

*TRANSCRIPT OF PROCEEDINGS*

**ST. LUCIE COUNTY, FLORIDA**

**EQUIPMENT LEASE/PURCHASE AGREEMENT**

**WITH**

**BANC OF AMERICA PUBLIC CAPITAL CORP**

*DECEMBER 8, 2015*

**Foley & Lardner LLP  
One Independent Drive, Suite 1300  
Jacksonville, FL 32202  
Telephone: (904) 359-2000**

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**Equipment Lease/Purchase Agreement  
between St. Lucie County, Florida, as Lessee, and  
Banc of America Public Capital Corp, as Lessor  
Dated December 8, 2015**

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**EQUIPMENT LEASE/PURCHASE AGREEMENT  
(ESCROW ACCOUNT)**

This Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of December 8, 2015, and entered into between Banc of America Public Capital Corp, a Kansas corporation (“*Lessor*”), and St. Lucie County, a political subdivision of the State of Florida (“*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:

“*Acquisition Amount*” means \$9,305,379.00. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with proceeds from Lessee, if any, to acquire the Equipment.

“*Acquisition Period*” means the period ending five (5) business days prior to May 8, 2017.

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

“*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.

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

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

“*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 Costs”* means the total cost of the Equipment, including related costs such as freight, installation and taxes, capitalizable costs, legal fees, financing costs and other costs necessary to vest full, clear legal title to the Equipment in Lessee, and other costs incurred in connection with the acquisition and/or financing of the Equipment.

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

*“Escrow Account”* means the account established and held by the Escrow Agent pursuant to the Escrow Agreement, if any.

*“Escrow Agreement”* means the Escrow Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which an Escrow Account is established and administered.

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

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

*“Lease Term”* means the Original Term and all Renewal Terms, with a final Renewal Term ending on April 1, 2031.

*“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, including the Equipment, the Rental Payments and other amounts due hereunder, pursuant to Section 11.01, or the Escrow Account, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

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

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

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

*“Renewal Terms”* means the renewal terms of this Agreement, each having a duration of one year and a term coextensive with Lessee’s fiscal year, except for the final Renewal Term

which shall commence on the first day of the last fiscal year and end one Business Day after the last scheduled Rental Payment is due.

“*Rental Payments*” means the basic rental payments payable by Lessee hereunder pursuant to Section 4.01, consisting of a principal component and an interest component.

“*State*” means the State of Florida.

“*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.

“*Termination Value*” means the amount provided in the Payment Schedule.

“*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.

## 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 political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the constitution and laws of the State, with full power and authority to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement and the Escrow 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 Escrow Agreement.

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

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

(e) Lessee has complied 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 (including all Renewal Terms) scheduled to be paid hereunder.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 270 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 budget for any prior or current fiscal year or the following fiscal year. 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 an immediate need for the Equipment and expects to make immediate use of the Equipment. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the 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 governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. 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.

(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 Escrow Agreement. Lessee will, at its expense, maintain its legal existence in good standing and do any further act and to the extent permitted by law, execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's rights and benefits under this Agreement and the Escrow Agreement.

(k) 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 event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(l) Lessee has complied with Section 218.38, Florida Statutes.

(m) The interest rate for the interest portion of the Rental Payments on the first date that interest begins to accrue does not exceed a rate of interest permitted by Section 215.84, Florida Statutes.

*Section 2.02. Representations and Covenants of Lessor.*

(a) Lessor represents, covenants and warrants for the benefit of Lessee on the date hereof that it has complied with Section 218.385(2) and Section 218.385(3), Florida Statutes.

(b) Lessor has duly authorized the execution and delivery of this Agreement and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement.

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

**ARTICLE III**

*Section 3.01. Lease of Equipment.* Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire the Equipment. Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment in accordance with the terms hereof. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term as set forth in the Payment Schedule. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee shall have terminated this Agreement pursuant to Section 3.03 or Section 10.01. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Payment Schedule.

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03, to continue the Lease Term through the Original Term and all Renewal Terms. Lessee affirms that sufficient funds are available for the current fiscal year, and Lessee 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. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law.

*Section 3.03. Nonappropriation.* Lessee is obligated only to pay such Rental Payments as may lawfully be made during Lessee's then-current fiscal year from legally available funds

budgeted and appropriated for that purpose. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees to cease use of the Equipment and peaceably remove and deliver at Lessee's expense (from legally available funds) the Equipment to Lessor at the location(s) to be specified by Lessor; *provided*, that Lessee shall pay month-to-month rent at the Contract Rate (or the Taxable Rate if then in effect) set forth in the Payment Schedule for each month or part thereof that Lessee fails to return the Equipment pursuant to this Section 3.03 or prepay all of the obligations under the Lease pursuant to Section 10.01 hereof. A non-appropriation of funds by the Lessee shall in no event constitute an "Event of Default" under Section 12.01 hereof.

*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 Escrow Agreement substantially in the form set forth in Exhibit I hereto, satisfactory to Lessor and executed by Lessee and the Escrow Agent;

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

(iii) A Certificate executed by the Clerk or Secretary or other comparable officer 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 6.01;

(vii) A copy of a fully completed and executed Form 8038-G;

(viii) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, provided however, that no "Disbursement Request" pursuant to



the Escrow Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 have been delivered to Lessor;

(x) An opinion of bond counsel to the Lessee, in form and substance acceptable to Lessor, to the effect (1) Lessee is a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code (the "Code") and the obligations of the Lessee under the Lease constitute an obligation within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code and (2) the interest component of the Rental Payments made by the Lessee pursuant to the Lease and received by the Lessor is excluded from gross income for federal income tax purposes under Section 103 of the Code, and the interest component of the Rental Payments made by the Lessee pursuant to the Lease and received by the Lessor is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes; and

(xi) Such other items reasonably required by Lessor.

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

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Escrow Agent.

*Section 3.05. Substitution.* Lessee reserves the right to substitute Equipment of the same quantity and general type with the approximate equal value, utility and remaining useful life as the Equipment so replaced. So long as the Lease related to such Equipment is in effect, such Substitution is subject to Lessor's prior written consent, which consent shall not be unreasonably withheld, and shall be reflected in an amendment to the Equipment Schedule.

## ARTICLE IV

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

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

*Section 4.03. Rental Payments to Constitute a Current Expense of Lessee.* Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in

contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee. THE RENTAL PAYMENTS ARE TO BE MADE ONLY FROM LESSEE'S LEGALLY AVAILABLE REVENUES APPROPRIATED ON AN ANNUAL BASIS, AND NEITHER LESSEE, THE STATE, NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE HEREUNDER FROM THE COMPELLED LEVY OF AD VALOREM OR OTHER TAXES EXCEPT FROM THOSE LEGALLY AVAILABLE REVENUES APPROPRIATED BY LESSEE ON AN ANNUAL BASIS, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF LESSEE, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF ARE PLEDGED FOR PAYMENT OF SUCH SUMS DUE HEREUNDER.

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

*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 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 Escrow Account 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 Commencement Date; and (ii) rebate to the United States, not less frequently than once every five (5) years after the Commencement Date, an amount equal to at least 90% of the Rebate Amount and within 60 days after payment of all Rental Payments or the Termination Value 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 Termination Value 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 Termination Value.

*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 by the Internal Revenue Service 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. Mandatory Prepayment.* Any funds not applied to Equipment Costs and remaining in the Escrow Account on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate (in the form attached hereto as Exhibit E), shall be applied by Lessor on any Rental Payment date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in the inverse order of Rental Payment dates.

## 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 specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor an “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) and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee.

*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. Upon giving of reasonable notice to Lessee, 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 judicial body, including, without limitation, all anti-money laundering laws and regulations; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights hereunder.

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, 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 interest of Lessor.

## **ARTICLE VI**

*Section 6.01. Title to the Equipment.* During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof. 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 the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, unless Lessee has elected not to return the Equipment and to prepay all of its obligations hereunder pursuant to Section 10.01(a), full and unencumbered legal title to the Equipment shall, at Lessor's option, be conveyed by Lessee to Lessor, and Lessee shall have no further interest therein (except to the extent provided in Section 12.02(b) and 12.04). In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the conveyance of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 3.03 or 12.02, as applicable. Upon purchase of the Equipment by Lessee pursuant to Section 10.01, Lessor's rights related to the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's rights related to the Equipment.

*Section 6.02. Lessor's Interest in the Equipment.* Lessor shall only have the remedies described in Section 12.02 and shall not have a general foreclosure right that entitles Lessor to a deficiency judgment or to retain Lessee's equity in the Equipment, if any.

*Section 6.03. Personal Property.* Lessee agrees that 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 thereunder for the purposes of any tax credits, benefits or deductions with respect to such Equipment. In the event that the installation of any component of any item of Equipment could be deemed to require a payment and performance bond under Section 255.05, Florida Statutes, or be deemed subject to the mechanic's lien provision of Chapter 713, Florida Statutes, or any successor statute to each, as they may be amended from time to time, Lessee shall require such bonds, post such notices and do all other things provided for under such laws in order to the Equipment free of and exempt from all liens.

*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 Termination Value 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 or

such other minimum coverage as may be agreed upon between Lessor and Lessee, and in all events in form and amount satisfactory to Lessor; and (c) worker's compensation coverage as required by the laws of the State; *provided that*, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, 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. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this 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 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, 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, Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the due date until paid at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less.

## **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 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 purchase the Equipment 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 represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's 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 use its best efforts to complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event, or be required to exercise its option to purchase the damaged equipment 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, or (b) pay or cause to be paid to Lessor the amount of the then applicable Termination Value for the Equipment, and, upon such payment, the Lease Term shall terminate and Lessor’s rights in the Equipment shall terminate as provided in Section 6.01 hereof. 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 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 Vendor of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments. 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. Purchase Option.* Lessee shall have the option to purchase all, but not less than all, of the Equipment, at the following times and upon the following terms:

(a) From and after the date specified (if any) in the Payment Schedule (the “*Purchase Option Commencement Date*”), on the Rental Payment dates specified in the Payment Schedule, upon not less than 30 days’ prior written notice, and upon payment in full of the Rental Payments then due and all other amounts then owing hereunder plus the then applicable Termination Value, 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 substantially all of the Equipment, on the day specified in Lessee’s notice to Lessor of its exercise of the purchase 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 Rental Payment then due plus the then applicable Termination Value (or, in the event such purchase occurs on a date other than a Rental Payment date, the sum of (i) the Termination Value relating to the Rental Payment immediately prior to the date of such purchase plus (ii) accrued interest on the Outstanding Balance relating to the Rental Payment immediately prior to the date of such purchase, plus 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, and the payment of \$1.00 to Lessor.

After payment of the applicable Termination Value and all other amounts owing hereunder, Lessor’s rights relating to such Equipment will be terminated and Lessee will own the Equipment free and clear of Lessor’s rights relating to 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 Escrow Agreement, 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 to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 11.01 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust; *provided* such certificates are sold only on a private placement basis (and not pursuant to any “public offering”) to a purchaser(s) who represents 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 that neither this Agreement nor 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) 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; *provided further*, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity.

(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. Notice of assignment provided pursuant to this Section 11.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 11.01(a) hereof. 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 rights related to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of Lessor’s interest in and to the Escrow Account, or all rights in, to and under the Escrow Agreement; *provided*, in the case of any partial assignment, Lessee shall only be required to make Rental Payments to Lessor.

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

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

## ARTICLE XII

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

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within 10 days of 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 \$100,000.00;

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

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for 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.

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

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

(b) With or without terminating the Lease Term, Lessor may request that Lessee at Lessee's expense promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify. In such event, Lessor shall use its best efforts to sell or lease such Equipment or, for the account of Lessee, sublease such

Equipment. If Lessee returns the Equipment and Lessor sells, leases or otherwise disposes of any or all of the Equipment, Lessor shall apply the proceeds of such sale, lease or other disposition as described in Section 12.04. Lessee shall not be liable for any deficiency after sale, lease or other disposition of the Equipment. If Lessee elects not to return the Equipment, Lessor is entitled to payment of unpaid Rental Payments through the date of Lessor's request to return the Equipment plus the then applicable Prepayment Price, as set forth in the applicable Schedule for such Equipment. 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 Escrow Agreement and apply any proceeds in the Escrow Account to the Rental Payments due hereunder; and

(d) Subject to the next sentence, Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights hereunder or the Escrow Agreement. The parties to this Agreement acknowledge that: (i) this Agreement is not intended to create a mortgage of or a security interest in the Equipment as proscribed by Nohrr v. Brevard County Educational Facilities Authority, 247 So. 2d 304 (Fla. 1971), and (ii) Lessor may not exercise any foreclosure-type remedies if an Event of Default occurs, State v. Brevard County, 539 So. 2d 461 (Fla. 1989), notwithstanding any provisions to the contrary in this Agreement.

*Section 12.03. No Remedy Exclusive.* No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article 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.

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

*Section 13.08 Public Records.* All documents, papers, letters or other material made or received in conjunction with this Agreement shall be subject to the public records provisions of Chapter 119, Florida Statutes

*[Remainder of Page Intentionally Left Blank]*

*[Signature Page Follows]*

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

LESSOR:

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

By: 

Name: Terri Preston

Title: Authorized Agent

LESSEE:

St. Lucie County, Florida  
2300 Virginia Avenue  
Fort Pierce, FL 34982  
Attention:  
Fax No.:

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

Name: Kim Johnson

Title: Chairman, Board of County  
Commissioners

(Seal)

Attest:

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

Name: Joseph E. Smith

Title: Clerk of the Circuit Court,  
Ex Officio Clerk of the Board of  
County Commissioners

*[Signature Page of Equipment Lease/Purchase Agreement]*

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) 541-3057


LESSEE:

St. Lucie County, Florida  
2300 Virginia Avenue  
Fort Pierce, FL 34982  
Attention:  
Fax No.:

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

Name: Terri Preston

Title: Authorized Agent

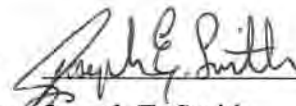
By:  \_\_\_\_\_

Name: Kim Johnson

Title: Chairman, Board of County  
Commissioners

(Seal)

Attest:

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

Name: Joseph E. Smith

Title: Clerk of the Circuit Court,  
Ex Officio Clerk of the Board of  
County Commissioners

*[Signature Page of Equipment Lease/Purchase Agreement]*

### List of Exhibits

- Exhibit A -- Equipment Schedule
- Exhibit B -- Payment Schedule
- Exhibit C-1 -- Form of Authorizing Resolution
- Exhibit C-2 -- Form of Incumbency and Authorization Certificate
- Exhibit D -- Form of Opinion of Counsel Form
- Exhibit E -- Form of Acceptance Certificate
- Exhibit F -- Form of Self-Insurance Certificate
- Exhibit G -- Reserved
- Exhibit H -- Form of Notice and Acknowledgement of Assignment
- Exhibit I -- Form of Escrow Agreement



## EXHIBIT A

### EQUIPMENT SCHEDULE

#### A. EQUIPMENT LOCATION

The Equipment will be located at one or more of the following addresses:

County Jail	900 Rock Road, Fort Pierce	Lighting, HVAC. MISC
Logistics Center	3855 U.S. 1, Fort Pierce	Lighting, TES
County Fairgrounds	15601 W. Midway Road, Fort Pierce	Lighting
Sheriff's Administration Building	4700 Midway Road, Fort Pierce	Lighting, HVAC
I.T. Bunker	101 Rock Road, Fort Pierce	Lighting
Ag. Extension Building	8400 Picos Road, Fort Pierce	Lighting
Walton Annex	1664 Walton Road, Port St. Lucie	Lighting, HVAC
Met's Stadium	525 NW Peacock Blvd., Port St. Lucie	Lighting, Water
Fenn Center	2000 Virginia Ave., Fort Pierce	Lighting
County Administration Building	2300 Virginia Ave., Fort Pierce	Lighting
County Administration Poitras Annex	2300 Virginia Ave., Fort Pierce	Lighting
Health Department	5150 NW Milner Drive, Port St. Lucie	Lighting
Fort Pierce Library	101 Melody Lane, Fort Pierce	Lighting, HVAC
Smithsonian Aquarium	420 Seaway Drive, Fort Pierce	Lighting
Navy Seal Museum	3300 N. Highway A1A, Fort Pierce	Lighting

CMs- Lighting, Water Conservation, HVAC (Chiller, AHUs, TES, and Controls) and MISC- Tankless Water Heating

B. EQUIPMENT LIST

A complete equipment list is found within the appendices of the St Lucie County Audit Report, dated September 29, 2015, by FPL Services, LLC as accepted by the St Lucie County on October 6, 2015 which is incorporated as part of this contract. Specific Energy Conservation Measure equipment lists can be found therein as follows:

- Lighting Systems: Appendix I of the Audit Report
- Water Conservation: Appendix K of the Audit Report
- HVAC Systems: Appendix M of the Audit Report
- MISC: Appendix O of the Audit Report

**EXHIBIT B****PAYMENT SCHEDULE**

<b>Rental Payment Date</b>	<b>Rental Payment Amount</b>	<b>Interest Component</b>	<b>Principal Component</b>	<b>Balance</b>
12/8/2015				9,305,379.00
3/1/2017	106,937.00	271,383.62	(164,446.62)	9,469,825.62
4/1/2017	939,723.00	18,702.91	921,020.09	8,548,805.53
4/1/2018	889,167.69	202,606.69	686,561.00	7,862,244.53
4/1/2019	902,758.22	186,335.20	716,423.02	7,145,821.51
4/1/2020	916,756.47	169,355.97	747,400.50	6,398,421.01
4/1/2021	931,174.66	151,642.58	779,532.08	5,618,888.92
4/1/2022	946,025.40	133,167.67	812,857.73	4,806,031.19
4/1/2023	961,321.66	113,902.94	847,418.72	3,958,612.47
4/1/2024	540,826.81	93,819.12	447,007.69	3,511,604.78
4/1/2025	557,054.62	83,225.03	473,829.59	3,037,775.19
4/1/2026	573,769.26	71,995.27	501,773.99	2,536,001.20
4/1/2027	515,920.88	60,103.23	455,817.65	2,080,183.55
4/1/2028	531,401.51	49,300.35	482,101.16	1,598,082.39
4/1/2029	547,346.56	37,874.55	509,472.01	1,088,610.38
4/1/2030	563,769.95	25,800.07	537,969.88	550,640.50
4/1/2031	563,690.68	13,050.18	550,640.50	-
	-----	-----	-----	
	10,987,644.37	1,682,265.37	9,305,379.00	

*Contract Rate.* The Contract Rate is 2.37%.

*Purchase Option Commencement Date.* For purposes of Section 10.01 of the Agreement, the Purchase Option Commencement Date is March 1, 2017. On and after the Purchase Option Commencement Date, the Lessee may prepay the balance of the Lease on any Rental Payment Date at a price of 102% of the principal component outstanding plus interest accrued to the date thereof.

## EXHIBIT C-1

### FORM OF AUTHORIZING RESOLUTION

A RESOLUTION OF THE ST. LUCIE COUNTY BOARD OF COUNTY COMMISSIONERS, AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, St. Lucie County, Florida (the “*Lessee*”), a body politic and corporate duly organized and existing as a political subdivision of the State of Florida (the “*State*”) is authorized by the laws of the State to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to acquire certain equipment with a cost not to exceed \$9,305,379.00 constituting personal property necessary for the Lessee to perform essential governmental functions (the “*Equipment*”); and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (the “*Agreement*”) with Banc of America Public Capital Corp (or one of its affiliates)(the “*Lessor*”), the form of which has been presented to the governing body of the Lessee at this meeting; and

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

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Board of County Commissioners of Lessee as follows:

*Section 1. Approval of Documents.* The form, terms and provisions of the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the Chairman of the Board of County Commissioners of the Lessee (the “*Chairman*”) or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the Chairman is hereby authorized and directed to execute, and the Clerk of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and any related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the

respective parties thereto, and the Clerk of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

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

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

*Section 4. Appointment of Authorized Lessee Representatives.* The Chairman and the Clerk of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement.

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

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

*Section 7. Effective Date.* This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the Board of County Commissioners of the Lessee this  
\_\_\_\_\_ day of \_\_\_\_\_.

ST. LUCIE COUNTY, FLORIDA

as lessee

[SEAL]

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

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

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

ATTEST:

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

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

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

**EXHIBIT C-2**

**FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE**

The undersigned, a duly elected or appointed and acting [Secretary] [County Clerk] of ST. LUCIE COUNTY, FLORIDA ("*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 December 8, 2015, by and between Lessee and Banc of America Public Capital Corp ("*Lessor*"), the Escrow Agreement dated as of December 8, 2015, among Lessor, Lessee and Bank of America, National Association, as Escrow Agent, and all documents related thereto and delivered in connection therewith (collectively, the "*Agreements*"), and the Agreements are the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

Name of Official	Title	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

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

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

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

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

**EXHIBIT D**

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

[Closing Date]

Banc of America 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 December 8, 2015, between  
Banc of America Public Capital Corp, as Lessor, and St. Lucie County, Florida, as  
Lessee

Ladies and Gentlemen:

As legal counsel to St. Lucie County, Florida ("*Lessee*"), I have examined (a) an executed counterpart of a certain Equipment Lease/Purchase Agreement, dated as of December 8, 2015, and Exhibits thereto by and between Banc of America Public Capital Corp ("*Lessor*") and Lessee (the "*Agreement*"), which, among other things, provides for the lease of certain property (the "*Equipment*") and a certain Escrow Agreement, among Lessor, Lessee, and Bank of America, National Association, as Escrow Agent, dated December 8, 2015 (the "*Escrow Agreement*"), (b) an executed counterpart of the ordinances or resolutions of Lessee which with respect to the transaction contemplated by the Agreement, the Escrow Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Escrow Agreement and the documents relating thereto are referred to collectively as the "Transaction Documents."

