify to City that the Project has been completed in accordance with the Construction Documents, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Project.
- 18.2 **Walk-Through Inspection.** A preliminary Walk-Through Inspection shall be conducted by City within ten (10) Working Days following D/B's notice to City of completion ("Walk-Through Inspection"). The Walk-Through Inspection will be conducted by the Inspection Team identified in Section 17.1.
- 18.2.1 *Punch List.* A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to D/B by the Engineer of Record within three (3) Working Days of the Walk-Through Inspection. D/B shall correct the items listed on the Punch List within thirty (30) Calendar Days of receipt of the punch list and prior to the Final Inspection.
- 18.2.2 *Failure to Identify Items.* As to any items not included on the Punch List or later discovered, nothing in this section is intended to limit D/B's obligations

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

under this Agreement and City will maintain all remedies available under this Agreement and the law.

- 18.3 **Equipment Demonstration.** Prior to final inspection, D/B shall demonstrate to City the operation of each system in the Project, and instruct City personnel in operation, adjustment and maintenance of equipment and systems, using the operation and maintenance data.
- 18.3.1 Startup. The D/B shall supervise, manage, and coordinate all project startup and testing activities for mechanical systems within the provisions of the project Contract Documents.
- 18.3.2 Reporting. The D/B shall report progress of project startup and testing to the City in a manner consistent with the City's reporting system.
- 18.4 **Final Inspection.** Provided D/B has corrected the Punch List items and notified the City of the correction ("Notice of Correction"), the Final Inspection for the Project shall be scheduled and conducted within ninety (90) Calendar Days of the Notice of Correction.

ARTICLE XIX. PROJECT ACCEPTANCE AND FINAL COMPLETION

- 19.1 **Acceptance.** Upon approval by the Inspection Team during the Final Inspection that Project improvements are complete and that work required on the Punch List has been finished, City shall accept the Project ("Acceptance"). Upon Acceptance, D/B shall do all of the following:
- 19.1.1 *Notice of Completion.* D/B shall execute and file a Notice of Completion with the County Recorder of San Diego County and shall provide the Project Manager with a conformed copy of the recorded Notice of Completion.
- 19.1.2 *Lien and Material Releases.* D/B shall cause all contractors and subcontractors to provide lien and material releases as to the Project and provide copies of such lien and material releases to the City or, upon approval of City which shall not be unreasonably withheld, provide bonds in lieu of lien and material releases in a form reasonably acceptable to City for all such work.
- 19.2 **Final Completion.** Final Completion of the Project shall be deemed to occur on the last date of the following events: (i) recordation of the Notice of Completion with a conformed copy to City; (ii) submission of all documents required to be supplied by D/B to City pursuant to this Agreement, including GIS information, warranties, and operating and maintenance manuals; or issuance of a final certificate of occupancy.
- 19.3 **No Waiver.** D/B's obligation to perform and complete the work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress payment or acceptance of work, nor any payment by City to D/B under the

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

Contract Documents, nor any use or occupancy of the Project or any part thereof by City, nor any act of acceptance by City, nor any failure to do act, nor any review of a shop drawing or sample submittal, will constitute an acceptance of work, which is not in accordance with the Contract Documents.

ARTICLE XX. PROJECT DELIVERABLES

- 20.1 **Project Deliverables.** Prior to Acceptance, D/B shall deliver all of the following to the City in the format required:
- 20.1.1 *As-Builts.* D/B shall provide As-Builts in 1 set of electronic format (pdf) and GIS data filed .
 - 20.1.2 *Operation and Maintenance Manuals.* D/B shall submit all Operation and Maintenance manuals prepared in the following manner:
 - 20.1.2.1 In triplicate, bound in 8½ x 11 inch (216 x 279 mm) three-ring size binders with durable plastic covers prior to City's Final Inspection.
 - 20.1.2.2 A separate volume for each system as it applies to the project, including but not limited to, mechanical, electrical, plumbing, roofing, irrigation, and any other system as determined by City, with a table of contents and index tabs in each volume as follows:
 - 20.1.2.2.1 Part 1: Directory, listing names, addresses, and telephone numbers of D/B's agents, suppliers, manufacturers, and installers.
 - 20.1.2.2.2 Part 2: Operation and Maintenance Instructions, arranged by specification division or system. For each specification division or system, provide names, addresses and telephone numbers of D/B's agents, suppliers, manufacturers, and installers. In addition, list the following: (i) appropriate design criteria; (ii) list of equipment; (iii) parts list; (iv) operating instructions; (v) maintenance instructions, equipment; (vi) maintenance instructions, finishes; (vii) shop drawings and product data; and (viii) warranties.
- 20.2 **Ownership of Project Deliverables.** Upon Final Completion or Termination, Project Deliverables shall become the property of the City. D/B and City mutually agree that the Contract documents for the Project shall not be used on any other work without the consent of each Party. Assemble and deliver to City upon Final Completion all records, documents, warranties, bonds, guarantees, maintenance/ service contracts, and maintenance and operating manuals