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

1. Lessee is a political subdivision of the State of Florida with the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.
3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents 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 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 interest of Lessor or its assigns, as the case may be, in the Equipment, the Escrow Account or other collateral thereunder.

6. All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Sincerely,

**EXHIBIT E**

**FORM OF 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, dated as of December 8, 2015, between  
Banc of America Public Capital Corp, as Lessor, and St. Lucie County, Florida, as  
Lessee

Ladies and Gentlemen:

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

1. All of the Equipment (as such term is defined in the Agreement) has been delivered, installed and accepted on the date hereof.

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.

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

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

LESSEE:  
ST. LUCIE COUNTY, FLORIDA

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

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

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

(Seal)

## 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 December 8, 2015, between  
Banc of America Public Capital Corp, as Lessor, and St. Lucie County, Florida, as  
Lessee

In connection with the above-referenced Agreement, St. Lucie County, Florida (the  
“Lessee”), 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: \_\_\_\_\_

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

LESSEE:  
ST. LUCIE COUNTY, FLORIDA

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

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

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

**EXHIBIT G**  
**RESERVED.**

## EXHIBIT H

### 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 (the “Agreement”) dated as of \_\_\_\_\_, between Assignor and \_\_\_\_\_ (“Lessee”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor’s right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Escrow and Account Control Agreement dated \_\_\_\_\_ (the “Escrow Agreement”) by and among Lessee, Assignor and \_\_\_\_\_, \_\_\_\_\_, as Escrow Agent, together with the Escrow Account related thereto (collectively, the Assigned Property”).

1. Pursuant to the authority of Resolution \_\_\_\_\_ adopted on \_\_\_\_\_, Lessee hereby [consents to and] 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.

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

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

4. The Agreement remains in full force and effect, has not been amended and no nonappropriation or 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 Escrow Account, 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: \_\_\_\_\_

[FOR EXHIBIT PURPOSES ONLY]

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

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

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

ASSIGNOR: **BANC OF AMERICA PUBLIC CAPITAL CORP**

[FOR EXHIBIT PURPOSES ONLY]

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

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

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

**DISBURSEMENT REQUEST  
(SCHEDULE OF PROPERTY NO. 1)**

Re: Equipment Lease/Purchase Agreement dated as of December 8, 2015 by and between Banc of America Public Capital Corp, as Lessor and St. Lucie County, Florida, as Lessee, and Schedule of Property No. 1 thereto (collectively, the “Lease”) (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow Agreement, dated as of December 8, 2015 (the “Escrow Account Agreement”) by and among Banc of America Public Capital Corp (“Lessor”), St. Lucie County, Florida (“Lessee”) and Bank of America, National Association, (the “Escrow Agent”), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow Account Agreement for the following purposes:

Disbursement Amounts:

Payee’s Name and Address (if disbursement via wire, must include wire transfer instructions)	Invoice Number	Dollar Amount	Purpose
See attached invoices.			

(i) (a) Each obligation specified in the table herein titled as “Disbursement Amounts” has been incurred by Lessee in the stated amount, (b) the same is a proper charge against the Escrow Account for costs relating to the Equipment identified in the Lease, and (c) has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof).

(ii) Each item of Equipment relating to an obligation specified in the table herein titled as “Disbursement Amounts” has been delivered, installed and accepted by Lessee. Attached hereto is the original invoice with respect to such obligation.

(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 is insured in accordance with 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.

(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.

(ix) No Material Adverse Change has occurred since the date of the execution and delivery of the Lease.

Dated: December 8, 2015

ST. LUCIE COUNTY, FLORIDA

By:

Name: Kim Jortberg

Title: CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

Disbursement of funds from the Escrow Account in accordance with the foregoing Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP

as Lessor under the Lease

By:

Name:

Title:

Terri J. Preston  
Authorized Agent

## **Escrow Agreement**

This Escrow Agreement (this "Agreement"), dated as of December 8, 2015, by and among Banc of America Public Capital Corp, a Kansas corporation (together with its successors and assigns, hereinafter referred to as "Lessor"), St. Lucie County, Florida, a political subdivision of the State of Florida (hereinafter referred to as "Lessee") and Bank of America, National Association, a national banking association organized under the laws of the United States of America "Escrow Agent").

Reference is made to that certain Equipment Lease/Purchase Agreement dated as of December 8, 2015, between Lessor and Lessee, and Schedule of Property No. 1 thereto (hereinafter referred to as the "Lease"), covering the acquisition and lease of certain Equipment described therein (the "Equipment"). It is a requirement of the Lease that the Acquisition Amount (\$9,305,379.00) be deposited into a segregated escrow account 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 purchase of and payment for the Equipment.

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

1. Creation of Escrow Account.

(a) There is hereby created an escrow fund to be known as the "St. Lucie County, Florida Escrow Account" (the "Escrow Account") to be held by the Escrow Agent 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) Lessee may, from time to time, provide written instructions for Escrow Agent to use any available cash in the Escrow Account to purchase any money market fund or liquid deposit investment vehicle that Escrow Agent from time to time makes available to the parties hereto. Such written instructions shall be provided via delivery to Escrow Agent of a signed and completed Escrow Account Investment Selection Form (such form available from Escrow Agent upon request). All funds invested by Escrow Agent at the direction of Lessee in such short-term investments shall be deemed to be part of the Escrow Account and subject to all the terms and conditions of this Agreement. If any cash is received for the Escrow Account after the cut-off time for the designated short-term investment vehicle, the Escrow Agent shall hold such cash uninvested until the next Business Day (as defined below). In the absence of written instructions designating a short-term investment for cash, cash in the Escrow Account shall remain uninvested. Escrow Agent shall have no obligation to pay interest on cash in respect of any period during which it remains uninvested. 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 the Escrow Agent for the reinvestment of any maturing investment. Accordingly, neither the Escrow Agent 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 Escrow

Account, and Lessee agrees to and does hereby release the Escrow Agent and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Escrow Account shall become part of the Escrow Account, and gains and losses on the investment of the moneys on deposit in the Escrow Account shall be borne by the Escrow Account. The Escrow Agent shall have no discretion whatsoever with respect to the management, disposition or investment of the Escrow Account. The Escrow Agent shall not be responsible for any market decline in the value of the Escrow Account and has no obligation to notify Lessor and Lessee of any such decline or take any action with respect to the Escrow Account, except upon specific written instructions stated herein. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements of Section 218.415, Florida Statutes, as amended, and "Business Day" means a day other than a Saturday, Sunday, or other day when banking institutions in Chicago, Illinois are authorized or required by law or executive order to be closed.

(c) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent in payment of amounts described in Section 2 hereof upon receipt of written instruction(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Escrow Account are insufficient to pay such amounts, Lessee shall deposit into the Escrow Account any funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Escrow Account on or after the earlier of (i) the expiration of the Acquisition Period and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof.

(d) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account or (ii) written notice given by Lessor of the occurrence of a default or termination of the Lease due to non-appropriation.

(e) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. Notwithstanding and without limiting the generality of the foregoing, concurrent with the execution of this Agreement, Lessee and Lessor, respectively, shall deliver to the Escrow Agent an authorized signers form in the form of Exhibit A-1 (Lessee) and Exhibit A-2 (Lessor) attached hereto. Notwithstanding the foregoing sentence, the Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the parties or by a person or persons authorized by the parties. The Escrow Agent specifically allows for receiving direction by written or electronic transmission from an authorized representative with the following caveat, Lessee and Lessor agree, to the extent permitted by law and solely from legally available funds, to indemnify and hold harmless the Escrow Agent against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees) (collectively, "Losses") incurred or sustained by the Escrow Agent as a result of or in connection with the Escrow Agent's reliance upon and compliance with instructions or directions by written or

electronic transmission given by each, respectively, provided, however, that such Losses have not arisen from the gross negligence or willful misconduct of the Escrow Agent, it being understood that forbearance on the part of the Escrow Agent to verify or confirm that the person giving the instructions or directions, is, in fact, an authorized person shall not be deemed to constitute gross negligence or willful misconduct.

In the event conflicting instructions as to the disposition of all or any portion of the Escrow Account are at any time given by Lessor and Lessee, the Escrow Agent shall abide by the instructions or entitlement orders given by Lessor without consent of the Lessee.

(f) Unless the Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Escrow Agent 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 Escrow Agent under this agreement; and in connection therewith, does to the extent permitted by law and solely from legally available funds indemnify the Escrow Agent 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 the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action including an interpleader action to resolve the disagreement. The Escrow Agent 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.

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

(i) Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for non-routine administration of the Escrow Account and the performance of the Escrow Agent'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 Escrow Account.

(j) The Escrow Agent 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 60 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the Lessee and Lessor. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Escrow Account.

(k) The Escrow Agent shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no implied duties responsibilities or obligations shall be read into this Agreement.

2. Acquisition of Property.

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Escrow Account. Lessee represents 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. Escrow Agent shall have no duty to monitor or enforce Lessee's compliance with the foregoing covenant.

(b) Authorized Escrow Account Disbursements. It is agreed as between Lessee and Lessor that Disbursements from the Escrow Account 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.

(c) Requisition Procedure. No disbursement from the Escrow Account shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Escrow Account there shall be filed with the Escrow Agent a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due and the manner of disbursement (check or wire). The Escrow Agent is authorized to obtain and rely on confirmation of such Disbursement Request and payment instructions by telephone call-back to the person or persons designated for verifying such requests on Exhibit A-2 (such person verifying the request shall be different than the person initiating the request). The Lessor and Lessee hereby confirm that any call-back performed by Escrow Agent to verify a disbursement instruction before release, shall be made to Lessor only and Escrow Agent shall have no obligation to call-back Lessee.

Each such requisition shall be signed by an authorized representative of Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following conditions, which Escrow Agent shall conclusively presume have been satisfied at such time as a requisition executed by Lessee and Lessor is delivered to it:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:
  - (i) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Escrow Account 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); (ii) 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; (iii) 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); (iv) the Equipment is insured in accordance with the Lease; (v) 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; (vi) such disbursement shall occur during the Acquisition Period; (vii) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof; and (viii) no Material Adverse Change has occurred since the date of the execution and delivery of the Lease.

2. Delivery to Lessor of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Equipment has passed to Lessee) therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and
3. The disbursement shall occur during the Acquisition Period.

Lessee and Lessor agree that their execution of the form attached hereto as Schedule 1 and delivery of the executed form to Escrow Agent confirms that all of the requirements and conditions with respect to disbursements set forth in this Section 2 have been satisfied.

3. Deposit to Escrow Account. Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited in the Escrow Account. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Escrow Account.

4. Excessive Escrow Account. Upon receipt of written instructions from Lessor, including a representation that one of the following conditions has been satisfied (upon which representation Escrow Agent shall conclusively rely), any funds remaining in the Escrow Account on or after the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate, or upon a termination of the Escrow Account as otherwise provided herein, shall be distributed by the Escrow Agent to the Lessor in order for the Lessor to apply such funds to amounts owed by Lessee under the Lease in accordance with Section 4.07 of the Lease.

5. 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 the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent 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 identifying documents to be provided.

6. 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.

Notices and other communications hereunder may be delivered or furnished by electronic mail provided that any formal notice be attached to an email message in PDF format and provided further that any notice or other communication sent to an e-mail address shall be deemed received upon and only upon the sender's receipt of affirmative acknowledgement or receipt from the intended recipient. For purposes hereof no acknowledgement of receipt generated on an automated basis shall be deemed sufficient for any purpose hereunder or admissible as evidence of receipt.

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:                      St. Lucie County  
    2300 Virginia Avenue  
    Fort Pierce, FL 34982  
    Attn: County Administration  
    Fax: (772) 462-2117

If to Escrow Agent                      Bank of America, National Association  
    Global Custody and Agency Services  
    135 S. LaSalle Street  
    IL4-135-05-07  
    Chicago, Illinois 60603  
    Attention: Alice Wolan  
    Telephone: (312) 992-9782  
    Fax: (312) 453-4443  
    Email address: [alice.m.wolan@baml.com](mailto:alice.m.wolan@baml.com)

7. Lessee and Lessor understand and agree that they are required to provide the Escrow Agent with a properly completed and signed Tax Certification (as defined below) and that the Escrow Agent may not perform its duties hereunder without having been provided with such Tax Certification. As used herein "Tax Certification" shall mean an IRS form W-9 or W-8 as described above. The Escrow Agent will comply with any U.S. tax withholding or backup withholding and reporting requirements that are required by law. With respect to earnings allocable to a foreign person, the Escrow Agent will withhold U.S. tax as required by law and report such earnings and taxes withheld, if any, for the benefit of such foreign person on IRS Form 1042-S (or any other required form), unless such earnings and withheld taxes are exempt from reporting under Treasury Regulation Section 1.1461-1(c)(2)(ii) or under other applicable law. With respect to earnings allocable to a United States person, the Escrow Agent will report such income, if required, on IRS Form 1099 or any other form required by law. The IRS Forms 1099 and/or 1042-S shall show the Escrow Agent as payor and Lessee as payee.

Lessee and Lessor agree that they are not relieved of their respective obligations, if any, to prepare and file information reports under Code Section 6041, and the Treasury regulations thereunder, with respect to amounts of imputed interest income, as determined pursuant to Code Sections 483 or 1272. The Escrow Agent shall not be responsible for determining or reporting such imputed interest.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the parties hereto consent to jurisdiction in the State Florida and venue in any state or Federal court located in St. Lucie County, Florida.

9. Any bank or corporation into which the Escrow Agent may be merged or with which it may be consolidated, or any bank or corporation to whom the Escrow Agent may transfer a substantial amount of its escrow business, shall be the successor to the Escrow Agent without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding. Any bank or corporation into which the Lessor may be merged or with which it may be consolidated, or any bank or corporation to whom the Lessor may transfer a substantial amount of its business, shall be the successor to the Lessor without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding.

10. This Agreement may be amended, modified, and/or supplemented only by an instrument in writing executed by all parties hereto.

11. No party hereto shall assign its rights hereunder until its assignee has submitted to the Escrow Agent (i) Patriot Act disclosure materials and the Escrow Agent has determined that on the basis of such materials it may accept such assignee as a customer and (ii) assignee has delivered an IRS Form W-8 or W-9, as appropriate, to the Escrow Agent which the Escrow Agent has determined to have been properly signed and completed.

12. Escrow Agent will treat information related to this Agreement as confidential but, unless prohibited by law, Lessee and Lessor authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates and other representatives and advisors of Escrow Agent and third parties selected by any of them,



wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Escrow Agent and any such subsidiary, officer, affiliate or third party may transfer or disclose any such information as required by any law, court, regulator or legal process.

Lessor will treat information related to this Agreement as confidential but, unless prohibited by law, Escrow Agent and Lessee authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates, other representatives and advisors of Lessor and debt and equity sources and third parties selected by any of them, and to their prospective assignees wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Lessor and any such subsidiary, officer, affiliate, debt and equity source or third party or prospective assignee may transfer or disclose any such information as required by any law, court, regulator or legal process.

In Witness Whereof, the parties have executed this Escrow Agreement as of the date first above written.

Banc of America Public Capital Corp  
as Lessor

St. Lucie County, Florida  
as Lessee

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

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


Name: Terri Preston

Name: Kim Johnson

Title: Authorized Agent

Title: Chairman, Board of County  
Commissioners

Bank of America, National Association  
As Escrow Agent

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

Name: ERIK R. BENSON

Title: Vice President

wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Escrow Agent and any such subsidiary, officer, affiliate or third party may transfer or disclose any such information as required by any law, court, regulator or legal process.


Lessor will treat information related to this Agreement as confidential but, unless prohibited by law, Escrow Agent and Lessee authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates, other representatives and advisors of Lessor and debt and equity sources and third parties selected by any of them, and to their prospective assignees wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Lessor and any such subsidiary, officer, affiliate, debt and equity source or third party or prospective assignee may transfer or disclose any such information as required by any law, court, regulator or legal process.

In Witness Whereof, the parties have executed this Escrow Agreement as of the date first above written.

Bank of America Public Capital Corp  
as Lessor

St. Lucie County, Florida  
as Lessee

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

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

Name: Terri Preston

Name: Kim Johnson

Title: Authorized Agent

Title: Chairman, Board of County  
Commissioners

Bank of America, National Association  
As Escrow Agent

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

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

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

**SCHEDULE 1**  
**to the Escrow Agreement**  
**(Schedule of Property No. 1)**

**FORM OF DISBURSEMENT REQUEST**  
**(SCHEDULE OF PROPERTY NO. 1)**

Re: Equipment Lease/Purchase Agreement dated as of December 8, 2015 by and between Banc of America Public Capital Corp, as Lessor and St. Lucie County, Florida, as Lessee, and Schedule of Property No. 1 thereto (collectively, the "Lease") (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow Agreement, dated as of December 8, 2015 (the "Escrow Account Agreement") by and among Banc of America Public Capital Corp ("Lessor"), St. Lucie County, Florida ("Lessee") and Bank of America, National Association, (the "Escrow Agent"), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow Account Agreement for the following purposes:

Disbursement Amounts:

Payee's Name and Address (if disbursement via wire, must include wire transfer instructions)	Invoice Number	Dollar Amount	Purpose

(i) (a) Each obligation specified in the table herein titled as "Disbursement Amounts" has been incurred by Lessee in the stated amount, (b) the same is a proper charge against the Escrow Account for costs relating to the Equipment identified in the Lease, and (c) has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof).

(ii) Each item of Equipment relating to an obligation specified in the table herein titled as "Disbursement Amounts" has been delivered, installed and accepted by Lessee. Attached hereto is the original invoice with respect to such obligation.

(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 is insured in accordance with 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.

(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.

(ix) No Material Adverse Change has occurred since the date of the execution and delivery of the Lease.

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

ST. LUCIE COUNTY, FLORIDA

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

Disbursement of funds from the Escrow  
Account in accordance with the foregoing  
Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP  
as Lessor under the Lease

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

[AN "EXHIBIT A-1" MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

**EXHIBIT A-1**

**INCUMBENCY AND AUTHORIZATION CERTIFICATE**

**See attached.**

**EXHIBIT A-2**

**Escrow Agreement dated as of December 8, 2015, by and among Banc of America Public Capital Corp, as Lessor, St. Lucie County, Florida, as Lessee, and Bank of America, National Association, as Escrow Agent**

**Certificate of Authorized Representatives – Lessor**

Name: Terri Preston

Title: Authorized Agent

Phone: 443-541-3642

Facsimile: 443-541-3057

E-mail: Terri.Preston@baml.com

Signature: 

Fund Transfer / Disbursement Authority Level:

- ☒ Initiate  
☒ Verify transactions initiated by others

Name: Nancy K. Hepner

Title: Authorized Agent

Phone: 443-541-3645

Facsimile: 443-541-3057

E-mail: Nancy.k.hepner@baml.com

Signature: 

Fund Transfer / Disbursement Authority Level:

- ☒ Initiate  
☒ Verify transactions initiated by others

Name: Nancy Nusenko

Title: Authorized Agent

Phone: 443-541-3646

Facsimile: 443-541-3057

E-mail: Nancy.a.nusenko@baml.com

Signature: 

Fund Transfer / Disbursement Authority Level:

- ☒ Initiate  
☐ Verify transactions initiated by others


Name: Arlene Sobieck

Title: Authorized Agent

Phone: 443-541-3643

Facsimile: 443-541-3057

E-mail: arlene.sobieck@baml.com


Signature: 

Fund Transfer / Disbursement Authority Level:

- ☒ Initiate  
☐ Verify transactions initiated by others

The Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the person or persons identified above including without limitation, to initiate and verify funds transfers as indicated.

Banc of America Public Capital Corp

By:   
Name: **Terri J. Preston**  
Title: **Authorized Agent**

Date: December 8, 2015

MASTER AGREEMENT  
FOR  
DEMAND SIDE MANAGEMENT AND ENERGY EFFICIENCY SERVICES  
(STATE GOVERNMENTAL ENTITIES)

THIS MASTER AGREEMENT is made and entered into as of May 22, 2007 (the "Effective Date"), by and between FPL Services, LLC, a Florida limited liability company, license No. QB25878, and the Board of County Commissioners, St. Lucie County, FL a political subdivision of the State of Florida, with reference to the following:

RECITALS

A. The Company is licensed under Chapters 471, 481 and 489, Florida Statutes, and is in the business of providing demand side management energy efficiency Services for its customers pursuant to a Company initiated Program;

B. The Customer has agreed to participate in the Program by considering the furnishing and upgrading of its facilities with energy efficient equipment and systems in order to achieve potential water and energy savings; and

C. Pursuant to this Master Agreement, the Parties wish to set forth their understanding concerning certain Services which may be provided by the Company to the Customer under the Program.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 Authorization Form means a form prepared by the Company for the purpose of identifying the Customer's options for proceeding with the evaluation, design or installation of specific ECO's identified at one or more Service Locations. An Authorization Form shall accompany each of the following types of documents prepared by the Company under this Master Agreement: Feasibility Study Proposals and Feasibility Reports.

1.2 Change means a request by the Customer that changes the Services, which may consist of modifications or additions to, or deletions from, any Services to be performed or materials to be provided by the Company arising under this Master Agreement.

1.3 Company means FPL Services, LLC, a Florida limited liability company, including its successors and assigns.

1.4 Confidential Information shall mean all information marked as "confidential" or "proprietary" by an appropriate stamp, label, legend or other written notice thereon if transmitted electronically or other written form, and if disclosed orally by either the Company, then the Company shall confirm the oral or visual disclosure that shall be considered Confidential Information in a written memorandum or e-mail transmittal to the Customer within thirty (30) days after such visual or oral disclosure and whether prepared by the Company or otherwise which is disclosed to the Customer or the Customer's agents in connection with this Master Agreement and including all reports, analyses, notes or other information that are based on, contain or reflect any such Confidential Information; however, Confidential Information shall not include the following: (a) information which is or becomes publicly available other than as a result of a violation of this Master Agreement; (b) information which is or becomes available on a non-confidential basis from a source which is not known to the Customer (after due inquiry) to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to the Company; or (c) information which the Customer can demonstrate was legally in its possession prior to disclosure by the



Company. The Company acknowledges that all undertakings by the Customer not to disclose Confidential Information are subject to the provisions of Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended.

1.5 Customer means the person designated in the first paragraph of this Master Agreement as the recipient of Services under the Program in accordance with the terms of this Master Agreement.

1.6 Delayed Payment Rate means a rate of interest equal to one-and-one-half percent (1½%) per month, which applies to unpaid Feasibility Study Price, Implementation Price and other amounts which the Customer may become obligated to pay to the Company under the terms of this Master Agreement.

1.7 Dispute means any dispute or disagreement that may arise between the Parties with respect to the interpretation of any provision of this Master Agreement, the performance of either Party under this Master Agreement, or any other matter that is in dispute between the Parties related to this Master Agreement.

1.8 ECO means an energy conservation opportunity identified by the Company at a specified Service Location.

1.9 Feasibility Study means the Services performed by the Company, including the preparation of a Feasibility Report, for the purpose of assisting the Customer in determining whether to proceed with Implementation Services for the installation and construction of particular ECO's at specified Service Locations.

1.10 Feasibility Study Price means the compensation to be paid by the Customer to the Company for conducting a Feasibility Study and issuing a Feasibility Report.

1.11 Feasibility Study Proposal means a written proposal within a Feasibility Study Authorization Form as described in Article 3, prepared by the Company in consultation with the Customer specifying the particular Services to be performed by the Company in conducting a Feasibility Study and preparing a Feasibility Report with respect to ECO's identified at specified Service Locations.

1.12 Feasibility Report means the written report which is issued by the Company to the Customer to summarize the Company's findings based upon a Feasibility Study of particular ECO's at specified Service Locations.

1.13 Final Acceptance Date means the date on which any Punch List items for an ECO(s) is determined by the Company and Customer as completed and stated as the effective date in the Notice of Final Acceptance.

1.14 Force Majeure Event means an event, including but not limited to, acts of God, fire, flood, windstorm, war, terrorism, sabotage, revolution, acts of any government or governmental agency, strikes or other labor difficulty, insurrection, riot, strikes, telecommunications failures, that neither the Company nor the Customer shall be considered to be in default in the performance of its obligations arising under this Master Agreement, except obligations to make payments with respect to amounts already accrued, to the extent that performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of, and not a result of the fault or negligence of, the affected Party.

1.15 Subcontractor means a third-party subcontractor who is retained by the Company to perform installation or construction work at the Customer's Service Location(s) pursuant to a Customer-authorized Implementation Services Authorization Form (as set forth in Section 4.1).

1.16 Implementation Price means the compensation to be paid by the Customer to the Company for performing Implementation Services with respect to particular ECO's at specified Service Locations.

1.17 Implementation Services means the Services provided or proposed to be provided by the Company to construct, install or otherwise implement one or more ECO's at specified Service Locations in accordance with the terms of a Feasibility Report, which Services shall include, but not be limited to, (a) causing the procurement, construction and installation of all materials, equipment and systems required to implement each ECO at a particular

Service Location, (b) providing and paying for all labor and support services necessary to perform such work, (c) supplying to the Customer copies of any operation and maintenance manuals available from the manufacturers, vendors and suppliers of equipment or systems comprising a part of any installed ECO, (d) providing on-site training for a reasonable number of the Customer's designated operating personnel, if such training is reasonably required or necessary for the proper operation and maintenance of any complex equipment or system comprising a part of any installed ECO, and (e) arranging for the final inspection and check-out of each installed ECO.

1.18 Master Agreement means this Master Agreement for Demand Side Management and Energy Efficiency Services, including any and all schedules and exhibits attached thereto, as may be amended from time to time. The terms, conditions, representations, warranties and other provisions of this Master Agreement shall apply by reference to each and every Feasibility Study Proposal, Feasibility Report, and any other written proposal, document, notice or Authorization Form issued under the terms of this Master Agreement, as if such provisions were set forth expressly therein.

1.19 Minor Deficiencies means, with respect to a particular ECO which has been determined by the Company to be Substantially Complete, any construction, installation or other Implementation Services identified in a Punch List which do not materially affect the ability of the ECO to properly operate and function in accordance with its intended purpose pursuant to this Master Agreement and the terms and specifications contained in a Customer-executed Implementation Services Authorization Form.

1.20 Notice of Substantial Completion means a written notice issued by the Company to notify the Customer of the substantial completion of the installation of an ECO.

1.21 Party or Parties means the Company and Customer identified in the opening paragraph of this Master Agreement.

1.22 Payback Criteria means, with respect to an ECO, the number of years obtained by dividing (i) the total estimated implementation cost of the ECO (including the costs incurred by the Company under this Master Agreement, but excluding all financing costs associated with implementation of the ECO), by (ii) the estimated savings to the Customer from the installed ECO, including energy savings, maintenance savings, avoided capital costs, and other avoided costs as applicable. All such estimates shall be made by the Company, in its sole professional judgment, and shall be binding upon the Customer for purposes of this Master Agreement.

1.23 Person means any individual or entity of any type, including, but not limited to, corporations, partnerships, business trusts, associations, governmental agencies, political subdivisions, state, district, college, university, board or other organization.

1.24 Program means the demand side management Services provided by the Company for its customers pursuant to a Company-initiated program known as the Energy Efficiency Services Program.

1.25 Punch List means, with respect to a particular ECO, a list of Minor Deficiencies provided by the Customer to the Company prior to the Customer's receipt and execution of a Notice of Substantial Completion.

1.26 Service Location means a facility legally owned or operated by the Customer at which the Customer desires the Company to perform Services.

1.27 Services means the energy efficiency services provided by the Company to the Customer under the Program and pursuant to the terms of this Master Agreement, including, but not limited to, the preparation of Feasibility Proposals, Feasibility Studies and Implementation Services.

1.28 Substantial Completion or Substantially Complete means, with respect to a particular ECO, that level of construction and implementation which renders the ECO operational, regardless of whether the ECO has one or more Minor Deficiencies, as determined within the reasonable exercise of the Company's professional judgment.

1.29 Substantial Completion Date means the date or milestone set forth in a Feasibility Report that is determined by the Company to be Substantially Complete.

1.30 Vendor means any vendor, manufacturer, or other representative of an ECO vendor, manufacturer, or distributor utilized by the Company in providing Services in accordance with this Master Agreement.

## ARTICLE 2 - SCOPE OF MASTER AGREEMENT AND TERM

2.1 Scope. Subject to the terms and conditions of this Master Agreement, the Company agrees to furnish to the Customer, and the Customer agrees to purchase and receive from the Company, certain Services at the Customer's specified Service Locations. The Parties shall agree upon the Services that the Company will furnish to the Customer with respect to each Service Location and with respect to ECO's identified at particular Service Location prior to the Company commencing work at any designated Service Location as set forth in an Authorization Form which accompanies one or more Feasibility Study Proposals and Feasibility Reports, as set forth in Articles 3 and 4 of this Master Agreement. Each of the various proposals, documents and forms referenced in this Master Agreement shall adopt and incorporate the terms and conditions of this Master Agreement as if such terms and conditions were expressly set forth within such proposals, documents and forms. Unless expressly stated in a Change Order in accordance with Article 14 below, where the terms and conditions of any schedules or exhibits thereto are inconsistent with the terms and conditions of this Master Agreement, the terms of this Master Agreement shall govern the terms and conditions of the Service. In the event the terms and conditions of Change Orders conflict, the most recently executed Change Order shall govern the terms and conditions of the Service.

2.2 Term. This Master Agreement shall commence upon the Effective Date and shall continue in effect for a period of five (5) years with automatic twelve (12) month annual renewals until written notice of termination by either Party in accordance with the provisions of Article 15 herein; provided that upon such written notice of termination, portions of this Master Agreement shall remain in effect as set forth in Articles 7 and 15.

## ARTICLE 3- FEASIBILITY STUDY AND REPORT

3.1 Preparation of Feasibility Study Authorization Form by Company. The Company may prepare and deliver to the Customer a Feasibility Study Authorization Form, which identifies any potential ECO's that the Company believes, in its sole professional judgment, may provide appropriate justification to proceed with the preparation of a Feasibility Study. Each Feasibility Study Proposal shall include a designation of the Services to be provided, the technologies to be included in the proposed Feasibility Study and the Feasibility Study Price. A sample copy of a Feasibility Study Authorization Form is attached to this Master Agreement as Schedule A.

3.2 Authorization to Proceed with Feasibility Study. Unless otherwise mutually agreed to by the Parties in writing, a Feasibility Study Authorization Form must be executed by the Customer and delivered to the Company within sixty (60) days after the Customer's receipt of the Feasibility Study Authorization Form to authorize the Company to proceed with the Feasibility Study. Upon the Company's timely receipt of a properly completed Feasibility Study Authorization Form wherein the Customer requests a Feasibility Study for any or all of the ECO's identified in the Feasibility Study Authorization Form, then the Company shall prepare and submit a Feasibility Study to the Customer. If the Customer elects to not authorize a Feasibility Study, or if the Customer fails to deliver to the Company an executed Feasibility Study Authorization Form within the sixty (60) day period provided by this Section 3.2, the Company shall have no duty or obligation to conduct a Feasibility Study with respect to any of the ECO's at the Service Locations identified in the Feasibility Study Authorization Form.

3.3 Feasibility Report. Pursuant to a Customer-authorized Feasibility Study performed by the Company in accordance with a Feasibility Study Authorization Form, the Company shall recommend ECO's for implementation at any Service Locations surveyed based on a life-cycle cost analysis and estimated energy savings for each ECO. The Company shall prepare and submit to the Customer a Feasibility Report specifying each recommended ECO and providing for each an estimate of (a) the expected implementation cost, (b) the anticipated life-cycle cost savings, and (c) the estimated timing for implementation, all of which shall be estimates only, based on the Company's reasonable assumptions. In the case of each ECO examined in a Feasibility Report, the Company

shall provide sufficient information to determine whether the Customer's Payback Criteria are expected to be met based on the Company's estimates.

3.4 Authorization to Proceed with Feasibility Report. Each Feasibility Report will include an Implementation Services Authorization Form, as defined below in Section 4.1, which must be executed by the Customer and delivered to the Company within sixty (60) days after the Customer's receipt of the Feasibility Report to authorize the Company to proceed with the preparation of an implementation of the Feasibility Report in accordance with Article 4. If the Customer timely delivers to the Company an executed Implementation Services Authorization Form, the Company will proceed with preparing any implementation of the Feasibility Report authorized by the Customer on the Implementation Services Authorization Form; provided, however, that if the Customer elects to proceed with less than fifty percent (50%) of the recommended ECO's (as determined on an estimated implementation cost basis) identified in a Feasibility Report, the Company shall have the ability to refuse to proceed with preparation and implementation identified in a Feasibility Report for any ECO's that the Customer elects to proceed. Each Implementation Services Authorization Form accompanying and referencing a Feasibility Report will include an option allowing the Customer to defer payment of the Feasibility Study Price in accordance with Section 3.5.3 if the Customer elects to proceed with additional Implementation Services.

### 3.5 Feasibility Study Price and Payment Terms.

3.5.1 Feasibility Study Price. Except as otherwise provided in Section 3.5.3, the Customer shall pay to the Company the Feasibility Study Price which is included in a Customer-executed Feasibility Study Authorization Form for all Services performed by the Company in conducting a Customer-authorized Feasibility Study and issuing a Feasibility Report. The Feasibility Study Price is the full compensation for the Services performed by the Company in conducting a Company-authorized Feasibility Study and rendering a Feasibility Report and includes all federal, state and local taxes, if any, assessed with respect to the Services or with respect to the furnishing of any items under the Feasibility Study.

3.5.2 Payment Upon Failure to Authorize Additional Services. If the Customer elects to not proceed with Implementation Services or fails to deliver to the Company a completed and executed Implementation Services Authorization Form within sixty (60) days of the Customer's receipt of a Feasibility Report, the Company shall have no duty or obligation to proceed with any Implementation Services with respect to the ECO's identified in the Feasibility Report, and the Company shall provide an invoice to the Customer for the full Feasibility Study Price determined in accordance with Section 3.5.1 and included in the Feasibility Study Authorization Form. The Customer shall pay the total amount of the invoice in full within sixty (60) days following the Customer's receipt of the invoice.

3.5.3 Deferral Election. In the event the Customer elects to proceed with Implementation Services for one or more ECO's pursuant to Section 3.4, the Customer shall elect on the Implementation Services Authorization Form accompanying and referencing a Feasibility Report to either (a) receive an invoice for the full amount of the Feasibility Study Price, or (b) defer and roll-over payment of the Feasibility Study Price until such time as compensation is payable to the Company pursuant to Article 4 for Implementation Services. If the Customer elects to receive an invoice pursuant to clause (a) of this Section 3.5.3, or if the Customer fails to make a timely election pursuant to the foregoing, the Company shall issue an invoice for the full amount of the Feasibility Study Price, and the Customer shall pay such amount within thirty (30) days following receipt of the invoice.

3.5.4 Late Payments. Any overdue payment under Article 3 shall bear interest at the Delayed Payment Rate from the date such payment is due until and including the date of payment.

3.5.5 Release from Obligation to Pay Feasibility Study Price. Notwithstanding any provision in Section 3.5.1 to the contrary, the Customer shall have no obligation hereunder to pay the Company for a Feasibility Study or Feasibility Report performed by the Company if (a) the Feasibility Report submitted by the Company does not identify at least one potential ECO at a Customer Service Location specified in the Customer-executed Feasibility Study Authorization Form which meets the agreed upon Payback Criteria as set forth in the Feasibility Study Authorization Form, or (b) the Customer does not elect to proceed further with any recommended ECO as set forth in Section 3.4.

3.5.6 Notice of Termination of Feasibility Study by the Company. In the event the Company determines, prior to submission of the Feasibility Report to the Customer, that the Company will not be able to identify at least one potential ECO that meets the agreed upon Payback Criteria as set forth in the Feasibility Study Authorization Form, then the Company, in its sole discretion, may elect by written notice to the Customer to terminate its duties and obligations to complete and deliver the Feasibility Report, unless the Customer, within five (5) days following receipt of such notice, elects in writing to waive the provisions of Section 3.5.5 and to pay to the Company the Feasibility Study Price as otherwise set forth in Section 3.5.1.

#### ARTICLE 4 – INSTALLATION AND IMPLEMENTATION

4.1 Authorization to Proceed with Implementation Services. Each Feasibility Report will be referenced and incorporated into an Implementation Services Authorization Form which must be executed by the Customer and delivered to the Company within sixty (60) days after the Customer's receipt of the Feasibility Report to authorize the Company to proceed with the Implementation Services identified in the Feasibility Report. A sample copy of an Implementation Services Authorization Form is attached to this Master Agreement as Schedule B. If the Customer timely delivers to the Company an executed Implementation Services Authorization Form, the Company will proceed with conducting the Implementation Services specified in the Feasibility Report. If the Customer elects to not authorize the Implementation Services or if the Customer fails to deliver to the Company an executed Implementation Services Authorization Form within the sixty (60) day period provided by this Section 4.1, the Company shall have no duty or obligation to perform any Implementation Services with respect to any of the ECO's at the Service Locations identified in the Feasibility Report, and the Customer shall pay the Company for the Feasibility Study prepared for such ECO.

#### 4.2 Substantial Completion and Final Acceptance.

4.2.1 Inspections and Notice of Substantial Completion. During the performance of Implementation Services under this Article 4, the Customer shall have the right to conduct reasonable inspections of the work of the Company or any Subcontractor at any time upon reasonable prior notice. Upon Substantial Completion of construction and installation of each ECO in accordance with a Customer-authorized Feasibility Report, the Company shall deliver a Notice of Substantial Completion to the Customer. A sample copy of a Notice of Substantial Completion is attached to this Master Agreement as Schedule C. The Customer shall have delivered a list of any Punch List items and any potential material defect or deficiency prior to the Customer executing a Notice of Substantial Completion.

4.2.2 Correction of Material Defects or Deficiencies. Prior to receiving a Notice of Substantial Completion, the Customer agrees it has identified and delivered written notification to the Company any and all potential material defect or deficiency in an ECO. If the Customer determines that a material defect or deficiency exists, then the Company shall cause any necessary corrections to be made to remedy the material defect or deficiency. If for any reason the Customer fails to deliver written notification to the Company of a material deficiency or defect in an ECO following the Customer's receipt of a Notice of Substantial Completion, the Customer shall thereby be deemed to have irrevocably acknowledged and agreed that (a) each ECO meets the requirements of the Master Agreement and the Customer-executed Implementation Services Authorization Form, and (b) each such ECO is complete and ready for operation. The Customer's sole recourse and exclusive remedy for the Company's failure to complete any Minor Deficiencies identified in the Punch List items in accordance with this Master Agreement is to seek its sole and exclusive remedy in accordance with Article 5, Warranty.

4.2.3 Correction of Punch List Items. Prior to receiving a Notice of Substantial Completion, the Customer agreed it has identified and delivered to the Company a Punch List which lists one or more Minor Deficiencies in an ECO. Following such identification and receipt of a Punch List, the Company shall work diligently to complete or correct such items and work listed in the Punch List within a reasonable time period. Upon completion of any Punch List items, the Company shall deliver a written notification of Punch List completion to the Customer.

4.2.4 Payment Unconditional Upon Substantial Completion. The Customer acknowledges that, notwithstanding the existence of any Minor Deficiencies, regardless of their inclusion in a Punch List, the Customer

unconditionally agrees to make payment to the Company for the ECO's listed in a Notice of Substantial Completion once the ECO's are, or are deemed to be, Substantially Complete in accordance with the applicable Implementation Services Authorization Form. The Customer acknowledges that, upon the Substantial Completion Date of an ECO, the Customer's payment obligation set forth in the Feasibility Report for the ECO (notwithstanding the existence of Minor Deficiencies or the failure of the Company to properly complete or correct such Minor Deficiencies), is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including, without limitation, any set-off, abatement, counterclaim, suspension, recoupment, reduction, rescission, defense or other right. The Customer's sole recourse and exclusive remedy for the Company's failure to complete any Minor Deficiencies identified in the Punch List items in accordance with this Master Agreement is to seek its sole and exclusive remedy in accordance with Article 5, Warranty.

4.2.5 Notice of Final Acceptance. Upon (i) the Customer's execution of the Notice of Substantial Completion, and in accordance with the process set forth in Section 4.3.2 to correct any material defects or deficiencies identified by the Customer, and (ii) the Company's completion of Minor Deficiencies identified in Punch List as set forth in Sections 4.2.3 and 4.2.4, the Company shall deliver a Notice of Final Acceptance to the Customer to execute. A sample of a Notice of Final Acceptance is attached to this Master Agreement as Schedule D. The Customer acknowledges that the Customer unconditionally agrees to make final payment to the Company for the ECO's listed as of the Final Acceptance Date, or are deemed to be, complete in accordance with this Master Agreement. The Customer acknowledges that, upon the Final Acceptance Date of an ECO, the Customer's payment obligation of the remaining ten percent (10%) of the Implementation Price set forth in the Feasibility Report for the ECO, is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including, without limitation, any set-off, abatement, counterclaim, suspension, recoupment, reduction, rescission, defense or other right. The Customer's exclusive recourse for any claim regarding the Implementation Services following the Final Acceptance Date is to seek its sole and exclusive remedy in accordance with Article 5, Warranty.

4.2.6 Reliance. The provisions of Article 4 may be relied on by the Company and by any assignee of the Company in connection with the furnishing of ECO financing to the Customer in accordance with the provisions of the Master Agreement. Any assignee of the Company shall be entitled to the rights, but not the obligations, of the Company under this Article 4.

4.2.7 ECO Responsibility. Unless otherwise mutually agreed to by the Parties, the Company assumes no responsibility for performance or maintenance of ECO's, which are to be insured by the Customer. No Vendor is an agent of Company, and no Vendor or employee of any Vendor is authorized to waive, supplement or otherwise alter any terms, conditions, or agreement between the Company and the Customer.

4.2.8 Training. If applicable, and if set forth in a Customer-authorized implementation of a Feasibility Report pursuant to a Customer-authorized Implementation Services Authorization Form, the Company shall provide on-site training for a reasonable number of the Customer's operating personnel with respect to completed ECO's, and the Customer shall assist in such training, all as more fully specified in the Feasibility Report. Unless otherwise provided in the Feasibility Report, such training shall be conducted with respect to an ECO following the Substantial Completion Date of the ECO.

#### 4.3 Implementation Price and Payment.

4.3.1 Implementation Price. The Customer shall pay to the Company the Implementation Price set forth in a Feasibility Report for all Implementation Services performed by the Company pursuant to a Customer authorized Implementation Services Authorization Form. The Implementation Price is the full compensation for such Implementation Services and includes all federal, state and local taxes, if any, including sales, use and excise taxes, assessed with respect to the Implementation Services or with respect to the furnishing of equipment and materials thereunder.

4.3.2 Implementation Price Payment. Within thirty (30) days following the Substantial Completion Date or as otherwise set forth in the draw schedule attached to the Implementation Authorization Form, the Company shall provide an invoice to the Customer for all or any portion of the Implementation Price, in accordance with Section 4.2.5, together with any unpaid Feasibility Study Price for such ECO(s), and the Customer

shall be obligated to pay the total of such amounts within thirty (30) days following receipt of the invoice. In the event the Master Agreement is terminated by either Party prior to the Substantial Completion Date, all accrued and unpaid Feasibility Study Price and Implementation Price, including any unpaid interest accrued upon such amounts, shall be paid by the Customer to the Company within thirty (30) days following the Customer's receipt of an invoice therefore.

4.3.3 Late Payment. Any overdue payment under Section 4.4 shall bear interest at the Delayed Payment Rate from the date such payment is due until and including the date of payment.