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

ARTICLE XXI. WARRANTIES

- 21.1 **Warranties Required.** D/B shall provide and require its agents to provide the warranties listed below. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law.
- 21.1.1 *Materials and Workmanship.* D/B shall guarantee, and shall require its agents to guarantee, all fixtures, photocells and lamps for the Project against defective workmanship and materials furnished by D/B for a period ten (10) years from the date of Project's Final Completion. D/B shall replace or repair any such defective work in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice. Ten-year warranty applies to defective fixtures, lamps and photocells, but does not include labor or equipment for in service (field) replacement.
- 21.1.2 *New Materials and Equipment.* D/B shall warrant and guarantee, and shall require its agents to warrant and guarantee, to City that all materials and equipment incorporated into the Project are new unless otherwise specified.
- 21.1.3 *Design, Construction, and Other Defects.* D/B shall warrant and guarantee, and shall require its agents to warrant and guarantee to City that all work is in accordance with the Plans and Specifications and is not defective in any way in design, construction or otherwise.
- 21.2 **Form and Content.** Except for manufacturer's standard printed warranties, all warranties shall be on D/B's and D/B's agents (or agent's), material suppliers (or supplier's), installers (or installer's) or manufacturers (or manufacturer's) own letterhead, addressed to City. All warranties shall be submitted in the format specified in this section, modified as approved by City to suit the conditions pertaining to the warranty.
- 21.2.1 *Durable Binder.* Obtain warranties, executed in triplicate by D/B and manufacturers. Provide Table of Contents and assemble in binder with durable plastic cover.
- 21.2.2 *Table of Contents.* All warranties shall be listed and typewritten in the sequence of the Table of Contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of product or work item.
- 21.2.3 *Index Tabs.* Separate each warranty with index tab sheets keyed to the Table of Contents listing.
- 21.2.4 *Detail.* Provide full information, using separate typewritten sheets, as necessary. List D/B's agents, installer, and manufacturer, with name, address

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

and telephone number of responsible principal.

21.2.5 *Warranty Start Date.* Except for items put into use with D/B's permission with date mutually agreed upon in writing, leave date of beginning of time of warranty open until the date of Final Completion.

21.2.6 *Signature and Notarization.* All warranties shall be signed and notarized. Signatures shall be required from D/B.

21.3 **Term of Warranties.** Unless otherwise specified or provided by law, lamp and fixture warranties shall extend for a term of at least ten (10) years and adaptive control components shall extend for a term of at least five (5) years from the date of installation. A one (1) year labor only warranty covering general workmanship shall also be provided by the DBT.

ARTICLE XXII. DEFECTIVE WORK

22.1 **Correction, Removal, or Replacement.** If within the designated warranty period, or such additional period as may be required by law or regulation, the Project is discovered to contain Defective Work, the D/B shall promptly and in accordance with the City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.

22.2 **City's Right to Correct.** If circumstances warrant, including but not limited to an emergency or D/B's failure to adhere to section 22.1, City may correct, remove, or replace the Defective Work. In such circumstances, D/B shall not recover costs associated with the Defective Work and shall reimburse the City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.

22.3 **Non-Reimbursable Costs.** All costs incurred by D/B or D/B's agents to remedy defects are non-reimbursable costs. If the City has already reimbursed the D/B for the defective work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against D/B's bond if D/B has been paid in full.

22.4 **No Limitation on other Remedies.** Exercise of the remedies for defects pursuant to this Article shall not limit the remedies City may pursue under this Agreement or law.