4.4 Identification of Energy Savings. As applicable, the Company shall set forth appropriate systems and procedures for measuring and verifying the actual energy savings resulting from the Implementation Services of an ECO, which shall be set forth in an applicable Feasibility Report.

4.1.1 Energy Savings Guarantee. As set forth in and in accordance with the applicable Implementation Services Authorization Form, the Company has formulated and, subject to the adjustments provided for in Section 4.1.2, has guaranteed the annual level of energy and operations savings to be achieved as a result of the installation and operation of the ECO and provision of Services provided for in this Master Agreement.

4.1.2 Annual Review and Reimbursement/Reconciliation. The Company shall provide to the Customer an annual reconciliation of the guaranteed energy cost savings. If at the end of any calendar year during the guarantee period as specified in the applicable Implementation Services Authorization Form, the ECO has failed to achieve the specified annual energy savings guarantee, and, upon written request by the Customer, which shall be given no earlier than the end of such year and no later than forty-five (45) days thereafter, the Company will pay the Customer the difference between the annual amount guaranteed and the amount of actual energy and operations savings achieved at the Location in accordance with the provisions of the applicable Implementation Services Authorization Form. The Company shall remit such payments to the Customer within forty-seven (47) days of written notice by the County of such monies due. When the total energy savings in any one calendar year during the guarantee period exceed the energy savings guarantee as set forth in Implementation Services Authorization Form, and are in addition to those monies due the Company for compensation for Services rendered as set forth in Implementation Services Authorization Form, such excess savings shall first be applied to reimburse the Company for any payment the Company made to Customer to meet the applicable ECO's guarantee for previous years in which the energy savings fell short of the applicable ECO's Energy Savings Guarantee under the terms as set forth in the applicable Implementation Services Authorization Form. Any excess savings not needed to reimburse the Company for prior year shortfalls shall be allocated to the Customer.

4.5 Bonds. On or before the Company commences Implementations Services at an ECO, the Company shall provide the Customer a one hundred percent (100%) performance bond and a labor and materials payment bond pursuant to Section 255.05, Florida Statutes, in an aggregate amount of not less than the Implementation Price.

## ARTICLE 5 - WARRANTY

5.1 General Warranty. The Company warrants to the Customer that the Services performed by the Company under this Master Agreement shall be performed with the degree of skill and care that is required by current good and sound professional procedures and practices, and in conformance with generally accepted industry standards prevailing at the time the Services are performed. The Company further warrants that all equipment and materials provided and installed by the Company in connection with the implementation of any ECO hereunder shall be new, be free from significant defects in design, engineering, materials, construction and workmanship, as reasonably determined by the Customer, and conform in all material respects with all requirements of applicable law, the final Design Documents applicable to such ECO and all descriptions set forth therein, applicable engineering and construction codes and standards, and all other requirements of this Master Agreement and of any applicable Customer-authorized Implementation Services Authorization Form.

5.2 Warranty Period. The warranty period for the warranties set forth in Section 5.1 shall extend, with respect to each installed ECO, for a period of one (1) year following the Substantial Completion Date for such ECO.

5.3 Remedies. The Customer shall promptly notify the Company in writing of the discovery during the applicable warranty period of any claim against the Company's warranties under Section 5.1, including any defects in the equipment or materials installed as part of an ECO. As the Customer's sole and exclusive remedy for any such claim against the Company's warranties, the Company shall, at its own cost and expense, as soon as reasonably possible following the Company's receipt of notice of any claim against any warranty or the Company's otherwise obtaining knowledge of any claim of warranty, cause the repair (or as Company determines appropriate the replacement, rework and/or retest) of defective equipment and construction workmanship and/or provide at the Company's expense any changes, modifications or additions to the work which the Company determines necessary due to a failure to perform any Services hereunder and furnish the equipment and materials in accordance with the standards set forth in Section 5.1. All costs incidental to the Company's rework and testing thereof shall be borne by the Company. The Company shall use reasonable efforts to perform such remedial actions and make any tests in a timely manner and at such times so as to minimize disruption of normal operations at the Customer's Service Location.

5.4 Vendor Warranties. Without limiting the Company's warranty set forth in Section 5.1, the Company, in procuring materials and equipment for an ECO, shall use reasonable efforts to obtain customary and standard Vendor warranties from the supplier or Subcontractor for the benefit of the Company and the Customer. The Customer shall be entitled to the benefit of any Vendor or Subcontractor warranties obtained which are better or of longer duration than those provided by the Company hereunder. If any such warranties are for a period longer than the Company's warranties, they shall be transferred to the Customer at the end of the Company's warranty period hereunder.

5.5 Company Principally Responsible. Notwithstanding Section 5.4, the Company shall have primary liability with respect to all Company warranties set forth in Section 5.1, including warranties with respect to materials and equipment, whether or not any event or defect is also covered by a Vendor or Subcontractor warranty, and the Customer need only look to the Company for corrective action pursuant to Section 5.3; provided that the Company shall receive the benefit of any Vendor or Subcontractor warranties.

5.6 Warranty Exclusions. The liabilities and obligations of the Company under this Article 5 do not extend to any repairs, adjustments, alterations, replacements or maintenance which were not prior approved in writing by the Company or may be required as a result of wear and tear in the operation or use of an ECO, or as a result of the Customer's failure to operate or maintain an ECO in accordance with the operating manuals or instructions supplied by the Company, or in accordance with the training provided by the Company to Customer's personnel.

5.7 NO IMPLIED WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 5, THE COMPANY MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, CONCERNING THE SERVICES OR ANY ECO, AND THE COMPANY DISCLAIMS ANY WARRANTY IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE. UNLESS OTHERWISE EXPRESSLY STATED IN A FEASIBILITY REPORT ATTACHED TO AN IMPLEMENTATION AUTHORIZATION FORM OR AS REQUIRED UNDER CHAPTER 489, FLORIDA STATUTES, THE COMPANY MAKES NO WARRANTIES OR GUARANTEES OF ANY NATURE WHATSOEVER CONCERNING THE ACTUAL REDUCTION IN THE CUSTOMER'S ENERGY USAGE AS A RESULT OF THE INSTALLATION AND OPERATION OF ANY ECO, AND THE CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY ESTIMATED SAVINGS, ESTIMATED LOAD REDUCTIONS OR OTHER SIMILAR PROJECTIONS SUPPLIED OR MADE BY THE COMPANY SHALL BE FOR INFORMATIONAL PURPOSES ONLY AND SHALL NOT CONSTITUTE A WARRANTY OR GUARANTEE BY THE COMPANY OF THE ACTUAL SAVINGS OR LOAD REDUCTION, IF ANY, WHICH MAY BE EXPERIENCED BY THE CUSTOMER.

#### ARTICLE 6 - LIMITATION OF LIABILITY

6.1 No Operating or Maintenance Responsibility. Except as otherwise specifically provided in Article 5, the Company shall have no responsibility or liability with respect to any ECO after the Substantial Completion Date thereof, and the Customer shall be solely responsible for the operation, maintenance and utilization of each



ECO after such date. Without limiting the generality of the foregoing, no payment obligation of the Customer arising under this Master Agreement shall be affected by the actual performance of any ECO following the Substantial Completion Date.

6.2 Consequential Damages. Neither Party shall be liable to the other Party for special, indirect, consequential or punitive damages, even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost institutional operating savings.

6.3 Intent. Except for each Party's indemnification obligations under this Agreement, each Party's total aggregate liability under this Master Agreement shall not exceed the total cost of the Services rendered and paid for by the Customer giving rise to the Dispute. The guaranteed savings that are set forth in an applicable Implementation Services Authorizations Form do not constitute a debt, liability, or obligation of the Customer. Except in cases of willful misconduct, the Parties intend that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Master Agreement shall apply even in the event of the fault, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its and their partners, shareholders, directors, officers, employees, contractors and agents. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the termination, suspension, cancellation or rescission of this Master Agreement. No officer, director, employee, agent or other individual representative of either Party shall be personally responsible for any liability arising under this Master Agreement.

6.4 Remedies. Where remedies are expressly afforded by this Master Agreement with respect to the Services provided by the Company, such remedies are intended by the Parties to be the sole and exclusive remedies of the Customer for liabilities of the Company arising out of or in connection with the Services or this Master Agreement, notwithstanding any remedy otherwise available at law or in equity.

## ARTICLE 7 - ACCESS AND INFORMATION

7.1 Customer Cooperation. The Customer shall use reasonable efforts to assist the Company in performing the Services contemplated by this Master Agreement, including providing reasonable access to the Customer's Service Location(s), providing information concerning the Service Location(s), making appropriate Customer personnel available if requested by the Company to assist the Company in performing such Services, and taking any other actions the Company may reasonably request from time to time to achieve the purposes and intent of this Master Agreement.

7.2 Access to Service Locations. Upon the request of the Company, the Customer shall provide the Company and its Subcontractors with reasonable access to the Service Location(s) to enable the Company to perform all Services hereunder and to verify and confirm the operation of any installed ECO following the Substantial Completion Date. The Company also shall have access to the Service Location(s) during the warranty period specified in Article 5 for purposes of performing its obligations thereunder. The Customer shall provide the Company with adequate storage and laydown areas at the Service Location(s), as applicable, during the installation of ECOs and shall make available any construction power and other utilities required by the Company and its Subcontractors to perform the Services. The Company and its Subcontractors shall observe all of the Customer's safety and security procedures at the Service Location(s), to the extent made known to the Company, and shall not unreasonably disturb or interrupt the Customer's operations at such location(s).

7.3 Requests for Information. The Customer shall promptly comply with all reasonable requests by the Company for information concerning the Service Location(s), as required by the Company to perform the Services, and information to enable the Company to determine the actual energy savings and load reduction achieved at the Service Location(s) as a result of ECO implementation. The Customer also shall provide the Company with any information and other assistance reasonably required to verify to the Florida Public Service Commission the demand and energy savings achieved and the related costs thereof. The Customer agrees that the Company may disclose such information obtained by the Company or provided by the Customer pursuant to this

Master Agreement or any supplemental Master Agreement to the Florida Public Service Commission and to any other public authority having jurisdiction.

7.4 Nondisclosure and Use of Confidential Information. Confidential Information shall not be used for any purpose other than to analyze, implement or complete the Program. Confidential Information shall be held in strict confidence by the Customer and its agents and shall not be disclosed without prior written consent of the Company, except to the Customer's employees with a need to know the Confidential Information for the purpose of performing work related to the Program. The Customer shall require all of its agents receiving the Confidential Information to be bound by the terms of Sections 7.1 through 7.7 of this Master Agreement. The Customer shall be responsible for any breach of this Master Agreement by Customer or its agents.

7.5 Required Disclosure. In the event that the Customer is requested or required by legal or regulatory authority to disclose any Confidential Information or as otherwise required pursuant to the provisions of the Florida Public Records Act, Chapter 119, Florida Statutes, the Customer shall promptly notify the Company of such request or requirement prior to disclosure so that the Company may seek an appropriate protective order and/or waive compliance with the terms of this Master Agreement. In the event that a protective order or other remedy is not obtained, or the Company waives compliance with the provisions hereof, the Customer agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. Notwithstanding anything to the contrary, the Parties and their agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Program and all materials of any kind (including opinions or other tax analyses) that are provided to either Party relating to the tax treatment and tax structure of the Program.

7.6 Disclosure to Third Party Lender. The Customer hereby acknowledges and agrees that the Company may disclose financial information that has been provided by the Customer to the Company for the purpose of assisting the Customer in obtaining financing for Implementation Services that would be provided under this Master Agreement.

7.7 Survival. Notwithstanding anything to the contrary, the obligations of the Parties under Sections 7.1 through 7.7 shall survive the termination of this Master Agreement.

## ARTICLE 8 - DOCUMENTS AND DATA

8.1 Ownership Rights. Any Feasibility Study, Feasibility Report or other report or document furnished or to be furnished by the Company pursuant to this Master Agreement constitute Confidential Information and shall remain the sole and exclusive property of the Company and may only be used by the Customer through the grant of a limited license for the operation, maintenance, repair or alteration of any ECO installed by the Company. The Customer shall not acquire any rights or interest with respect to the Company's or its Subcontractors' proprietary technology, know-how, processes or computer software or any other intellectual property that may be used in connection with the Services or the supply of equipment and materials hereunder. The Customer acknowledges that the Company provides Services to other companies and agrees that nothing in this Master Agreement will be deemed or construed to prevent the Company from carrying on such business. In particular, the Customer agrees that, notwithstanding anything to the contrary set forth herein, as part of the Company's provision of the Services hereunder, the Company may utilize software, methodologies, tools, specifications, models, samples and documentation, the Company's Confidential Information, as well as copyrights, trademarks, service marks, ideas, concepts, know-how, techniques, knowledge or data, which have been originated, developed or purchased by the Company or by third parties under agreements to provide services for such third parties.

8.2 No Use of Documents After Termination. If any Feasibility Study, Feasibility Report or other document prepared by the Company under this Master Agreement is terminated, in whole or in part, by the Customer prior to completion of the installation of any ECO, or the Customer chooses not to proceed with the implementation of an ECO as set forth herein, then the Customer shall not be entitled to use any such document for any purpose whatsoever, and the Customer shall, to the fullest extent permitted by law, be obligated to indemnify,

defend and hold harmless the Company and its Subcontractors with respect to all claims, actions, liabilities and costs (including attorneys' fees and costs of litigation) arising out of any unauthorized use by the Customer.

#### ARTICLE 9 - INSURANCE

9.1 Insurance to Be Maintained by the Company. At any time that the Company is performing Services under this Master Agreement at any Customer Service Location, the Company shall keep and maintain, with insurers the minimum coverages and limits necessary to fulfill its obligations under this Master Agreement. The Company shall have the right at anytime to self-insure any obligations in connection with its performance of the Services. Upon request by the Customer, the Company shall provide proof of such adequate or self-insurance.

9.2 Customer Insurance. During and throughout the term of this Master Agreement and until all amounts payable to the Company pursuant to this Master Agreement are paid in full, the Customer shall maintain, as of the date of installation of each ECO, (i) comprehensive property insurance, including all risk physical damage insurance, on each ECO with replacement cost coverage; and (ii) comprehensive liability insurance for bodily injury, death, and property damage in the amount of \$1,000,000 with coverage in excess of the \$100,000 or \$200,000 waiver of sovereign immunity provided for in Section 768.28(5), Florida Statutes, and the indemnity obligation of Customer shall extend up to but shall not exceed the higher limits of such insurance. The Company and its assignees shall be named as additional insureds and as loss payees, as their interests appear under this Master Agreement, and each policy shall be endorsed to be primary to any insurance maintained by the Company. The Customer shall provide the Company and its assignees with insurance certificates which provide evidence of the insurance coverage under this Master Agreement, in form and substance reasonably satisfactory to the Company and its assignees. Such certificates shall provide at least twenty (20) days prior written notice of cancellation or material change, with the exception of ten (10) days for nonpayment of premiums, to each additional insured and loss payee named therein.

#### ARTICLE 10 - INDEMNIFICATION

10.1 Indemnity Obligations. The Company shall not be responsible for damages from the Customer's negligence. The Customer shall not be responsible for damages resulting from the Company's negligence. To the fullest extent permitted by law, the Parties shall hold harmless, indemnify and defend the each other against all liability, claims, judgments or costs for injury to, or death of any person or persons, for the loss or damage to any property, and for the imposition of any penalties, fines or other assessments by any governmental agency arising out of the use, ownership of each and any Service Location, operation or performance of the terms of this Master Agreement, and resulting exclusively from any negligence by the other Party, or any of its employees, agents, contractors or representatives.

10.2 Employee Claims. In any and all claims against a Party, its affiliates or contractors and their respective directors, partners, shareholders, officers, agents and employees (collectively, the "Indemnitee") by an employee of the other Party (the "Indemnitor") or of anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations stated in Section 10.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the indemnifying Party under any applicable worker's compensation law, disability law, or other employee benefit law.

10.3 Defense of Claims. An Indemnitor shall have the right to defend an Indemnitee by counsel (including insurance counsel) of Indemnitor's selection reasonably satisfactory to the Indemnitee, with respect to any claims within the indemnification obligations hereof. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. No Indemnitee shall settle any such claims or actions without prior written consent of the Indemnitor.

10.4 Payment. In the event that either Party is required to make an indemnity payment under this Article 10, such Party shall promptly pay the Indemnitee the amount so determined. The amount owing to the

Indemnity shall be the amount of such Indemnity's actual out-of-pocket loss or expense, net of any insurance or other recovery paid to such Indemnity. If there should be a dispute as to the amount or manner of determination of any indemnity obligation, the Indemnitor shall nevertheless pay when due such portion, if any, of the obligation as is not subject to dispute. Upon the payment in full of any claim, the Indemnitor making payment shall be subrogated to the rights of the Indemnity against any person with respect to the subject matter of such claim.

10.5 Survival. The obligations of the respective Parties under this Article 10 shall survive the termination of this Master Agreement with respect to any claims or liability arising prior to such termination.

#### ARTICLE 11 - HAZARDOUS MATERIALS

The Customer shall have sole responsibility and liability with respect to the proper identification, removal and disposal of any hazardous materials (e.g., asbestos) or correction of any hazardous condition at a Service Location which affects the Company's performance of the Services under this Master Agreement. If, during the course of performing the Services, the Company becomes aware of any such hazardous materials or hazardous condition, the Company shall promptly report such matter to the Customer and before disturbing (or further disturbing) such materials or condition. Work in the affected areas shall be resumed by the Company only upon the written notice from the Customer that such materials have been removed or such condition has been corrected, and then only if such continuation of work shall not violate any applicable law or permit. The Customer shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the Company and its Subcontractors with respect to any liability, cost or expense of whatever nature incurred as a result of any such hazardous materials or hazardous condition.

#### ARTICLE 12 - TITLE, RISK OF LOSS, SECURITY INTEREST AND TAXES

12.1 Passage of Title. Upon the Company's receipt of full payment for Services performed under each Implementation Services Authorization Form, legal title to each installed ECO, including all equipment and materials comprising a part thereof, shall pass to the Customer upon the Substantial Completion Date for the ECO. Notwithstanding the foregoing, the Customer shall bear all risk of loss or damage of any kind with respect to all or any part of an ECO located at a Service Location, whether installed or not, and the Customer shall hold the Company harmless from and pay for the repair or replacement of any ECO or component thereof stolen, lost, destroyed or damaged at a Service Location, unless such loss or damage is directly caused by the Company or an Subcontractor retained by the Company. Loss or damage to an ECO directly caused by the Company or its Subcontractor shall be the responsibility of the Company. The Customer hereby releases and waives, and will cause its insurers to release and waive, any right of subrogation against the Company and each of its Subcontractors.

12.2 Warranty of Title. The Company warrants good title to all ECO's and components thereof furnished or installed by the Company or its Subcontractors, and the Company warrants that title to such ECO's and components shall pass to and vest in the Customer as set forth in Section 12.1 free and clear of all liens, claims, charges, security interests, encumbrances and rights of other parties arising as a result of the actions or failure to act of the Company, its Subcontractors, or their employees.

12.3 Taxes. The Customer agrees to pay any taxes and assessments, whether real or personal, which are now or hereafter imposed or assessed by any governmental authority, whether it be federal, state or local, with respect to the installation, delivery, sale, use, operation or maintenance of the ECO's, and to make all filings in respect of any such taxes and assessments. The Company shall have no obligation or liability with respect to any property tax nor with respect to any income, excess profits, or revenue tax charged or levied against the Customer as a result of this Master Agreement. The Company shall pay any sales and use taxes imposed on the ECO's prior to the Company's delivery or installation of the ECO's, as required by applicable law, subject to any sales and use tax exemptions available to the Company and the Customer.

### ARTICLE 13 - FORCE MAJEURE

If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. Notwithstanding the foregoing, the occurrence of a Force Majeure Event shall not relieve the Customer of its payment obligations for Services rendered set forth in Article 3, Feasibility Study and Report and Article 4, Installation and Implementation.

### ARTICLE 14 - CHANGES

Upon receiving such a request, the Company may at its sole option prepare and deliver a proposed Change Order to the Customer listing the price of the Changes. If the Customer fails to return an executed Change Order, a sample copy of which is attached to this Master Agreement as Schedule E, the Company shall have no obligation to complete the Changes. A Change also may result from any failure of the Customer, or its representatives or agents, to fulfill its obligations hereunder, which failure materially adversely affects the Company's cost, schedule or performance under this Master Agreement. Should any Change cause a material increase or decrease in the cost of or time required for the Company's performance, or otherwise affect any provision of this Master Agreement, the Company may propose an appropriate adjustment. The Company shall not be obligated to proceed with or perform any Change requested by the Customer hereunder until the Parties have agreed in writing upon any such adjustments resulting from the Change. Except to the extent a Change specifically results in an amendment or adjustment to one or more provisions of this Master Agreement, all provisions of this Master Agreement shall apply to all Changes, and no Change shall be implied as a result of any other Change.

### ARTICLE 15 - TERMINATION AND DEFAULT

15.1 Termination for Convenience. Either Party may terminate this Master Agreement, in its sole discretion, at any time, without further liability, upon ten (10) days prior written notice to the other Party; provided, however, that such termination shall not apply with respect to any Services or work of the Company previously ordered by the Customer under an Authorization Form executed by the Customer on or prior to the termination date. With respect to any such previously ordered Services or work, including any previously implemented ECO or ECO under implementation, this Master Agreement and the applicable Customer-authorized proposals, shall remain in full force and effect in accordance with their terms, unless both Parties specifically agree in writing to the contrary.

#### 15.2 Termination for Cause.

15.2.1 Termination by Either Party for Default. A Party shall have the right to terminate this Master Agreement or a Customer-authorized Implementation Services Authorization Form, for cause if: (a) any proceeding is instituted against a Party seeking to adjudicate such Party as bankrupt or insolvent, or if such Party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of such Party, or if a Party files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts and, in the case of any such proceeding instituted against such Party (but not by such Party) such proceeding is not dismissed within sixty (60) days of such filing; (b) the Customer fails to perform any payment obligation under this Master Agreement and fails to cure such obligation within ten (10) days written notice from the Company; or (c) a Party substantially fails to perform any non-payment obligation under this Master Agreement and fails to cure or commence and diligently proceed to cure such obligation within thirty (30) days written notice from the other Party. Subject to Article 6, in the case of such a termination by a Party, to the extent that the reasonable and necessary costs of completing any Services previously ordered by the non-defaulting Party under this Master Agreement, including compensation for obtaining a replacement contractor or for obtaining additional professional services required as a consequence of the defaulting Party's breach, exceed those costs which would have been payable to the defaulting Party but for the defaulting Party's breach, the defaulting Party shall pay the difference to the non-defaulting Party. The Customer shall pay the Company an amount (to the extent not already paid) equal to the sum of all of the Company's

reasonable costs incurred in performing the Services up to the termination date, including all costs incurred with respect to any Subcontractors; provided that the Company makes available to the Customer all of the work product, equipment and materials produced or obtained by the Company in performing such Services (except any and all intellectual property of the Company or third parties).

15.2.2 Payment. All amounts payable by either Party pursuant to Sections 15.1 and 15.2 shall be due within thirty (30) days following the submission by the other Party of an invoice therefor, which invoice shall include in reasonable detail an itemization of costs with respect to any amounts measured on the basis of reimbursable costs. Reimbursable costs also shall be subject to audit by the other Party, at the other Party's expense upon reasonable advance notice; provided that such audit shall be completed within sixty (60) days following the submission of the invoice. Amounts not paid by either Party to the other when due hereunder shall bear interest, from the date payment was due to and including the date of payment at the Delayed Payment Rate.

#### ARTICLE 16 - DISPUTES

16.1 No Set-Off. Anything to the contrary notwithstanding, all payments under this Master Agreement shall be made without set-off or deduction. Any payment not made by the date required by the Master Agreement shall bear interest from the date on which such payment was due and payable through and including the date such payment is actually received at the Delayed Payment Rate. If, as a result of a Dispute settled in favor of Customer, a refund is owed to Customer, then the amount of the overpayment shall bear interest from the date on which such payment was received by the Company through and including the date that the overpayment is refunded by the Company at an annual rate equal to the Delayed Payment Rate.

16.2 Pendency of Dispute. The existence of any Dispute, controversy or claim under this Master Agreement, or the pendency of the Dispute settlement or resolution procedures set forth in this Master Agreement, shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations hereunder or thereunder.

16.3 Alternative Dispute Resolution Process. Upon the written request of either Party, the Parties will meet for the purpose of resolving such Dispute. The Parties agree to discuss the problem and negotiate in good faith to attempt to resolve the Dispute. No formal proceedings may be commenced until either Party concludes in good faith that resolution of the Dispute through continued informal negotiations does not appear likely. Disputes that cannot be settled to in a manner described via informal discussions may be settled, but shall not be obligated to, mutually agree to non-binding mediation. Mediation must occur within twenty (20) business days after the Parties agree to submit the dispute to mediation, and the duration of the mediation shall be limited to one (1) business day. The Parties shall mutually select an independent mediator experienced in commercial information system contract disputes, and each Party shall designate a representative(s) to meet with the mediator in good faith in an effort to resolve the Dispute. The specific format of the mediation shall be left to the discretion of the mediator and the designated Party representatives.

#### ARTICLE 17 - ASSIGNMENT

17.1 Master Agreement Binding. This Master Agreement and each Customer-authorized Feasibility Study and implementation of a Feasibility Report pursuant to a Customer-authorized Implementation Services Authorization Form entered into by the Parties shall be binding upon, and shall inure to the benefit of, the Parties and their successors and permitted assigns.

17.2 Permitted Assignment. (a) The Customer may not assign this Master Agreement without the prior written consent of the Company. No such assignment by the Customer or consent by the Company to the Customer's assignment shall release the Customer of any of its obligations under this Master Agreement or any associated supplements or Schedules. (b) The Company may, without notice to the Customer, assign this Master Agreement, any supplements, or Schedules, and any of the Company's rights hereunder or thereunder (i) in the event of a merger, acquisition or divestiture, the Company may assign to an entity or individual acquiring greater than fifty percent (50%) of the assets or voting securities of the Company and provided such assignee assumes the Company's

obligations under this Master Agreement and the Company provides the Customer of such assignment and assumption, or (ii) to a third party financing institution upon notice to the Customer. Notwithstanding such assignment, the Company shall remain liable and responsible to the Customer for all of the Company's obligations and other performance requirements set forth in this Master Agreement and all exhibits, appendices, Schedules, supplements, and attachments hereto. No assignee shall be responsible for any obligations of the Company unless and until the Customer receives express written notice from such assignee which expressly states that such assignee has assumed the obligations of the Company, and assumption of any of the Company's obligations shall not bind any other assignee unless such assignee also expressly assumes such obligations in a written notice issued to the Customer. Any assignee shall have the right (but not the obligation) to cure any default or breach by the Company of its obligations to the Customer in accordance with the terms of this Master Agreement. No curing of any defaults or breaches by any assignee shall be construed as an assumption by any assignee of any of the obligations, covenants, or Master Agreements of the Company. (c) Any assignment which does not comply with the provisions of this Section 17.2 shall be null and void.

17.3 No Third Party Beneficiaries. Except as otherwise expressly provided herein, this Master Agreement nor any term or provision or obligation arising hereof or hereunder, shall be construed as being for the benefit of any Party not a signatory hereto.

17.4 Timing of Receipt. Notices sent by mail shall be given as of four (4) business days after the date of the postmark, and notices delivered by overnight courier shall be deemed received on the date when left at the address of the recipient. Notices sent by fax shall be effective the date faxed, if a business day, or the following business day otherwise.

#### ARTICLE 18 - GENERAL PROVISIONS

18.1 Entire Master Agreement. This Master Agreement, including the Schedules attached hereto and any exhibits attached thereto, sets forth the full and complete understanding of the Parties relating to the subject matter hereof as of the Effective Date, and supersedes any and all negotiations, agreements and representations made or dated prior hereto with respect to the subject matter of this Master Agreement. Any actions or Services described in this Master Agreement which were performed or implemented by the Parties prior to the Effective Date shall for all purposes be deemed to have been performed under this Master Agreement.

18.2 Amendments. No change, amendment or modification of this Master Agreement or Schedule or exhibits thereto shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

18.3 Status of the Parties. The Company and its Subcontractors shall be independent contractors with respect to the Services performed hereunder irrespective of whether such Subcontractors are approved by the Customer, and neither the Company nor its Subcontractors, nor the employees of either, shall be deemed to be the employees, representatives or agents of the Customer. Nothing in this Master Agreement shall be construed as inconsistent with the foregoing independent contractor status or relationship, or as creating or implying any partnership, joint venture, trust or other relationship between the Company and the Customer.

18.4 Customer & Company. The Parties hereby represents and warrants to the other Party that (i) the execution and delivery by a Party of this Master Agreement and the performance of its obligations hereunder have been duly authorized by all requisite actions and proceedings; are not inconsistent with and do not and will not contravene any provisions of a Party's organizational documents or any applicable law, rule or regulation; have been approved by all necessary persons or entities; and do not and will not conflict with or cause any breach or default under any agreement or instrument to which a Party is a party or by which it or any of its properties is bound; and (ii) this Master Agreement has been duly executed and delivered by the Parties and constitutes the valid and legally binding obligation of each Party, enforceable against the other Party in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles.

18.5 Drafting Interpretations and Costs. Preparation and negotiation of this Master Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating and finalizing this Master Agreement.

18.6 Captions. The captions contained in this Master Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of such document or the intent of any provision contained therein.

18.7 Severability/Divisible Contracts. (a) The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Master Agreement shall not affect the validity of the remaining portions thereof so long as the material purposes of such document can be determined and effectuated. (b) Each Customer-authorized proposal for Services under this Master Agreement shall constitute a separate and divisible contract which the Company may assign to one or more assignees, in whole or in part, and each and every such assignee of the Company shall be entitled to the benefits and rights of the Company under this Master Agreement, and shall be entitled to exercise the rights of the Company under this Master Agreement. No assignee shall be responsible for any obligations of the Company except as expressly assumed in writing by such assignee in accordance with the terms and conditions of Section 17.2.

18.8 Further Assurances. The Company and the Customer each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, as either Party may reasonably request from time to time whether at or after the execution of this Master Agreement, in furtherance of the express provisions of this Master Agreement.

18.9 Applicable Law and Venue. This Master Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, exclusive of conflicts of laws provisions. Any disputes resulting in litigation between the Parties shall be conducted in the state or federal courts of the State of Florida. Proceedings shall take place in the Circuit Court for St. Lucie County, Florida or the United States District Court for the Southern District of Florida.

18.10 Counterparts. This Master Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties.

18.11 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MASTER AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, OR STATEMENTS WHETHER ORAL OR PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS MASTER AGREEMENT.

18.12 No Waiver. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this Master Agreement, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

18.13 Notices. All notices, demands, offers or other written communications required or permitted to be given pursuant to this Master Agreement shall be in writing signed by the Party giving such notice and shall be mailed by U.S. Mail, postage prepaid, via courier or faxed as follows:

If to the Company:

Ron Bartnick  
FPL Services, LLC  
PO BOX 14000  
Juno Beach, FL 33408-0420  
Fax: (561) 691-7611  
Tel: (561) 691-7664  
Attention: Manager Engineering & Construction



If to the Customer:  
St Lucie County  
2300 Virginia Ave.  
Ft Pierce, FL 34982  
Fax: 772-462-1444  
Tel: 772-462-1431  
Attention: Roger Shinn

Each Party shall have the right to change the place to which notices shall be sent or delivered or to specify additional addresses to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Master Agreement by and through their duly authorized representatives as of the Effective Date.

Authorized By the Company:  
FPL Services, LLC,  
a Florida limited liability company

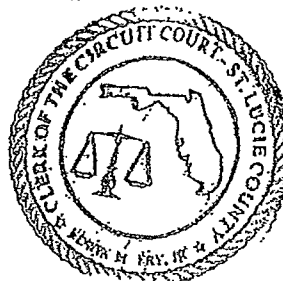
BY: [Signature]  
for NAME: Dennis Brandt  
TITLE: Vice President  
DATE: 5/29/07

Acknowledged by the Customer:  
Board of County Commissioners, St Lucie County,  
Florida

BY: [Signature]  
NAME: Chris Craft  
TITLE: Chairman  
DATE: 5/22/07

ATTEST:

[Signature]  
DEPUTY CLERK



APPROVED AS TO FORM  
AND CORRECTNESS

[Signature]  
COUNTY ATTORNEY

**SCHEDULE B**  
**IMPLEMENTATION SERVICES AUTHORIZATION FORM**

Project Name: St. Lucie County – Phase 2

ECM No.: N/A

Service Location: various locations throughout St Lucie County

Company: FPL Services, LLC

Customer: St Lucie County Board of County Commissioners

Company Representative:

Name: Rex Noble  
Address: FPL Services, LLC  
6001 Village Blvd  
West Palm Beach, Florida 33407  
Telephone: (561) 681-3079  
Facsimile: (561) 681-3088  
E-mail: rex.noble@fpl.com

Customer Representative:

Name: Roger Shinn  
Address: 2300 Virginia Ave.  
Ft Pierce, FL 34982  
Telephone: (772)-462-1431  
Facsimile: (772)-462-1444  
E-mail: shinnr@stlucieco.org

I. AUTHORIZATION:

This Implementation Services Authorization Form ("ISA Form") is issued by the Company to the Customer pursuant to that certain Master Agreement for Demand Side Management and Energy Efficiency Services ("Master Agreement"), effective as of 22nd day of May, 2007. This ISA Form authorizes the Company to commence Services as described herein pursuant to the terms and conditions of the Master Agreement. This ISA Form is not intended as a Change and in no way amends, varies or modifies the Master Agreement. Any alternate, different or additional terms or conditions referenced by the Customer in subsequent correspondence from the Customer are hereby rejected and will not become part of this ISA Form or other the Master Agreement unless expressly set forth and incorporated herein. In order for the Company to commence Services set forth in this ISA Form, the Customer is required to sign this ISA Form. Capitalized terms used herein without other definition shall have the meanings set forth in the Master Agreement.

This ISA Form consists of this **Implementation Services Authorization Form** and the following attachments, which are incorporated into this ISA Form by this reference: (i) **Exhibit A** – Feasibility Report, and (ii) **Exhibit B** – Implementation Price.

II. SCOPE OF WORK:

The Company shall implement the Feasibility Report which shall set forth Services recommended ECM(s) and the implementation at the Service Location identified above, as more particularly described in the Feasibility Report, attached hereto and made a part hereof as **Exhibit A**.

III. IMPLEMENTATION SERVICES PRICE:

Subject to Section 3.5 of the Master Agreement, the Customer shall compensate the Company for the Services provide in connection with the implementation of a Feasibility Report and any deferral payment obligations due for the Company's implementation and delivery of the ECO(s) at the Service Locations indentified in the Feasibility Report to the Customer, which shall be set forth in **Exhibit B**.

**SCHEDULE B**  
**IMPLEMENTATION SERVICES AUTHORIZATION FORM**

Project Name: St. Lucie County – Phase 2

ECM No.: N/A

Service Location: various locations throughout St Lucie County

Company: FPL Services, LLC

Customer: St Lucie County Board of County Commissioners

Company Representative:

Name: Rex Noble  
Address: FPL Services, LLC  
6001 Village Blvd  
West Palm Beach, Florida 33407  
Telephone: (561) 681-3079  
Facsimile: (561) 681-3088  
E-mail: rex.noble@fpl.com

Customer Representative:

Name: Roger Shinn  
Address: 2300 Virginia Ave.  
Ft Pierce, FL 34982  
Telephone: (772)-462-1431  
Facsimile: (772)-462-1444  
E-mail: shinnr@stlucieco.org

**I. AUTHORIZATION:**

This Implementation Services Authorization Form ("ISA Form") is issued by the Company to the Customer pursuant to that certain Master Agreement for Demand Side Management and Energy Efficiency Services ("Master Agreement"), effective as of 22nd day of May, 2007. This ISA Form authorizes the Company to commence Services as described herein pursuant to the terms and conditions of the Master Agreement. This ISA Form is not intended as a Change and in no way amends, varies or modifies the Master Agreement. Any alternate, different or additional terms or conditions referenced by the Customer in subsequent correspondence from the Customer are hereby rejected and will not become part of this ISA Form or other the Master Agreement unless expressly set forth and incorporated herein. In order for the Company to commence Services set forth in this ISA Form, the Customer is required to sign this ISA Form. Capitalized terms used herein without other definition shall have the meanings set forth in the Master Agreement.

This ISA Form consists of this **Implementation Services Authorization Form** and the following attachments, which are incorporated into this ISA Form by this reference: (i) **Exhibit A** – Feasibility Report, and (ii) **Exhibit B** – Implementation Price.

**II. SCOPE OF WORK:**

The Company shall implement the Feasibility Report which shall set forth Services recommended ECM(s) and the implementation at the Service Location identified above, as more particularly described in the Feasibility Report, attached hereto and made a part hereof as **Exhibit A**.

**III. IMPLEMENTATION SERVICES PRICE:**

Subject to Section 3.5 of the Master Agreement, the Customer shall compensate the Company for the Services provide in connection with the implementation of a Feasibility Report and any deferral payment obligations due for the Company's implementation and delivery of the ECO(s) at the Service Locations indentified in the Feasibility Report to the Customer, which shall be set forth in **Exhibit B**.


IV. CUSTOMER COOPERATION:

The Customer shall use reasonable efforts to assist the Company in performing the Services contemplated by this ISA Form, including providing reasonable access to each Service Location, providing information concerning each Service Location, making appropriate Customer personnel available if requested by the Company to assist the Company in performing such Services, and taking any other actions the Company may reasonably request from time to time to achieve the purposes and intent of this Schedule and the Master Agreement.

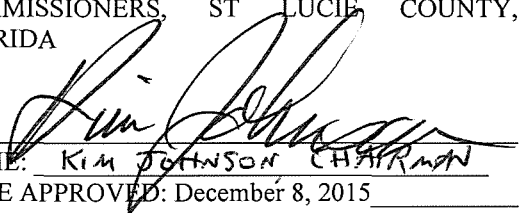
This ISA is being provided by the Company to the Customer, acknowledging acceptance of the Services specified in this ISA, and the Master Agreement, which is incorporated herein. The Customer has examined and carefully studied all of this ISA Form, including the Master Agreement and all exhibits, appendices, specifications, terms and conditions thereto and hereby agrees to be bound by any and all terms, conditions, and obligations set forth therein. THIS FORM IS HEREBY ISSUED BY THE COMPANY TO CUSTOMER ON THIS 8th DAY OF December, 2015 ("Effective Date of ISA Form").

IN WITNESS WHEREOF, the Parties have executed this ISA Form as of the Effective Date of ISA Form.

FPL SERVICES, LLC

BY:   
NAME: Troy Price, VP & GM  
DATE APPROVED: December 8, 2015

THE ST LUCIE COUNTY BOARD OF COUNTY  
COMMISSIONERS, ST LUCIE COUNTY,  
FLORIDA

BY:   
NAME: KIM JOHNSON, CHAIRMAN  
DATE APPROVED: December 8, 2015

**SCHEDULE B**

**EXHIBIT A**

**FEASIBILITY REPORT**

Project Description: Various Measures as described in detail in the attached Investment Grade Audit

Service Location: Various locations throughout St Lucie County, Florida

Facility Address:

County Jail - 900 Rock Road, Fort Pierce

Logistics Center - 3855 U.S. 1, Fort Pierce

County Fairgrounds - 15601 W. Midway Road, Fort Pierce

Sheriff's Administration Building - 4700 Midway Road, Fort Pierce

I.T. Bunker - 101 Rock Road, Fort Pierce

Ag. Extension Building - 8400 Picos Road, Fort Pierce

Walton Annex - 1664 Walton Road, Port St. Lucie

Met's Stadium - 525 NW Peacock Blvd., Port St. Lucie

Fenn Center - 2000 Virginia Ave., Fort Pierce

County Administration Building - 2300 Virginia Ave., Fort Pierce

County Administration Poitras Annex - 2300 Virginia Ave., Fort Pierce

Health Department - 5150 NW Milner Drive, Port St. Lucie

Fort Pierce Library - 101 Melody Lane, Fort Pierce

Smithsonian Aquarium - 420 Seaway Drive, Fort Pierce

Navy Seal Museum - 3300 N. Highway A1A, Fort Pierce

Scope of Services: see attached Investment Grade Audit

Procurement Services: see attached Investment Grade Audit

**SCHEDULE B**

**EXHIBIT B**

**IMPLEMENTATION PRICE**

ECM Price: \$9,284,379

Payment Schedule/Deferred Payment Option:

	% Completion	Month %	Draw	Value
Construction Progress 1	20%	3	20%	\$1,856,876
Construction Progress 2	40%	6	30%	\$2,785,314
Construction Progress 3	60%	9	25%	\$2,321,095
Substantial Completion - Progress 4	80%	12	15%	\$1,392,657
Final Acceptance	100%	15	10%	\$928,438
Total			100%	\$9,284,379

Form of Invoice:

Draws to be invoiced upon execution of Substantial Completion per attached form.

Address for Invoice:

2300 Virginia Ave.

Ft Pierce, FL 34982

Retainage Terms:

10% upon Final Acceptance

Additional Final Payment Conditions:

See attached Form of Final Acceptance

**SCHEDULE C**  
**FORM OF**  
**NOTICE OF SUBSTANTIAL COMPLETION**

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

Service Location: \_\_\_\_\_

ECM No.: \_\_\_\_\_

Company: FPL Services, LLC

Customer: \_\_\_\_\_

Company Representative:

Name: Rex Noble  
Address: FPL Services, LLC  
6001 Village Blvd.  
West Palm Beach, Florida 33407  
Telephone: (561) 681-3066  
Facsimile: (561) 681-3088  
E-mail: Rex.Noble@fpl.com

Customer Representative:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

EFFECTIVE DATE OF SUBSTANTIAL COMPLETION: \_\_\_\_\_ ("Effective Date of Notice")

This Notice of Substantial Completion ("Notice") is issued by the Company to the Customer pursuant to that certain Master Agreement for Demand Side Management and Energy Efficiency Services ("Master Agreement"), effective as of \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. Initial capitalized words used herein but not defined shall have the meaning ascribed to such words in the Master Agreement.

The Customer certifies that as of the Effective Date of Notice, the Company has achieved Substantial Completion of the ECMs specified in this Notice pursuant to the Implementation Service Authorization Form effective as of \_\_\_\_ date of \_\_\_\_\_, 20\_\_, all in strict accordance with the Master Agreement.

A list of Punch List items to be completed or corrected by the Company is attached hereto as Exhibit A. In accordance with Section 4.2 of the Master Agreement, the Company will complete or correct the Punch List items listed in Exhibit A.

The ECMs have been reviewed by the Customer and based on that review and the information provided by the Company, the Customer has executed this Notice of Substantial Completion, without modifying the Parties obligations under the Master Agreement.

IN WITNESS WHEREOF, the Company and Customer have made and executed this Notice of Substantial Completion by and through their duly authorized representatives as of the Effective Date written above.