22.5 **Disputes.** If D/B and City are unable to reach agreement on disputed work, D/B shall not have the right to stop or delay in the prosecution or any Services of Work. Instead D/B shall continue to diligently prosecute all Work and Services. During the time of the dispute, the City shall withhold the amount of the charge in question and compensate D/B for undisputed amounts. Payment of disputed amounts shall be as

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

later determined in accordance with Section 24.

ARTICLE XXIII. RECORDS AND AUDITS

- 23.1 **Record System – Reimbursable Costs.** D/B shall develop and maintain an accurate system for tracking all Reimbursable Costs. Utilizing this system, D/B shall include with each month payment application an itemization of all such Reimbursable Costs actually incurred by D/B, during the previous month. If requested by the City, D/B shall provide all backup documentation supporting such Reimbursable Costs.
- 23.2 **Record System – Hard Construction Costs.** D/B shall develop and maintain an accurate system for tracking all Hard Construction Costs it incurs on the Project. Utilizing this system, D/B shall include with each monthly application for payment an itemization of all Hard Construction Costs actually incurred by D/B during the previous month.
- 23.3 **Retention of Records.** D/B, contractors, and subcontractors shall maintain data and records related to this Agreement for a period of not less than three (3) years following receipt of final payment under this Agreement or three (3) years following final settlement associated with the termination of this Agreement.
- 23.4 **Audit of Records.** At any time during normal business hours, during the term of the contract plus and record retention period and as often as the City deems necessary, D/B and any or all Contractors or subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. D/B and all contractors or subcontractors will permit the City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then D/B shall pay all the City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained. Such costs will not be Reimbursable Costs.
- 23.4.1 *Costs.* D/B and D/B's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for Extra Work have been submitted under this Agreement.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

ARTICLE XXIV. CLAIMS AND DISPUTES

(a) 24.1 **Claims for Additional Compensation.** If the D/B wishes to make a Claim for additional compensation, the D/B shall submit a written claim to the Engineer within ten (10) working days of the start of the condition which caused the purported increase in Contract price. The Claim shall include all the information required in order to substantiate the Claim. The D/B shall, at a minimum, submit daily reports to the Engineer in a form subject to the review and approval of the Engineer. The daily report shall include copies of supporting documents to substantiate all costs listed therein. Supporting documents shall include payroll sheets, delivery tickets, purchase orders, and invoices. The daily report shall describe only that extra work performed by the D/B for which the D/B wishes to be compensated in accordance with this section. The daily report shall include, at a minimum, the following:

- 1) The names, classifications, and hours of all laborers,
- 2) The quantities and types of materials used,
- 3) The type of equipment, size, identification number, and hours of operation, including loading and transportation if applicable,
- 4) Any other costs for services and expenditures allowable.

The Engineer shall review the D/B's claim and may authorize additional compensation.

24.2 **Claims for Additional Time.** If the D/B wishes to make a Claim for an increase in Contract Time, the D/B shall submit a written Claim to the Engineer within ten (10) working days of the start of the condition which purportedly caused the increase in Contract Time. The Claim shall include all the information in order to substantiate the Claim. The D/B shall, at a minimum, submit a specific description of the manner in which the condition impacts the D/B's construction schedule.

The Engineer shall review the D/B's claim and may authorize extensions of time in accordance with the criteria set forth in this section only when a delay is caused to the entire Work for the Project. Extensions of time shall not be granted for noncontrolling delays to portions of the Work unless the D/B demonstrates that such delays also delay the progress of the entire Work.

If delays are caused by events which are reasonably foreseeable to and within the control of the D/B, the D/B shall be entitled to no extension of time. Such events shall include, but are not limited to, the AGENCY's suspension of work due to the D/B's failure to

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

maintain required insurance, and failure to provide adequate safety measures at the site.

If delays are caused by unforeseen events beyond the control of both the D/B and the AGENCY, the D/B shall be entitled to an extension of time, but the D/B shall not be entitled to any additional compensation due to the delay. Such unforeseen events include war, government regulations, labor disputes, strikes, fires, floods, adverse weather necessitating cessation of work, other similar action of the elements, and other causes substantially equal in gravity.

If delays are caused solely by the AGENCY, the D/B shall be entitled to an extension of time, and may be entitled to additional compensation in accordance with Section 24 only if the delays are unreasonable under the circumstances and not within the reasonable contemplation of the D/B at the time the project was bid.