FPL SERVICES, LLC

ST LUCIE COUNTY BOARD OF COUNTY  
COMMISSIONERS, ST LUCIE COUNTY,  
FLORIDA

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_

**SCHEDULE C**

**EXHIBIT A**

**PUNCHLIST**

**[INSERT PUNCHLIST ITEMS TO BE COMPLETED]**



**SCHEDULE D**

**FORM OF  
FINAL ACCEPTANCE CERTIFICATE**

Project Name: \_\_\_\_\_  
Service Location: \_\_\_\_\_  
ECM No.: \_\_\_\_\_  
Company: FPL Services, LLC  
Customer: \_\_\_\_\_  
Company Representative: \_\_\_\_\_

Name: Rex Noble  
Address: FPL Services, LLC  
6001 Village Blvd  
West Palm Beach, Florida 33407  
Telephone: (561) 681-3066  
Facsimile: (561) 681-3088  
E-mail: Rex.Noble@fpl.com

**Customer Representative:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

EFFECTIVE DATE OF FINAL ACCEPTANCE: \_\_\_\_\_ ("Effective Date of FAC")

This Final Acceptance Certificate ("FAC") is issued by the Company to the Customer pursuant to that certain Master Agreement for Demand Side Management and Energy Efficiency Services effective as of \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between the Customer and the Company (the "**Master Agreement**"). Initial capitalized words used herein but not defined shall have the meaning ascribed to such words in the Contract.

The Customer certifies that as of the Effective Date of FAC, the Company has achieved final completion of the ECMs required pursuant to the Implementation Service Authorization Form effective as of \_\_\_\_ date of \_\_\_\_\_, 20\_\_, all in strict accordance with the Master Agreement.

This FAC and the certifications of the Customer set forth herein and on any FAC may be relied on by the Company and by any assignee of the Company in connection with the furnishing of the Implementation Services financing to the Customer in accordance with the provisions of the Contract. Any assignee of the Company shall be entitled to the rights, but not the obligations, of the Company under this Schedule.

This FAC is being provided by the Company to the Customer, acknowledging final acceptance of the ECMs specified in this FAC. The Customer has examined and carefully studied all of this FAC, including the Master Agreement and all exhibits, appendices, specifications, terms and conditions. IN WITNESS WHEREOF, the Parties have executed this FAC as of the Effective Date of FAC.

FPL Services, LLC

St Lucie County Board of County Commissioners,  
St Lucie County, Florida

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_

**SCHEDULE E**

**FORM OF  
CHANGE ORDER**

Project Name: \_\_\_\_\_  
ECM NO.: \_\_\_\_\_  
SERVICE LOCATION: \_\_\_\_\_  
CUSTOMER: \_\_\_\_\_  
COMPANY: FPL Services, LLC  
CUSTOMER: \_\_\_\_\_  
DATE OF THIS CHANGE ORDER: \_\_\_\_\_ (“Effective Date of Change Order”)  
CHANGE ORDER NUMBER: \_\_\_\_\_

This Change Order (“Change Order”) by and between the Customer and the Company, with reference to the above indicated Service Locations and ECM(s). This Change Order is issued pursuant to that certain Master Agreement for Demand Side Management and Energy Efficiency Services effective as of \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between the Customer and the Company (the “**Master Agreement**”). Capitalized terms used herein without other definition shall have the meanings set forth in the Master Agreement.

The Company and the Customer hereby authorize the following modifications and changes to the [Feasibility Study referenced in the Feasibility Study Authorization Form effective as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_][Feasibility Report referenced in the Implementation Services Authorization Form effective as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_][Master Agreement]:

(1) ADDITIONAL SERVICES AUTHORIZED. The Customer hereby authorizes the Company to perform the following additional items of work (in addition to all other Services described in the Master Agreement) and the [Feasibility Price][Implementation Price] is increased accordingly by the amount set forth in the table made a part of this Change Order: (describe additional work fully).

**ADD**

(the “Additional Services”)

[The Substantial Completion Date and the effective date of the anticipated Final Acceptance Date are hereby extended for a period of \_\_\_\_\_ (\_\_) days in order for the Contractor to perform the Additional Services.][IT IS UNDERSTOOD THAT THE SUBSTANTIAL COMPLETION DATE AND THE FINAL ACCEPTANCE DATE DO NOT REQUIRE EXTENSIONS ON ACCOUNT OF THE ADDITIONAL SERVICES.]

OR

(2) WORK DELETED FROM THE COMPANY'S SERVICES. The Customer hereby authorizes the Company to remove/delete the following items of work from the scope of the [Feasibility Study][Feasibility Report] [Feasibility Price], and decrease the [Feasibility Price][Implementation Price] accordingly by the amount set forth in the table made a part of this Change Order: (describe deleted work fully).

**DELETE**

(the "Deleted Services")

[The Substantial Completion Date and the Final Acceptance Date are hereby reduced by \_\_\_\_ days as a result of the Deleted Services.][IT IS UNDERSTOOD THAT THE SUBSTANTIAL COMPLETION DATE AND THE FINAL ACCEPTANCE DATE DO NOT REQUIRE REDUCTIONS ON ACCOUNT OF THE DELETED SERVICES.]

ORIGINAL SUBSTANTIAL COMPLETION DATE:	
ORIGINAL FINAL ACCEPTANCE DATE:	
CURRENT SUBSTANTIAL COMPLETION DATE BY PRIOR CONTRACT CHANGES:	
FINAL ACCEPTANCE DATE: BY PRIOR CHANGES ORDER	
REVISED SUBSTANTIAL COMPLETION DATE (if applicable):	
REVISED FINAL ACCEPTANCE DATE (if applicable):	
ORIGINAL IMPLEMENTATION PRICE IN FEASIBILITY REPORT:	\$
AMOUNT OF PRIOR CHANGE ORDERS (if applicable):	\$
ADDITIONAL IMPLEMENTATION PRICE (due to change order)(if applicable):	\$
REDUCED IMPLEMENTATION PRICE (due to change order)(if applicable):	\$
REVISED IMPLEMENTATION PRICE:	\$

It is hereby understood that, upon authorization of this Change Order by the Customer, the Company shall implement the above-referenced Change(s). The above adjustments to the Substantial Completion Date, the Final Acceptance Date, and/or Implementation Price will constitute a full and complete settlement for the Change(s) and all issues related thereto. Except as set forth in this Change Order, and in any other contract changes and written amendments signed by the Customer, the Master Agreement shall remain in full force and effect.

Changes in the Services, Implementation Price, Substantial Completion Date or the Final Acceptance Date may be authorized only by a Change Order duly executed by each Party's designated representative. Without a duly executed Change Order, the original scope of Services under the applicable Implementation Services Authorization Form shall remain in full force and effect.

This Change Order is being provided by the Company to the Customer, acknowledging acceptance of the modification(s) specified in this Change Order, and the Master Agreement, which is incorporated herein. The Customer has examined and carefully studied all of this Change Order, including the Master Agreement and all exhibits, appendices, specifications, terms and conditions thereto and hereby agrees to be bound by any and all terms, conditions, and obligations set forth therein. THIS FORM IS HEREBY ISSUED BY COMPANY TO THE CUSTOMER AS OF THE EFFECTIVE DATE OF CHANGE ORDER INDICATED ABOVE.

FPL Services, LLC


St Lucie County Board of County Commissioners,  
St Lucie County, Florida

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_

**Nabors  
Giblin &  
Nickerson P.A.**  
ATTORNEYS AT LAW

**FORT LAUDERDALE**  
110 East Broward Boulevard  
Suite 1700  
Fort Lauderdale, Florida 33301  
(954) 315-3852 Tel

<b>U.S. Postal Service™</b> <b>CERTIFIED MAIL™ RECEIPT</b> <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	<b>For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>®</b> <div style="border: 2px solid black; padding: 5px; font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">OFFICIAL USE</div>											
<div style="text-align: center;">   <b>CERTIFIED MAIL™</b> </div>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Postage</td> <td style="width: 60%; text-align: right;">\$ 0.485</td> </tr> <tr> <td>Certified Fee</td> <td style="text-align: right;">3.45</td> </tr> <tr> <td>Return Receipt Fee (Endorsement Required)</td> <td style="text-align: right;">2.80</td> </tr> <tr> <td>Restricted Delivery Fee (Endorsement Required)</td> <td style="text-align: right;"></td> </tr> <tr> <td>Total Postage &amp; Fees</td> <td style="text-align: right;">\$ 6.735</td> </tr> </table>	Postage	\$ 0.485	Certified Fee	3.45	Return Receipt Fee (Endorsement Required)	2.80	Restricted Delivery Fee (Endorsement Required)		Total Postage & Fees	\$ 6.735	Postmark Here
Postage	\$ 0.485											
Certified Fee	3.45											
Return Receipt Fee (Endorsement Required)	2.80											
Restricted Delivery Fee (Endorsement Required)												
Total Postage & Fees	\$ 6.735											
PLEASE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, TOLD AT SORTING LINE												

7003 1010 0004 3190 7329

7003 1010 0004 3190 7329

Sent To <b>Internal Revenue Service Center</b>	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4 <b>Ogden, Utah 84201</b>	

PS Form 3800, June 2002

See Reverse for Instructions

# Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>St. Lucie County, Florida</b>		2 Issuer's employer identification number (EIN) <b>59-600835</b>	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions) <b>Mark T. Mustian, Esq.</b>		3b Telephone number of other person shown on 3a <b>850/224-4070</b>	
4 Number and street (or P.O. box if mail is not delivered to street address) <b>1500 Mahan Drive</b>	Room/suite <b>200</b>	5 Report number (For IRS Use Only) <b>3</b>	
6 City, town, or post office, state, and ZIP code <b>Tallahassee, Florida 32308</b>		7 Date of issue <b>12/8/15</b>	
8 Name of issue <b>St. Lucie County, Florida Equipment Lease/Purchase Agreement</b>		9 CUSIP number <b>N/A</b>	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) <b>Shai Francis, Finance Director</b>		10b Telephone number of officer or other employee shown on 10a <b>772/462-1482</b>	

<b>Part II Type of Issue (enter the issue price).</b> See the instructions and attach schedule.		
11 Education . . . . .	11	
12 Health and hospital . . . . .	12	
13 Transportation . . . . .	13	
14 Public safety . . . . .	14	
15 Environment (including sewage bonds) . . . . .	15	
16 Housing . . . . .	16	
17 Utilities . . . . .	17	
18 Other. Describe ► <b>governmental equipment</b>	18	<b>9,305,379 00</b>
19 If obligations are TANs or RANs, check only box 19a . . . . . ► <input type="checkbox"/>		
If obligations are BANs, check only box 19b . . . . . ► <input type="checkbox"/>		
20 If obligations are in the form of a lease or installment sale, check box . . . . . ► <input checked="" type="checkbox"/>		

<b>Part III Description of Obligations.</b> Complete for the entire issue for which this form is being filed.					
	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	<b>4/1/2031</b>	<b>\$ 9,305,379.00</b>	<b>\$ 9,305,379.00</b>	<b>7.6266 years</b>	<b>2.3545 %</b>

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>					
22	Proceeds used for accrued interest . . . . .	22	<b>0</b>	<b>00</b>	
23	Issue price of entire issue (enter amount from line 21, column (b)) . . . . .	23	<b>9,305,379</b>	<b>00</b>	
24	Proceeds used for bond issuance costs (including underwriters' discount) . . . . .	24	<b>20,000</b>	<b>00</b>	
25	Proceeds used for credit enhancement . . . . .	25	<b>0</b>	<b>00</b>	
26	Proceeds allocated to reasonably required reserve or replacement fund . . . . .	26	<b>0</b>	<b>00</b>	
27	Proceeds used to currently refund prior issues . . . . .	27	<b>0</b>	<b>00</b>	
28	Proceeds used to advance refund prior issues . . . . .	28	<b>0</b>	<b>00</b>	
29	Total (add lines 24 through 28) . . . . .	29	<b>20,000</b>	<b>00</b>	
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) . . . . .	30	<b>9,285,379</b>	<b>00</b>	

<b>Part V Description of Refunded Bonds.</b> Complete this part only for refunding bonds.	
31	Enter the remaining weighted average maturity of the bonds to be currently refunded . . . . . ► <b>N/A</b> years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded . . . . . ► _____ years
33	Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) . . . . . ► _____
34	Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)

**Part VI Miscellaneous**

- |            |  |            |  |
|------------|--|------------|--|
| <b>35</b>  |  | <b>35</b>  |  |
| <b>36a</b> |  | <b>36a</b> |  |
| <b>37</b>  |  | <b>37</b>  |  |
- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .
- b** Enter the final maturity date of the GIC ▶ \_\_\_\_\_
- c** Enter the name of the GIC provider ▶ \_\_\_\_\_
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ☐ and enter the following information:
- b** Enter the date of the master pool obligation ▶ \_\_\_\_\_
- c** Enter the EIN of the issuer of the master pool obligation ▶ \_\_\_\_\_
- d** Enter the name of the issuer of the master pool obligation ▶ \_\_\_\_\_
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ☐ . . . . .
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ☐ . . . . .
- 41a** If the issuer has identified a hedge, check here ☐ and enter the following information:
- b** Name of hedge provider ▶ \_\_\_\_\_
- c** Type of hedge ▶ \_\_\_\_\_
- d** Term of hedge ▶ \_\_\_\_\_
- 42** If the issuer has superintegrated the hedge, check box ☐ . . . . .
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ☐ . . . . .
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box ☐ . . . . .
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ☐ and enter the amount of reimbursement . . . . . ▶ \_\_\_\_\_
- b** Enter the date the official intent was adopted ▶ \_\_\_\_\_

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
	 Signature of issuer's authorized representative	December 8, 2015 Date	Kim Johnson, Chairman Type or print name and title	
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed
	Mark T. Mustian, Esq.		12/8/2015	PTIN
	Firm's name ▶ Nabors, Giblin & Nickerson, P.A.			Firm's EIN ▶ 59-2427540
	Firm's address ▶ 1500 Mahan Drive, Suite 200, Tallahassee, Florida 32308			Phone no. 850/224-4070

**Notice Of Sale**

Printed On: 11/9/2015 10:24:12AM

**Bond issue name:** St. Lucie County, Florida 2015 Lease-Purchase Agreement

**Sale date:** 12/07/2015

**Closing date:** 12/21/2015

**Submitted by:** tkeith@ngnlaw.com

**Submission date:** 11/09/2015



STATE OF FLORIDA  
DIVISION OF BOND FINANCE  
LOCAL BOND MONITORING SECTION

**This form represents an update and compilation of the BF2003, BF2004-A and BF2004-B forms.**

- \* Bond Information forms (BF2003) are required to be completed by local governments pursuant to Chapter 19A-1.003, Florida Administrative Code (F.A.C.).  
\* Bond Disclosure forms BF2004-A (Competitive Sale) or BF2004-B (Negotiated Sale) are required to be filed with the Division within 120 days of the delivery of the issue pursuant to Sections 218.38(1)(b)1 and 218.38(1)(c)1, Florida Statutes (F.S.), respectively.  
\* Final Official Statements, if prepared, are required to be submitted pursuant to Section 218.38(1), F.S..  
\* Please complete **all items** applicable to the issuer as provided by the Florida Statutes.  
\* PURSUANT TO SECTION 218.369, F.S., ISSUERS OF BOND ANTICIPATION NOTES ARE **EXEMPT** FROM THESE FILING REQUIREMENTS.

**BF2003  
BOND INFORMATION FORM**

**PART I. ISSUER INFORMATION**

1. NAME OF GOVERNMENTAL UNIT: St. Lucie County, Florida
2. MAILING ADDRESS OF GOVERNMENTAL UNIT OR ITS MANAGER: 2300 Virginia Avenue, Fort Pierce, Florida 34982
3. COUNTY(IES) IN WHICH GOVERNMENTAL UNIT HAS JURISDICTION: St. Lucie
4. TYPE OF ISSUER: ☒ COUNTY ☐ CITY ☐ AUTHORITY ☐ INDEPENDENT SPECIAL DISTRICT  
☐ DEPENDENT SPECIAL DISTRICT ☐ OTHER (SPECIFY) \_\_\_\_\_

**PART II. BOND ISSUE INFORMATION**

1. NAME OF BOND ISSUE: Equipment Lease/Purchase Agreement
2. AMOUNT ISSUED: \$ 9,305,379      3. AMOUNT AUTHORIZED: \$ 9,305,379
4. DATED DATE: 12/8/15      5. SALE DATE: 12/1/15      6. DELIVERY DATE: 12/8/15
7. LEGAL AUTHORITY FOR ISSUANCE: FLORIDA STATUTES Chapter 125  
SPECIAL ACTS \_\_\_\_\_  
OTHER \_\_\_\_\_
8. TYPE OF ISSUE: ☐ GENERAL OBLIGATION ☐ SPECIAL ASSESSMENT ☐ SPECIAL OBLIGATION  
☐ REVENUE ☐ COP (CERTIFICATE OF PARTICIPATION) ☒ LEASE-PURCHASE  
☐ BANK LOAN/LINE OF CREDIT
9. A. IS THIS A PRIVATE ACTIVITY BOND (PAB)? ☐ YES ☒ NO  
B. (1) IF YES, DID THIS ISSUE RECEIVE A PAB ALLOCATION? ☐ YES ☐ NO  
(2) IF YES, AMOUNT OF ALLOCATION: \$ \_\_\_\_\_
10. SPECIFIC REVENUE(S) PLEDGED:  
(1) PRIMARY Annual Lease Payment from Non-Ad Valorem Revenues  
(2) SECONDARY \_\_\_\_\_  
(3) OTHER(S) \_\_\_\_\_

11 A. PURPOSE(S) OF THE ISSUE:

- |               |  |
|---------------|--|
| (1) PRIMARY   | Finance the cost of certain equipment  |
| (2) SECONDARY | Pay certain costs and expenses in connection with the preparation and consummation of the loan |
| (3) OTHER(S)  |  |

B. IF PURPOSE IS REFUNDING, COMPLETE THE FOLLOWING:

(1) FOR EACH ISSUE REFUNDED LIST: NAME OF ISSUE, DATED DATE, ORIGINAL PAR VALUE (PRINCIPAL AMOUNT) OF ISSUE, AND AMOUNT OF PAR VALUE (PRINCIPAL AMOUNT) REFUNDED.

_____
_____
_____
_____
_____

(2) REFUNDED DEBT HAS BEEN: \_\_\_\_\_ RETIRED    **OR**    \_\_\_\_\_ DEFEASED

(3) A. DID THE REFUNDING ISSUE CONTAIN NEW MONEY?    \_\_\_\_\_ YES    \_\_\_\_\_ NO

B. IF YES, APPROXIMATELY WHAT PERCENTAGE OF PROCEEDS IS NEW MONEY? \_\_\_\_\_ %

12. TYPE OF SALE: \_\_\_\_\_ COMPETITIVE BID    \_\_\_\_\_ NEGOTIATED    ☒ NEGOTIATED PRIVATE PLACEMENT

13. BASIS OF INTEREST RATE CALCULATION, I.E., INTEREST RATE USED TO STRUCTURE THE BOND ISSUE:

NET INTEREST COST RATE (NIC) \_\_\_\_\_ % TRUE INTEREST COST RATE (TIC) \_\_\_\_\_ %

CANADIAN INTEREST COST RATE (CIC) \_\_\_\_\_ % ARBITRAGE YIELD (ARBI)    2.3545 %

SPECIFY OTHER: \_\_\_\_\_

14. INSURANCE/ENHANCEMENTS: \_\_\_\_\_ AGIC    \_\_\_\_\_ AMBAC    \_\_\_\_\_ CGIC    \_\_\_\_\_ CLIC    \_\_\_\_\_ FGIC    \_\_\_\_\_ FSA

\_\_\_\_\_ HUD    \_\_\_\_\_ MBIA    \_\_\_\_\_ NGM    \_\_\_\_\_ LOC(LETTER OF CREDIT)    \_\_\_\_\_ OTHER (SPECIFY) \_\_\_\_\_

☒ **NOT INSURED**

15. RATING(S): \_\_\_\_\_ MOODY'S    \_\_\_\_\_ S & P    \_\_\_\_\_ FITCH    \_\_\_\_\_ DUFF&PHELPS    \_\_\_\_\_ OTHER (SPECIFY) \_\_\_\_\_

☒ **NOT RATED**

16. DEBT SERVICE SCHEDULE:

ATTACH **COMPLETE** COPY OF SCHEDULE PROVIDING THE FOLLOWING INFORMATION:

MATURITY DATES (MO/DAY/YR)

COUPON/INTEREST RATES

ANNUAL INTEREST PAYMENTS

PRINCIPAL (PAR VALUE) PAYMENTS

MANDATORY TERM AMORTIZATION

17. LIST OR ATTACH OPTIONAL REDEMPTION PROVISIONS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. PROVIDE THE NAME AND ADDRESS OF THE SENIOR MANAGING UNDERWRITER OR SOLE PURCHASER.

Banc of America Public Capital Corp.

555 California Street, 4th Floor

San Francisco, CA 94104

19. PROVIDE THE NAME(S) AND ADDRESS(ES) OF ANY ATTORNEY OR FINANCIAL CONSULTANT WHO ADVISED THE UNIT OF LOCAL GOVERNMENT WITH RESPECT TO THE BOND ISSUE.

☐ NO BOND COUNSEL      ☐ NO FINANCIAL ADVISOR      ☐ NO OTHER PROFESSIONALS

BOND COUNSEL(S):

Nabors, Giblin & Nickerson, P.A.

1500 Mahan Drive, Suite 200

Tallahassee, Florida 32308

FINANCIAL ADVISOR(S)/CONSULTANT(S):

Public Financial Management, Inc.

300 S. Orange Avenue, Suite 1170

Orlando, Florida 32801

OTHER PROFESSIONALS:

Daniel S. McIntyre, Esq., County Attorney

20. PAYING AGENT \_\_\_\_\_ ☐ NO PAYING AGENT

21. REGISTRAR \_\_\_\_\_ ☐ NO REGISTRAR

22. COMMENTS: \_\_\_\_\_

**PART III. RESPONDENT INFORMATION**

FOR ADDITIONAL INFORMATION, THE DIVISION SHOULD CONTACT:

Name and Title Mark T. Mustian, Esq. Phone 850/224-4070

Company Nabors, Giblin & Nickerson, P.A.

INFORMATION RELATING TO PARTY COMPLETING THIS FORM (If different from above):

Name and Title \_\_\_\_\_ Phone \_\_\_\_\_

Company \_\_\_\_\_

Date Report Submitted December 8, 2015



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**BF2004-A and BF2004-B**

**NOTE:** The following items are required to be completed in full for **all** bond issues **except** those sold pursuant to Section 154 Part III, Sections 159 Parts II, III or V; or Section 243 Part II, Florida Statutes.

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23. ANY FEE, BONUS, OR GRATUITY PAID BY ANY UNDERWRITER OR FINANCIAL CONSULTANT, IN CONNECTION WITH THE BOND ISSUE, TO ANY PERSON NOT REGULARLY EMPLOYED OR ENGAGED BY SUCH UNDERWRITER OR CONSULTANT:

☒ **NO FEE, BONUS OR GRATUITY PAID BY UNDERWRITER OR FINANCIAL CONSULTANT**

(1) COMPANY NAME \_\_\_\_\_

FEE PAID: \$ \_\_\_\_\_ SERVICE PROVIDED or FUNCTION SERVED: \_\_\_\_\_

(2) COMPANY NAME \_\_\_\_\_

FEE PAID: \$ \_\_\_\_\_ SERVICE PROVIDED or FUNCTION SERVED: \_\_\_\_\_

(3) COMPANY NAME \_\_\_\_\_

FEE PAID: \$ \_\_\_\_\_ SERVICE PROVIDED or FUNCTION SERVED: \_\_\_\_\_

(4) COMPANY NAME \_\_\_\_\_

FEE PAID: \$ \_\_\_\_\_ SERVICE PROVIDED or FUNCTION SERVED: \_\_\_\_\_

24. ANY OTHER FEES PAID BY THE UNIT OF LOCAL GOVERNMENT WITH RESPECT TO THE BOND ISSUE, INCLUDING ANY FEE PAID TO ATTORNEYS OR FINANCIAL CONSULTANTS:

       **NO FEES PAID BY ISSUER**

(1) COMPANY NAME Nabors, Giblin & Nickerson, P.A. 44

FEE PAID: \$ 7,500 SERVICE PROVIDED or FUNCTION SERVED: Bond Counsel

(2) COMPANY NAME Public Financial Management, Inc.

FEE PAID: \$ 5,000 SERVICE PROVIDED or FUNCTION SERVED: Financial Advisor

(3) COMPANY NAME Foley & Lardner

FEE PAID: \$ 7,500 SERVICE PROVIDED or FUNCTION SERVED: Bank Counsel

(4) COMPANY NAME \_\_\_\_\_

FEE PAID: \$ \_\_\_\_\_ SERVICE PROVIDED or FUNCTION SERVED: \_\_\_\_\_

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**(UNLESS YOU ARE EXEMPT FROM FILING A BF2004), PLEASE PROVIDE THE SIGNATURE OF EITHER THE CHIEF EXECUTIVE OFFICER OF THE GOVERNING BODY OF THE UNIT OF LOCAL GOVERNMENT OR THE GOVERNMENTAL OFFICER PRIMARILY RESPONSIBLE FOR COORDINATING THE ISSUANCE OF THE BONDS:**

NAME (Typed/Printed): Kim Johnson

SIGNATURE: (See attached signature page)

TITLE: Chairman, Board of County Commissioners

DATE: December 8, 2015

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**BF2004-B**

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**ITEMS 25 AND 26 MUST BE COMPLETED FOR ALL BONDS SOLD BY NEGOTIATED SALE**

25. MANAGEMENT FEE CHARGED BY UNDERWRITER: \$\_\_\_\_\_ PER THOUSAND PAR VALUE.  
OR  
PRIVATE PLACEMENT FEE: \$\_\_\_\_\_  
☒ **NO MANAGEMENT FEE OR PRIVATE PLACEMENT FEE**
26. UNDERWRITER'S EXPECTED GROSS SPREAD: \$\_\_\_\_\_ PER THOUSAND PAR VALUE.  
☒ **NO GROSS SPREAD**
- 

**PART IV. CONTINUING DISCLOSURE INFORMATION**

In order to better serve local governments, the Division of Bond Finance will remind issuers as their deadlines approach for filing continuing disclosure information required by SEC Rule 15c2-12, based on the following information:

27. Is the issuer required to provide continuing disclosure information in accordance with SEC Rule 15c2-12?

\_\_\_\_ Yes

☒ No

28. If yes, on what date is the continuing disclosure information required to be filed?

\_\_\_\_\_

29. Provide the following information regarding the person(s) responsible for filing continuing disclosure information required by SEC Rule 15c2-12 and the continuing disclosure agreement (including other obligated parties, if appropriate).

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

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

Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

FAX Number: \_\_\_\_\_

E-mail address (if e-mail notification is requested): \_\_\_\_\_

---

**PART V. RETURN THIS FORM AND THE FINAL OFFICIAL STATEMENT, IF ONE WAS PREPARED,**

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**TO:**

**Courier Deliveries:** Division of Bond Finance  
State Board of Administration  
1801 Hermitage Blvd., Suite 200  
Tallahassee, FL 32308

**Mailing Address:** Division of Bond Finance  
State Board of Administration  
P. O. Drawer 13300  
Tallahassee, FL 32317-3300

**Phone:** 850/413-1304 or 413-1305


**FAX:** 850/413-1315

REVISED Dec. 9, 2002 / bfcombo

[signature page to BF2003 Bond Information Form]

**ST. LUCIE COUNTY, FLORIDA**

By:

  
Chairman

## ARBITRAGE AND TAX CERTIFICATE

I, Kim Johnson, Chairman of the Board of County Commissioners of St. Lucie County, Florida (the "County"), do hereby certify that this Certificate is issued pursuant to Sections 1.141-1 through 1.141-16, 1.148-0 through 1.148-11, 1.150-1 and 1.150-2 of the Treasury Regulations (the "Regulations") promulgated pursuant to the Internal Revenue Code of 1986, as amended (the "Code"), to set forth the County's reasonable expectations on the date of issue of the obligations of the County under that certain Equipment Lease/Purchase Agreement (as hereinafter defined) and as to future events regarding the amount and use of the proceeds thereof.

### The Lease/Purchase Agreement

1. The undersigned is charged, together with other officials and officers of the County, with the responsibility for entering into the Equipment Lease/Purchase Agreement, dated as of December 8, 2015 (the "Lease/Purchase Agreement") between the County and Banc of America Public Capital Corp, a Kansas corporation (the "Lessor"), which is authorized pursuant to Chapter 125, Florida Statutes, and other applicable provisions of law, and action taken by the Board of County Commissioners of the County at a duly called meeting on December 1, 2015. This certificate shall constitute a document related to the Lease/Purchase Agreement.

2. The Lease/Purchase Agreement is being entered into to finance the cost of certain Equipment listed on Exhibit A to the Lease/Purchase Agreement. As contemplated by the Lease/Purchase Agreement, the Lessor will lease the Equipment to the County, and the County will agree to make rental payments under the Lease/Purchase Agreement (the "Rental Payments") to the Lessor. The Equipment has been and will continue to be used for public and governmental purposes of the County.

### Proceeds

3. (a) The amount of proceeds received with respect to the Lease/Purchase Agreement (the "Net Proceeds"), will be \$9,305,379.

(b) An amount of the Net Proceeds equal to \$9,305,379 will be deposited on the date hereof to the Escrow Fund (the "Escrow Fund") established pursuant to the Escrow Agreement, dated as of December 8, 2015, by and among Bank of America, National Association (the "Escrow Agent"), the Lessor and the County (the "Escrow Agreement") to be held, invested and disbursed as provided in the Escrow Agreement.

(c) Except as described in this Section 3 and Section 4 hereof, there are no other amounts which constitute proceeds of the Lease/Purchase Agreement or investment earnings on such proceeds.

### Investments

4. All income and profits derived from the investment of moneys on deposit in the Escrow Fund shall be retained in such Fund and used solely for the purpose of lease-purchasing

the Equipment. All income and profits derived from the investment of moneys in the Escrow Fund shall be retained in the Escrow Fund to the extent necessary to make the amount then on deposit therein equal to the maximum amount required to lease-purchase the Equipment. Any balance remaining in or accruing to the Escrow Fund after the acquisition of all Equipment listed in the Lease/Purchase Agreement shall be transferred to the Lessor as described in the Escrow Agreement to be used to make payments under the Lease/Purchase Agreement, as required by the Escrow Agreement.

5. Under the Lease/Purchase Agreement, the County is required to make periodic payments to the Lessor in amounts sufficient to pay the Rental Payments. The County has not established and does not expect to establish any sinking fund or other similar fund that is expected to be used to pay the Rental Payments.

#### Equipment

6. The County represents that the Equipment will not be used in such a manner so as to cause the Lease/Purchase Agreement to constitute "private activity bonds" as defined in Section 141(a) of the Code and Sections 1.141-0 through 1.141-16 of the Regulations.

7. All Equipment financed by the Lease/Purchase Agreement will be owned by the County in accordance with Section 141 of the Code.

8. Either (a) the County has not and will not permit the Equipment to be used by any private non-governmental entity (a "Private User") to the extent such use exceeds 10% of the Equipment, or (b) the County has not and will not (i) secure, directly or indirectly, more than 10% of either principal or interest of the Rental Payments on the Lease/Purchase Agreement by (A) any interest in property used or to be used by any Private User or (B) any payments in respect of property used or to be used by any Private User, or (ii) directly or indirectly, cause or permit more than 10% of either principal or interest of the Rental Payments under the Lease/Purchase Agreement to be derived from payments (whether or not to the County) in respect of property, or borrowed money, used or to be used by any Private User. Use by the general public does not constitute use by Private Users.

No portion of the proceeds of the Lease/Purchase Agreement or any other obligation financed or refinanced, directly or indirectly, in whole or in part with the proceeds of such obligation has been or will be loaned, directly or indirectly, by the County or any other person to any person.

The County will not sell, lease (other than as permitted under the limitations described above), allow the private management of or otherwise dispose of, directly or indirectly, in whole or in part, whether for consideration or otherwise, the Equipment unless prior to any sale, lease or other disposition, the County receives the approval of Bond Counsel.

In the event that the County takes any action, or fails to take any action, the result of which would adversely affect the tax-exempt status of the Lease/Purchase Agreement, the County will immediately take such remedial action as permitted by the Code (including, particularly Sections 141 and 150 thereof) and the regulations thereunder to preserve such tax-



exempt status, including, if necessary, the defeasance and/or redemption of all or a portion of the Lease/Purchase Agreement from funds derived from a source other than tax-exempt obligations.

#### Yield

9. The County represents that no other obligations of the County (1) were or will be sold within 15 days of the date hereof; (2) are being sold or were sold pursuant to a plan of financing common with the lease-purchase of the Equipment; and (3) are or were payable from substantially the same source of funds as the Lease/Purchase Agreement.

10. For purposes of this Certificate, "yield" means yield computed by the actuarial method using a 360-day year and semi-annual compounding, resulting in a discount rate which, when used in computing the present worth of all payments of principal and interest to be paid on an obligation, produces an amount equal to the issue price, fair market value, present value or purchase price thereof, as applicable, and is determined in all respects in accordance with Section 148 of the Code and the Regulations.

11. As of the Closing Date, the County expects that the purchase price of \$9,305,379 is the issue price of the obligations under the Lease/Purchase Agreement to the public (excluding bond houses, brokers and other intermediaries). Based upon such price, the County expects the yield on the Lease/Purchase Agreement to be computed as 2.3545%. Such yield has been calculated in accordance with the provisions of Section 148 of the Code by Public Financial Management, Inc., financial advisor to the County.

#### Arbitrage Certifications

12. There are no funds or accounts established with respect to the Lease/Purchase Agreement or the Equipment. No sinking fund has been established in connection with the payment of the principal component and interest component of the Rental Payments under the Lease/Purchase Agreement, and no other similar fund or reserve or replacement fund has or will be created or established, nor does the County expect to create or establish such a fund. The County will pay Rental Payments directly to the Lessor on the due dates thereof.

13. The obligations represented by the Lease/Purchase Agreement have a weighted average maturity of 7.6266 years, which does not exceed 120% of the expected economic life of the Equipment. As of the Closing Date, the County expects that the term of the Lease/Purchase Agreement is not longer than reasonably necessary for the governmental purpose of the Lease/Purchase Agreement. As of the Closing Date, the County does not expect to have available amounts (within the meaning of Section 1.148-1(c)(4) of the Regulations) during the period in which the Lease/Purchase Agreement is in effect.

14. The County acknowledges its rebate obligations under Section 148 of the Code. The County will maintain such records as to the investments and earnings on the Net Proceeds as may be necessary and appropriate to determine the amount, if any, that it is required to rebate to the U.S. Treasury because the earnings on such investments exceed the amount that would have been earned if such proceeds had been invested at the yield payable as the interest portion of the Rental Payments on the Lease/Purchase Agreement. In the event that the County invests any of the Net Proceeds or any investment proceeds in investments that have a yield in excess of the

yield on the Lease/Purchase Agreement, the County agrees to retain a rebate advisor to assist the County in complying with Section 148 of the Code. The County will make the calculations of its liability, file such reports and make any required payments at the time or times as are now or may hereafter be prescribed under Section 148 (or a successor provision) of the Code.

15. Except as expressly permitted hereunder, the County will not use the Net Proceeds to acquire investments with a yield considered as a class higher than the yield payable as the interest portion of the Rental Payments on the Lease/Purchase Agreement or to replace funds which are used to directly or indirectly acquire investments with a yield higher than the yield payable as the interest portion of the Rental Payments on the Lease/Purchase Agreement.

16. The Lease/Purchase Agreement is not and will not be part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code or the Regulations (a) enabling the County to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage; or (b) overburdening the market for tax-exempt obligations.

#### Miscellaneous

17. The Lease/Purchase Agreement will not be federally guaranteed within the meaning of Section 149(b) of the Code.

18. The County shall file or cause to be filed, the requisite Form 8038-G on or before the 15<sup>th</sup> day of the second month after the calendar quarter in which the Lease/Purchase Agreement is executed. The County has reviewed the Form 8038-G prepared for the Lease/Purchase Agreement and all of the information contained therein is, to the best of the County's knowledge, true and complete.

19. It is reasonably expected that at least 85% of the proceeds of the Lease/Purchase Agreement will be allocated to expenditures for the Equipment no later than three years from the date hereof. Not more than 50% of such proceeds of the Lease/Purchase Agreement will be invested in nonpurpose investments having a substantially guaranteed yield for four years or more (including but not limited to any investment contract or fixed yield investment having a maturity of four years or more). The reasonable expectations stated above are not based on and do not take into account any expectations or assumptions as to the occurrence of changes in market interest rates or of federal tax law or regulations or rulings thereunder. These reasonable expectations are not based on any prepayments of items other than items which are customarily prepaid.

20. The County has not received notice of deficiency or other notice from the Internal Revenue Service, the Department of Treasury or any other governmental agency or department challenging or questioning in any way the status of the interest portion of the Rental Payments as being excludable from gross income for federal income tax purposes, nor has the County been notified of any listing or proposed listing of it by the Internal Revenue Service as an issuer that may not enter into the type of lease-purchase transaction as contemplated here.

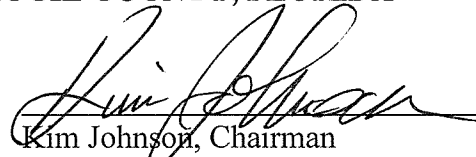
On the basis of the foregoing facts, estimates and circumstances in existence on the date hereof, it is not expected that the proceeds of the Lease/Purchase Agreement will be used in a manner that would cause the Lease/Purchase Agreement to be "arbitrage bonds" under Section 148 of the Code and the Regulations. To the best of my knowledge and belief there are no other facts, estimates or circumstances which would materially change such expectations.

Dated as of the 8<sup>th</sup> day of December, 2015, the same being the date of delivery of and payment for the Lease/Purchase Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand.

**ST. LUCIE COUNTY, FLORIDA**

By:

  
\_\_\_\_\_  
Kim Johnson, Chairman  
Board of County Commissioners

## INCUMBENCY, SIGNATURE AND CLOSING CERTIFICATE

We, Kim Johnson, Chairman of the Board of County Commissioners of St. Lucie County, Florida (the "County"), and Joseph E. Smith, Clerk of the Circuit Court and ex officio Clerk of the Board of County Commissioners of the County (the "Board"), DO HEREBY CERTIFY as follows:

1. The following are now, and have continuously been since the dates of beginning of their respective current terms shown below, the duly elected, qualified and acting members of the Board, and the dates of the beginning and ending of their respective current terms are hereunder correctly designated opposite their names:

<u>Member</u>	<u>Beginning Date of Current Term</u>	<u>Ending Date of Current Term</u>
Chris Dzadovsky	November, 2012	November, 2016
Tod Mowery	November, 2014	November, 2018
Paula A. Lewis	November, 2012	November, 2016
Frannie Hutchison	November, 2014	November, 2018
Kim Johnson	November, 2012	November, 2016

2. The following are now, and have continuously been since the dates of beginning of their respective current terms of office shown below, the duly appointed or elected, qualified and acting officers of the County and the dates of the beginning and ending of their respective current terms of office are hereunder correctly designated opposite their names:

<u>Office</u>	<u>Name</u>	<u>Beginning Date of Current Term</u>	<u>Ending Date of Current Term</u>
Chairman	Kim Johnson	November 2015	November 2016
Clerk	Joseph E. Smith	January 2013	January 2017
County Administrator	Howard Tipton	N/A	N/A
County Official	Scotty Beaulieu	N/A	N/A

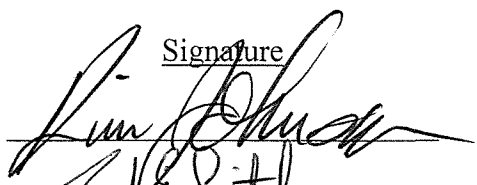
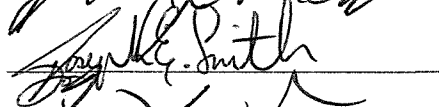
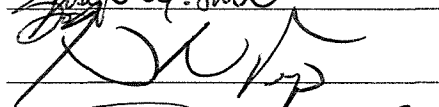

3. That Kim Johnson, Chairman of the Board, has caused to be executed the Equipment Lease/Purchase Agreement (the "Lease Agreement") and the Escrow Agreement (collectively, the "Financing Documents") by his manual signature, and that said Chairman was on the date his manual signature was imprinted on the Financing Documents and is now the duly appointed, qualified and acting Chairman of the Board.

4. That the official seal of the County has been imprinted on each of the Financing Documents, said seal imprinted hereon being the official seal of the County, and that Joseph E. Smith, Clerk of the Circuit Court, ex officio Clerk to the Board, has caused such seal to be attested by his manual signature, and that said Joseph E. Smith was on the date his manual

signature was imprinted on the Financing Documents and is now the duly qualified and acting Clerk to the Board.

5. That the seal which has been impressed on or otherwise reproduced on the Financing Documents and upon this certificate is the legally adopted, proper and only seal of the County.

6. That the following are true and genuine specimens of the signatures of the officials of the County listed below.

<u>Signature</u>	<u>Title of Office</u>
	Chairman
	Clerk
	County Administrator*
	County Official*

\*Authorized to execute disbursement requests pursuant to the Escrow Agreement.

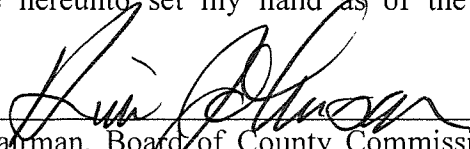
7. The representations, warranties and covenants of the County in the Lease Agreement are true and correct in all material respects and are complied with as of the date hereof.

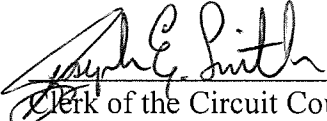
8. Since September 30, 2014, the date of the most recent audited financials of the County, no material and adverse change has occurred in the financial condition of the County and the County has not incurred any material liabilities other than in the ordinary course of business.

All capitalized terms used, but not otherwise defined herein shall have the meanings ascribed to such terms in Resolution No. 2015-247, adopted by the Board on December 1, 2015.

**IN WITNESS WHEREOF**, we have hereunto set my hand as of the 8th day of December, 2015.

(SEAL)

  
\_\_\_\_\_  
Chairman, Board of County Commissioners of St.  
Lucie County, Florida

  
\_\_\_\_\_  
Clerk of the Circuit Court, ex officio to the Board of  
County Commissioners of St. Lucie County, Florida



700 Central Parkway, Stuart, Florida 34994  
Telephone: (772) 287-7650 Fax: (772) 287-1387

December 1, 2015

Banc of America Public Capital Corp  
P.O. Box 4431  
Atlanta, GA 30302

RE: St. Lucie County Board of County Commissioners  
Equipment Lease Agreement

To Whom It May Concern:

As requested, attached is a certificate of insurance that confirms general/auto liability and workers' compensation, and property coverage for St. Lucie County Board of County Commissioners.

St. Lucie County Board of County Commissioners is a member of the Treasure Coast Risk Management Program (TRICO) who is a qualified self-insurer in the State of Florida and granted immunity under Florida Statute 768.28 (as it now is written as it may be amended by the legislature at future dates). Liability is limited to \$200,000 per claimant, \$300,000 per claim or occurrence for negligent acts of the county.

St. Lucie County Board of County Commissioners is unable to list the Banc of America Public Capital Corp as an additional insured due to the operation of F.S. 768.28 affecting sovereign immunity. Specifically, entities that are not themselves governmental entities cannot avail themselves the protections afforded through Florida law governing sovereign immunity. This self-insurance program is predicated upon the concept of sovereign immunity among its insureds. Therefore, entities that do not qualify for protection under this statute are not eligible to be an additional insured.

We appreciate your understanding and should you have any questions, please do not hesitate to contact me.