24.3 **Disputed Work.** In the event that a dispute arises between the AGENCY and the D/B as to the interpretation of Contract Documents, including change orders, or the compensation for Work, or the time for completion of the Work, the D/B shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall diligently proceed with all work to be performed under the Contract Documents. No work shall be delayed or postponed by the D/B pending resolution of any disputes or disagreements with the AGENCY unless otherwise agreed upon in writing. The AGENCY shall compensate the D/B based on the City Attorney's interpretation of the AGENCY's obligation to pay, or on a subsequent written agreement of the parties, or as determined by arbitration, or as fixed in a court of law.

24.4 **Resolution of Disputed Claims: Administrative Review and Civil Action Procedures**

1. **Definition.**

For the purpose of this Section, "claim" means a separate demand by the D/B for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the D/B pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the D/B is not otherwise entitled to, or (C) an amount the payment of which is disputed by the AGENCY.

2. **Administrative Review by Agency.**

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

this Section is intended to extend the time limit or supersede notice requirements otherwise provided by statute for the filing of claims.

- (b)
 - (1) For claims of less than fifty thousand dollars (\$50,000), the AGENCY shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the AGENCY may have against the D/B.
 - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the AGENCY and the D/B.
 - (3) The AGENCY's written response to the claim, as further documented, shall be submitted to the D/B within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the D/B in producing the additional information, whichever is greater.
- (c)
 - (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the AGENCY shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the AGENCY may have against the D/B.
 - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the AGENCY and the D/B.
 - (3) The AGENCY's written response to the claim, as further documented, shall be submitted to the D/B within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the D/B in producing the additional information or requested documentation, whichever is greater.
- (d)
 - (1) For claims of over three hundred seventy-five thousand (\$375,000), the AGENCY shall respond in writing to all written claims within ninety (90) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the AGENCY may have against the D/B.
 - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the AGENCY and the D/B.

CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK

- (3) The AGENCY's written response to the claim, as further documented, shall be submitted to the D/B within sixty (60) days after receipt of the further documentation, or within a period of time no greater than that taken by the D/B in producing the additional information or requested documentation, whichever is greater.
- (e) If the D/B disputes the AGENCY's written response, or the AGENCY fails to respond within the time prescribed, the D/B may so notify the AGENCY, in writing, either within fifteen (15) days of receipt of the AGENCY's response or within fifteen (15) days of the AGENCY's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the AGENCY shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
- (f) Following the meet and confer conference, if the claim or any portion remains in dispute, the D/B may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. D/B understands and agrees that timely and properly filing a Government Code claim is a condition precedent to maintenance of a civil action for money or damages based on such claim. For purposes of those provisions, the running of the period of time within which a Government Code claim must be filed shall be tolled from the time the D/B submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

3. CIVIL ACTION PROCEDURES.

- (a) The parties agree that if the D/B files a civil action, then within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the matter will be submitted to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the fifteen (15) day period, any party may petition the court to appoint the mediator.
- (b) (1) The parties agree that if the matter remains in dispute, the case will be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the code of Civil Procedure,

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 [Article 3, (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure] shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

- (2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
 - (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of trial de novo.
- (c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

ARTICLE XXV. NOTICES

- 25.1 **Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 25.2 **Effective Date.** Except in relation to Change Orders as provided for in Article 13 or as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (i) on personal delivery, (ii) on the second business day after mailing by certified or registered U.S. Mail, return receipt requested, (iii) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (iv) upon successful transmission of facsimile.
- 25.3 **Recipients.** Except in relation to Change Orders, all demands or notices required or permitted to be given shall be sent to all of the following:
- 25.3.1 Jim Filanc, Southern Contracting Company

**CITY WIDE STREET LIGHT RETROFIT PROJECT
EXHIBIT A – PROJECT SPECIFICATIONS AND SCOPE OF WORK**

25.3.2 Kiel Koger, City of Oceanside

25.3.3 (Reserved)

25.4 **Recipients of Change Orders.**

25.4.1 Jim Filanc, Southern Contracting Company

25.4.2

25.4.3

25.5 **Change of Address(es).** Notice of change of address shall be given in the manner set forth in this Article.

**CITY WIDE STREET LIGHT RETROFIT PROJECT
ATTACHMENTS**

ATTACHMENTS

ATTACHMENT A

Item #	Description	Early Start	Early Finish	Contract Negotiations / City Council Approval
1020	Contract Negotiations / City Council Approval	19AUG13	30SEP13	Contract Negotiations / City Council Approval
1025	NOTICE TO PROCEED	01OCT13		◆ NOTICE TO PROCEED
1030	Project Kickoff - Engineering Phase	01OCT13		◆ Project Kickoff - Engineering Phase
1040	SDG&E Rebate Process Review / Reservations	02OCT13	06OCT13	SDG&E Rebate Process Review / Reservations
1050	Data Reconciliation / Field Survey	02OCT13	19NOV13	Data Reconciliation / Field Survey
1060	Collect Documents / Information	02OCT13	09OCT13	Collect Documents / Information
1070	80% Engineering Phase	09OCT13	29OCT13	80% Engineering Phase
1080	Prepare Draft Report	30OCT13	09NOV13	◆ Prepare Draft Report
1090	Preliminary Findings Review	09NOV13		◆ Preliminary Findings Review
1100	90% Engineering Phase	09NOV13	12NOV13	90% Engineering Phase
1110	City Review	12NOV13	19NOV13	◆ City Review
1115	Manufacturer Approval	21NOV13		◆ Manufacturer Approval
1140	Notice To Proceed To Field / Place Order	21NOV13		◆ Notice To Proceed To Field / Place Order
1150	Fabrication / Delivery	21NOV13		◆ Fabrication / Delivery
1170	Field Mobilization	04JAN14		◆ Field Mobilization
1180	Installation @500week	04JAN14	14APR14	Installation @500week
1185	SDG&E Rebate Process	26JAN14	18APR14	SDG&E Rebate Process
1190	Project Closeout	12APR14	29APR14	◆ Project Closeout
1200	Notice of Completion			◆ Notice of Completion

Legend:

- Early bar
- Progress bar
- Critical bar
- Summary bar
- Start milestone point
- Finish milestone point

SOUTHERN CONTRACTING CO.
OCEANSIDE LED STREET LIGHT CONV.

Start date	19AUG13
Finish date	29APR14
Issue date	19AUG13
Run date	21JUN13
Page number	1 of 1
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ATTACHMENT B

AIA DOCUMENT
MANUFACTURER: TBD
G.C.: Southern Contracting
JOB: Oceanside LED Street Light Conversion Project
Application No.: Project No.:
Application Date: Sub Contract No.:
Period To:

A	B	C	D	E	F	G	H	I	J	K
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION	THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN DCRE)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	PERCENT (GC)	BALANCE TO FINISH (C-G)	RETAINAGE 10%	RETAINAGE This Period 10%
	Design Phase	31,000.00								
	Design & Engineering	51,000.00								
	Traffic Control Plans / Survey / GIS									
	Construction Phase									5.00%
1	150W HPS Conversion - 36 ea.	8,955.62						8,955.62		
2	100W HPS Conversion - 5,511 ea.	1,460,234.24						1,460,234.24		
3	150W HPS Conversion - 779 ea.	256,888.65						256,888.65		
4	4250W HPS Conversion - 1,369 ea.	787,075.34						787,075.34		
5	400W HPS Conversion - 8 ea.	6,284.22						6,284.22		
6	Installation	395,485.67						395,485.67		
7	Traffic Control Allowance	141,487.50								
8	Adaptive Controls	1,125,487.48								
9										
10										
11										
12										
13										
	Total	4,263,898.69								
	Soft Costs									
14	3% Contractor Contingency	129,093.80						129,093.80		
16	3% General Conditions	129,093.80						129,093.80		
17	3% Overhead Recovery	129,093.80						129,093.80		
	Fixed Fees									
18	18% Profit	258,187.59						258,187.59		
19										
	Construction Total	4,909,367.68								
	Bonds									
	Insurance									
	Construction Total	4,909,367.68								
	Bonds	39,227.87						39,227.87		
	SDG&E Rebate	(450,190.00)						(450,190.00)		
	Contract Total	4,498,405.55								
	Add Alternate Adaptive Controls									
	Contingencies									
	City Controlled Contingency - 3% of Construction	146,351.03						146,351.03		
	Reimbursables									
	CHANGE ORDERS									
26	Change Order # 01									
27	Change Order # 02									
	Approved CO's - Subtotal									
	Guaranteed Maximum Price	4,644,756.58								

Note: City to apply for and obtain SDG&E rebates.
 Add back: SDG&E Rebates: 450,190.00
 Southern Contract G-Max Value 5,094,946.58