Sincerely,  
Mary Sundeen  
Ascension Benefits & Insurance Solutions of Florida  
[msundeen@ascensionins.com](mailto:msundeen@ascensionins.com)





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/1/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Ascension Benefits & Insurance Solutions of 700 Central Parkway  Stuart FL 34994		<b>CONTACT NAME:</b> Mary Sundeen <b>PHONE (A/C, No, Ext):</b> (772) 287-7650 <b>FAX (A/C, No):</b> (772) 287-1387 <b>E-MAIL ADDRESS:</b> msundeen@ascensionins.com	
<b>INSURED</b> TRICO - Treasure Coast Risk Mngmt Prgrm City of Port St. Lucie; City of Stuart; Martin County BOCC; St. Lucie County BOCC 700 Central Parkway Stuart FL 34994		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> UnderwritersAtLloydsBritSyn2987 <b>INSURER B:</b> <b>INSURER C:</b> LexingtonIns - Various Carriers <b>INSURER D:</b> UnderwritersAtLloyds <b>INSURER E:</b> <b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: CL1512115311

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			PK1017815 SIR: \$1,000,000	6/1/2015	6/1/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	Property			19946773-PRIMARY	6/1/2015	6/1/2016	Loss Limit Per Occurrence \$75,000,000
D	Property - Terrorism			B1230AW65383D15	6/1/2015	6/1/2016	Incl Bus Interruption \$100K Ded \$75,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Any and all equipment thereto between St. Lucie County Board of Commissioners and Banc of America Public Capital Corp. Banc of America Public Capital Corp its affiliates, successors and assigns as their interest may appear named as sole Loss Payee.

**CERTIFICATE HOLDER****CANCELLATION**

Banc of America Public Capital Corp, its affiliates, successors and assigns as the interest may appear  
P. O. Box 4431  
Atlanta, GA 30302-4431

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

A FL House/SUMA2

## COMMENTS/REMARKS

### PROPERTY:

Policy #: 19946773 - Lexington Insurance Company Primary Carrier with various excess carriers.

\$75,000,000 per Occurrence. Annual Aggregate applying separately to Flood & Quake.

TRICO quota share 10% of Primary \$25M Limit or \$2.5M.

All risk of direct physical loss or damage including flood and earthquake subject to policy exclusions. Real & Personal Property, Business Interruption, Extra Expense, Electronic Data Processing(Including Hardware & Software, Watercraft/Aircraft, Mobile Equipment, Building Ordinance, Miscellaneous Property/Property In the Open, as per SOV on file with the company.

Blanket Limits.

### DEDUCTIBLES:

A. All loss, damage, and/or expense arising out of any one occurrence shall be adjusted as one loss, and from the amount of each such adjusted loss shall be deducted the sum of \$100,000 except;

B. For covered loss due to the peril of Named Hurricane/Named Windstorm the following shall apply;

1. With respect to Real and/or Personal Property, the deductible shall be 5% of the replacement cost values of each "Unit of Insurance" insured under this policy at the time such loss shall happen, subject to a minimum of \$100,000 for any one occurrence.

2. \$100,000 per occurrence in respect of all other Windstorm/Hail.

C. For covered loss due to the peril of Named Storm Flood, the following shall apply:

1. The Deductible Shall be 5% of The Replacement Cost Value of Each "Unit of Insurance" Insured Under This Policy at The Time Such Loss Shall Happen, Subject to a Minimum of \$100,000 For Any One Occurrence Except;

With Respect to Locations Partially or Wholly Exposed to Areas of Frequent Flooding (less than 100 year frequency) Within Special Flood Hazard Areas (SFHA), as Defined by The Federal Emergency Management Agency, The Deductible Shall be The Maximum Available (\$500,000 per building, \$500,000 per contents) Under The National Flood Insurance Program Whether Purchased or Not. A Separate Additional Business Interruption/Extra Expense Deductible of \$100,000 Will Apply.

D. \$100,000 Per Occurrence in Respect to All Other Flood.

E. Leased Sculptures on Exhibition: \$10,000 Per Occurrence.

24 hour waiting period for Service Interruption & Civil or Military Authority & Ingress/Egress.

**RESOLUTION NO. 2015-247**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. LUCIE COUNTY, FLORIDA AUTHORIZING THE EXECUTION AND DELIVERY OF THE FORM OF ATTACHED EQUIPMENT LEASE/PURCHASE AGREEMENT BETWEEN THE COUNTY AND BANC OF AMERICA PUBLIC CAPITAL CORP.; AUTHORIZING THE EXECUTION OF AN ESCROW AGREEMENT AND THE LEASING OF CERTAIN EQUIPMENT AS DESCRIBED THEREIN; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. LUCIE COUNTY, FLORIDA, that:**

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This resolution is adopted pursuant to the provisions of Section 125.01, et seq., Florida Statutes, and other applicable provisions of law.

**SECTION 2. FINDINGS.** It is hereby ascertained, determined and declared that:

A. St. Lucie County, Florida (the "County") has obtained a proposal to provide the County with the necessary financing to provide for leasing from time to time of certain equipment by the County.

B. It is necessary and desirable to provide for the execution and delivery of an Equipment Lease/Purchase Agreement and an Escrow Agreement in connection therewith.

C. In accordance with the provisions of Part III, Chapter 218, Florida Statutes, a negotiated sale of the County's obligation under the Agreement is in the best interest of the County because of the flexibility available in structuring the Agreement and its terms.

**SECTION 3. APPROVAL OF EQUIPMENT LEASE/PURCHASE AGREEMENT AND SCHEDULE.** The Equipment Lease/Purchase Agreement (the "Agreement"), including the form of Schedule of Property and Rental Payment Schedule attached thereto, and the Escrow Agreement (the "Escrow Agreement") in the forms attached hereto as Exhibits A and B, respectively, are hereby approved in substantially such forms, with such modifications as may be approved by the Chair or Vice Chair of the Board of County Commissioners of the County, such approval to be conclusively determined by his or her execution thereof, and the execution and delivery thereof by the Chair or Vice Chair of the Board of County Commissioners and the Clerk of the County who are hereby authorized to execute and deliver such instruments and to take such other actions as shall be necessary to execute the Agreement and Escrow Agreement, is

hereby authorized. The officials referenced above (the "Authorized Officials"), are each hereby authorized and directed to sign and deliver on behalf of the County the Agreement and Escrow Agreement and any related exhibits attached thereto if and when required.

**SECTION 4. OTHER ACTIONS AUTHORIZED.** The officers and employees of the County shall take all action necessary or reasonably required by the parties to the Agreement and Escrow Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Final Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

**SECTION 5. NO GENERAL LIABILITY.** Nothing contained in this Resolution, the Agreement, the Escrow Agreement nor any other instrument shall be construed with respect to the County as incurring a pecuniary liability or charge upon the general credit of the County or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the County or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are limited obligations of the County, subject to annual appropriation, as provided in the Agreement.

**SECTION 6. APPOINTMENT OF AUTHORIZED COUNTY REPRESENTATIVES.** The Chair or Vice-Chair of the Board of County Commissioners and the Clerk of the Circuit Court, ex officio Clerk of the Board of County Commissioners of the County are each hereby designated to act as authorized representatives of the County for purposes of the Agreement and Escrow Agreement until such time as the governing body of the County shall designate any other or different authorized representative for purposes of the Agreement or Escrow Agreement.

**SECTION 7. REPEAL OF INCONSISTENT PROVISIONS.** All resolutions or parts thereof in conflict with this Resolution are hereby repealed to the extent of such conflict.

**SECTION 8. SEVERABILITY.** In the event that any portion or section of this Resolution is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Resolution, which shall remain in full force and effect.

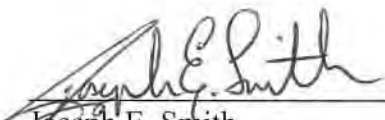
**SECTION 9. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its final passage and adoption.

**PASSED AND ADOPTED** this 1<sup>st</sup> day of December, 2015.

**BOARD OF COUNTY COMMISSIONERS  
ST. LUCIE COUNTY, FLORIDA**

  
Its: Chair

ATTEST:

  
Joseph E. Smith  
Its: Ex-Officio Clerk

APPROVED AS TO FORM  
AND CORRECTNESS  
  
COUNTY ATTORNEY

**EXHIBIT A**  
**FORM OF EQUIPMENT LEASE/PURCHASE AGREEMENT**

**EXHIBIT B**  
**FORM OF ESCROW AGREEMENT**

**CLERK'S CERTIFICATE REGARDING RESOLUTION NO. 2015-247**

I, Joseph E. Smith, the undersigned Clerk of the Circuit Court, ex officio Clerk of the Board of County Commissioners of St. Lucie County, Florida (the "County"), DO HEREBY CERTIFY that:

Attached hereto is a copy of "A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. LUCIE COUNTY, FLORIDA AUTHORIZING THE EXECUTION AND DELIVERY OF THE FORM OF ATTACHED EQUIPMENT LEASE/PURCHASE AGREEMENT BETWEEN THE COUNTY AND BANC OF AMERICA PUBLIC CAPITAL CORP.; AUTHORIZING THE EXECUTION OF AN ESCROW AGREEMENT AND THE LEASING OF CERTAIN EQUIPMENT AS DESCRIBED THEREIN; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE;" adopted at a meeting of the Board of County Commissioners duly called and held on December 1, 2015, at which meeting a quorum was present and acting throughout, which resolution has been compared by me with the original thereof as recorded in the Minute Book of said County and that said resolution is a true, complete and correct copy thereof, and said resolution has been duly adopted and has not been further modified, amended, supplemented or repealed and is in full force and effect on and as of the date hereof in the form attached hereto.



**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the County as of the 8<sup>th</sup> day of December, 2015.

(SEAL)

A handwritten signature in cursive script, appearing to read "Joseph E. Smith", written over a horizontal line.

Clerk of the Circuit Court, ex officio Clerk of the  
Board of County Commissioners of St. Lucie  
County, Florida

**CERTIFICATE REQUIRED BY  
SECTIONS 218.385(2) AND (3), FLORIDA STATUTES**

December 8, 2015

Board of County Commissioners  
of St. Lucie County, Florida

Re: St. Lucie County Lease/Purchase of Equipment

Ladies and Gentlemen:

In connection with the proposed Equipment Lease/Purchase Agreement to be entered into between St. Lucie County, Florida (the "Lessee") and us, Banc of America Public Capital Corp (the "Bank") has agreed to finance the lease of equipment described in the Equipment Lease/Purchase Agreement dated as of December 8, 2015 (the "Lease") upon the terms and conditions set forth therein and in the Lease.

The purpose of this letter is to acknowledge to the Lessee certain information reflecting the obligations described in the Schedule, as required by the provisions of Section 218.385(2) and 218.385(3), Florida Statutes, as amended. Accordingly, the Bank hereby acknowledges as follows:

1. The Lease is not being underwritten. There is no managing underwriter in connection with the Lease. The nature and estimated amount of expenses to be incurred by the Bank in connection with the Financing are set forth in Schedule 1 attached hereto.
2. No person has entered into an understanding with the Bank or, to the knowledge of the Bank, with the Lessee for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Lessee and the Bank or to exercise or to attempt to exercise any influence to effect any transaction in connection with the Financing.
3. No underwriting spread will be realized by the Bank.
4. No management fee will be charged by the Bank.
5. No fee, bonus or other compensation will be paid by the Bank in connection with the issuance of the Schedule to any person not regularly employed or retained by the Bank (including any "finder," as defined in Section 218.386(1)(a), Florida Statutes, as amended), except as disclosed as expenses to be incurred by the Bank, as set forth in paragraph 1 above.
6. No managing underwriter is connected with the Lease.

7. The Lessee is proposing to enter into the obligations represented by the Lease for the purpose of financing certain energy efficiency equipment. The obligations are expected to be repaid over a period of approximately 15 years and 4 months. At the interest rates specified in the Lease, total interest paid over the life of the obligation is expected to be approximately \$1,682,265.37.

8. The source of repayment or security for the obligation is a covenant to budget and appropriate funds to satisfy such obligations on an annual basis, subject to the Lessee's right to nonappropriate in any given year and terminate the obligations. Authorizing the obligations and budgeting and appropriating sufficient funds to pay such obligations each year will result in a an annual maximum of \$961,321.66 of such revenues not being available to finance other services each year for approximately 15 years and 4 months.

We understand that the statements set forth herein are for informational purposes only and shall not affect or control the actual terms and conditions of the obligations contained in the Lease.

BANC OF AMERICA PUBLIC CAPITAL CORP



By: \_\_\_\_\_  
Terri Preston, Authorized Agent



## Consumer's Certificate of Exemption

DR-14  
R. 04/11

Issued Pursuant to Chapter 212, Florida Statutes

85-8012622335C-9	08/31/2012	08/31/2017	COUNTY GOVERNMENT
Certificate Number	Effective Date	Expiration Date	Exemption Category

This certifies that

ST LUCIE COUNTY  
BOARD OF COUNTY COMMISSIONERS  
2300 VIRGINIA AVE RM 226  
FORT PIERCE FL 34982-5632



is exempt from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased.



## Important Information for Exempt Organizations

DR-14  
R. 04/11

1. You must provide all vendors and suppliers with an exemption certificate before making tax-exempt purchases. See Rule 12A-1.038, Florida Administrative Code (F.A.C.).
2. Your *Consumer's Certificate of Exemption* is to be used solely by your organization for your organization's customary nonprofit activities.
3. Purchases made by an individual on behalf of the organization are taxable, even if the individual will be reimbursed by the organization.
4. This exemption applies only to purchases your organization makes. The sale or lease to others of tangible personal property, sleeping accommodations, or other real property is taxable. Your organization must register, and collect and remit sales and use tax on such taxable transactions. Note: Churches are exempt from this requirement except when they are the lessor of real property (Rule 12A-1.070, F.A.C.).
5. It is a criminal offense to fraudulently present this certificate to evade the payment of sales tax. Under no circumstances should this certificate be used for the personal benefit of any individual. Violators will be liable for payment of the sales tax plus a penalty of 200% of the tax, and may be subject to conviction of a third-degree felony. Any violation will require the revocation of this certificate.
6. If you have questions regarding your exemption certificate, please contact the Exemption Unit of Account Management at 800-352-3671. From the available options, select "Registration of Taxes," then "Registration Information," and finally "Exemption Certificates and Nonprofit Entities." The mailing address is PO Box 6480, Tallahassee, FL 32314-6480.

BOARD OF  
COUNTY  
COMMISSIONERS



COUNTY  
ATTORNEY

Daniel S. McIntyre

Heather Young  
Katherine Davis Barbieri

ASSISTANT COUNTY ATTORNEY  
ASSISTANT COUNTY ATTORNEY

December 8, 2015

Board of County Commissioners  
of St. Lucie County, Florida

Banc of America Public Capital Corp  
Hunt Valley, Maryland

Nabors, Giblin & Nickerson, P.A.  
Tampa, Florida

Re: Equipment Lease/Purchase Agreement, dated as of December 8, 2015, between Banc of America Public Capital Corp, as Lessor, and St. Lucie County, Florida, as Lessee.

Ladies and Gentlemen:

As County Attorney to St. Lucie County, Florida (the "County"), I have examined (a) an executed counterpart of that certain Equipment Lease/Purchase Agreement, dated as of December 8, 2015, and Exhibits thereto by and between Banc of America Public Capital Corp, as Lessor (the "Lessor") and the County, as Lessee (the "Agreement"), which, among other things, provides for the lease of certain property (the "Equipment"), (b) the Escrow Agreement, dated as of December 8, 2015, among the Lessor, the County and Bank of America, National Association, as Escrow Agent (the "Escrow Agreement"), (c) an executed counterpart of Resolution No. 2015-247 adopted by the Board of County Commissioners of the County on December 1, 2015, which, among other things, authorized the County to execute the Agreement and the Escrow Agreement and (d) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Escrow Agreement and the documents relating thereto are referred to collectively as the "Transaction Documents".

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

1. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of County, and the Transaction Documents are valid and binding obligations of the County enforceable in accordance with their terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency,



moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

2. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of the County 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.

3. There is no proceeding pending or, to the best of my 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 interest of Lessor or its assigns, as the case may be, in the Equipment, the Escrow Account or other collateral thereunder.

4. The County is a political subdivision of the State of Florida with the requisite power and authority to lease, purchase and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein.

Yours truly,



Daniel S. McIntyre  
County Attorney

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(239) 288-4057 Fax

**TAMPA**

2502 Rocky Point Drive  
Suite 1060  
Tampa, Florida 33607  
(813) 281-2222 Tel  
(813) 281-0129 Fax

December 8, 2015

Board of County Commissioners  
of St. Lucie County, Florida  
Fort Pierce, Florida

Re: Equipment Lease/Purchase Agreement, dated as of December 8, 2015, between Banc of America Public Capital Corp, as Lessor, and St. Lucie County, Florida, as Lessee.

Ladies and Gentlemen:

We are Bond Counsel to St. Lucie County, Florida (the "County"). In connection with the rendering of the opinions contained herein, we have examined (a) an executed counterpart of that certain Equipment Lease/Purchase Agreement, dated as of December 8, 2015, and Exhibits thereto by and between Banc of America Public Capital Corp, as Lessor (the "Lessor") and the County, as Lessee (the "Agreement"), which, among other things, provides for the lease of certain property (the "Equipment"), (b) the Escrow Agreement, dated as of December 8, 2015, among the Lessor, the County and Bank of America, National Association, as Escrow Agent (the "Escrow Agreement"), (c) an executed counterpart of Resolution No. 2015-247 of the County, adopted by the Board of County Commissioners of the County on December 1, 2015, which, among other things, authorized the County to execute the Agreement and the Escrow Agreement and (d) such other opinions, documents and matters of law as we have deemed necessary in connection with the following opinions.

As to questions of fact material to our opinion, we have relied upon the representations of the County contained in the Agreement and in the certified proceedings and other certifications of officials furnished to us without undertaking to verify the same by independent investigation. We have not undertaken an independent audit, examination, investigation or inspection of such matters and have relied solely on the facts, estimates and circumstances described in such proceedings and certifications. We have assumed the genuineness of signatures on all documents and instruments, the authenticity of documents submitted as originals and the conformity to originals of documents submitted as copies.

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

1. The County is a political subdivision of the State of Florida, duly created and validly existing under the Constitution and laws of the State of Florida.



2. The County has the right and power under the Constitution and Laws of the State of Florida to execute and deliver the Agreement and the Escrow Agreement and adopt the Resolution, and the Agreement and the Escrow Agreement have been executed and delivered by the County and the Resolution has been duly and lawfully adopted by the County, each is in full force and effect in accordance with its respective terms and is valid and binding upon the County and is enforceable in accordance with its respective terms, and no other authorization for the Agreement, the Escrow Agreement or the Resolution is required.

3. Under existing statutes, regulations, rulings and court decisions, prior to the termination of the Agreement resulting from a Non-Appropriation or an Event of Default thereunder, the interest component of the Rental Payments received by the Lessor is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, it should be noted that with respect to certain corporations, such interest component is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations. The opinions set forth above are subject to the condition that all requirements of the Internal Revenue Code of 1986, as amended, must be satisfied subsequent to the delivery of the Agreement in order that the interest component be (or continues to be) excluded from gross income for federal income tax purposes. Failure to comply with certain of such requirements could cause the interest component to be so included in gross income retroactive to the date of delivery of the Agreement. The County has covenanted in the Agreement to comply with all such requirements. The Agreement may result in collateral federal tax consequences to certain taxpayers. We express no opinion regarding such federal tax consequences arising with respect to the Agreement.

We express no opinion regarding the federal income tax or Florida tax consequences resulting from the Agreement or the receipt by the Lessor of payments under the Agreement following the termination of the Agreement resulting from a Non-Appropriation of an Event of Default thereunder.

The opinions expressed in paragraph 2 hereof are qualified to the extent that the enforceability of the Resolution, the Agreement and the Escrow Agreement may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity. Furthermore, as such opinions in paragraph 2 relate to the Agreement and the Escrow Agreement we are assuming the due authorization and execution of the Agreement and the Escrow Agreement by the Lessor and with respect to the Escrow Agreement, the other party thereto.

We have not been engaged or undertaken to review the compliance with laws of the State of Florida or the United States with regard to the sale or distribution of the Agreement and we express no opinion relating thereto.

The opinions set forth herein are expressly limited to, and we opine only with respect to, the laws of the State of Florida and the United States of America. The only opinions rendered

December 8, 2015

hereby shall be those expressly stated as such herein, and no opinion shall be implied or inferred as a result of anything contained herein or omitted herefrom.

This opinion is given as of the date hereof and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention that may hereafter occur.

All capitalized terms herein shall have the same meanings as in the Agreement unless otherwise provided herein.

Respectfully submitted,

*Nelson, Lili & Peterson, P.A.*

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December 8, 2015

Banc of America Public Capital Corp  
Hunt Valley, Maryland

Re: Equipment Lease/Purchase Agreement, dated as of December 8, 2015, between Banc of America Public Capital Corp, as Lessor, and St. Lucie County, Florida, as Lessee.

Dear Sir or Madam:

We have acted as Bond Counsel for St. Lucie County, Florida (the "County"), in connection with that certain Equipment Lease/Purchase Agreement (the "Agreement"), dated as of December 8, 2015, between the City and Banc of America Public Capital Corp, and we have participated in various proceedings relating thereto. All terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

Of even date herewith we have delivered to the County our approving opinion as Bond Counsel with respect to the Agreement. This letter will confirm that you may rely on such opinion as if it were addressed to you; provided, however, no attorney-client relationship has existed or exists between our firm and yours in connection with the Agreement and by virtue of this letter or our approving opinion. This letter is delivered to you solely for your benefit as the Lessor under the Agreement and may not be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person.

This letter is furnished by us in our capacity as Bond Counsel for the County and not as counsel to any other person.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nabors, Giblin &amp; Nickerson, P.A.', is written over a horizontal line.