

To: City Council
CC: Jim App, City Manager

From: Mike Compton, Director of Administrative Services

Subject: Lease Purchase Approval Resolution - Aerial Ladder Truck

DATE: December 28, 1999

After preparation of the agenda staff report, including the resolution, staff received a sample resolution from the Zion National Bank, who is providing the lease purchase financing, which contains certain provisions that they desire to be included in resolution to be adopted by the Council.

Accordingly, I have prepared the attached revised resolution for your consideration and adoption at your 1/4/00 Council meeting. Please substitute this resolution for the one which was previously distributed in your agenda packet. Additional copies will be distributed at the actual meeting itself.

Sorry for any confusion that this may cause.

RESOLUTION NO. 00-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING A CONTRACT FOR LEASE PURCHASE CONTRACT WITH ZION FIRST
NATIONAL BANK FOR THE ACQUISITION OF AN AERIAL LADDER TRUCK

WHEREAS, the Council has authorized the acquisition of an aerial ladder truck; and

WHEREAS, the Council has approved a budget appropriation for its acquisition; and

WHEREAS, the Council has determined that the acquisition of the aerial ladder truck shall be made via lease purchase financing in accordance with the agreement attached herewith; and

WHEREAS, pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, under certain circumstances, certain obligations the interest on which is exempt from federal income tax under Section 103 of the Internal Revenue Code may be designated by the issuer thereof as "qualified tax-exempt obligations," thereby allowing certain financial institutions that are holders of such qualified tax-exempt obligations to deduct for federal income tax purposes a portion of such institution's interest expense that is allocable to such qualified tax-exempt obligations, all as determined in accordance with Section 265 and 291 of the Internal Revenue Code.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of El Paso de Robles as follows:

SECTION 1. The terms of the lease purchase agreement for the leasing of the aerial ladder truck, attached herewith, are in the best interests of the City of Paso Robles.

SECTION 2. The Director of Administrative Services is hereby authorized to execute and deliver the lease purchase agreement in substantially the form attached herewith and any related documents necessary to the consummation of the transaction contemplated by the lease purchase agreement for and on behalf of the City of Paso Robles. The Director of Administrative Services and other City officials may make such changes to the lease purchase agreement as such officials deem necessary or desirable, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 3. The Director of Administrative Services and other City officials are hereby authorized and directed to fulfill all obligations under the terms of the lease purchase agreement.

SECTION 4. Based upon the following representations, the interest components of the lease purchase payments under the lease purchase agreement are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code: (i) such lease purchase payments are not private activity bonds within the meaning of Section 141 of the Internal Revenue Code; (ii) the City of Paso Robles reasonably anticipates that it, together with its subordinate entities, will not issue during the current calendar year obligations (other than those obligations described in clause (iii) below) the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Internal

Revenue Code which, when aggregated with all obligations described in clause (ii) above, will exceed an aggregate principal amount of \$10,000,000; (iii) and notwithstanding clause (ii) above, City of Paso Robles and its subordinate entities may have issued in the current calendar year and may continue to issue during the remainder of the current calendar year private activity bonds other than qualified 501(c)(3) bonds as defined in Section 145 of the Internal Revenue Code.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 4th day of January, 2000, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Duane Picanco, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

TO: James L. App, City Manager
FROM: Mike Compton, Director of Administrative Services
SUBJECT: Lease Purchase Contract - Aerial Ladder Truck
DATE: January 4, 2000

Needs: For the City Council to consider approval of a lease purchase contract for the acquisition of an aerial ladder truck for fire protection needs.

Facts:

1. The Council, at their meeting of November 16, 1999, appropriated a portion of the fiscal year 1999 surplus from reserves for the lease purchase acquisition of an aerial ladder truck.
2. The Council, at this same meeting, awarded a bid to Pierce for the acquisition of an aerial ladder truck.
3. The bid award was based upon a competitive bid process undertaken by the San Miguel Fire Protection District located in San Diego County.
4. Staff has solicited interest rate quotes from numerous lending institutions for the purpose of lease purchasing financing the acquisition of an aerial ladder truck.
5. The lowest interest rate quote was from Zion First National Bank in Salt Lake City at 5.28%.

Analysis

and

Conclusion:

The Council has authorized the acquisition of an aerial ladder truck using lease purchase financing. As noted above, staff has solicited interest quotes and recommends a lease purchase contract with Zion First National Bank at the rate of 5.28%.

Due to *bank qualified* issues, approval of the lease purchase contract was postponed until January, 2000. Financing companies offer lease purchase contracts to public agencies at extremely favorable rates because they receive federal tax benefits from doing so. However, this tax benefit is only available if the financing is *bank qualified*. To be *bank qualified*, the public agency must issue less than \$10 million in tax exempt financings in any given calendar year. Since the City has issued \$23 million in general obligation bonds in the current calendar year, entering into a lease purchase contract during the current calendar year would make the lease purchase financing 'unqualified' and may result in a higher interest rate. Since the City has a ninety (90) day pricing guarantee from Pierce, making the lease purchase contract effective in January, 2000 has not posed a problem.

Fiscal

Impact:

The Council has already appropriated funds for the down payment, \$100,000, and first and second year's lease purchase payments at \$100,000 each. Per the adopted four year financial plan, assuming all budget assumptions and projections remain unchanged, the following impacts upon the adopted budget, particularly the General Fund, will be experienced:

Fiscal Year 2000 - The adopted budget estimated the June 30th General Fund year end results at a positive \$85,400. The budget appropriation adjustment approved by the Council for the aerial truck acquisition authorized \$100,000 for a cash down payment and an additional \$100,000 for the first

years' debt service payment. Since the City will receive \$428,000 as proceeds from the lease purchase contract, the net impact on General Fund resources is a positive \$228,000 (\$428,000 less \$100,000 less \$100,000). It should be noted that this positive increase to General Fund resources (reserves) does NOT represent discretionary funds that may be used for other General Fund purposes.

Fiscal Year 2001 - The adopted budget estimated the June 30th General Fund year end results at a negative \$(61,400). The budget appropriation adjustment approved by the Council for the aerial truck acquisition authorized \$100,000 for the second year's debt service payment. Due to compliance with *Generally Accepted Accounting Principles*, the accounting treatment will result in an increase in the negative estimated General Fund results from \$(61,400) to \$(161,400).

Fiscal Year 2002 - The adopted budget estimated the June 30th General Fund year end results at a positive \$29,900. There is NO budget appropriation adjustment approved by the Council for the third year's debt service payment of \$100,000. Due to compliance with *Generally Accepted Accounting Principles*, the accounting treatment will result in elimination of the projected surplus of \$29,900 and replace it with an operating deficit of \$(70,100).

Fiscal Year 2003 - The adopted budget estimated the June 30th General Fund year end results at a positive \$228,200. There is NO budget appropriation adjustment approved by the Council for the fourth year's debt service payment of \$100,000. Due to compliance with *Generally Accepted Accounting Principles*, the accounting treatment will result in a reduction of the projected surplus from \$228,200 to \$128,200.

It should also be noted that the above General Fund impacts do NOT include other budget adjustments approved by the Council since July 1, 1999; i.e. wage and benefit packages and Community Development overtime, etc.

The lease purchase contract proposed is a five year contract calling for semi-annual payments at an interest rate cost of 5.28%.

There will be an extended time between the placement of the purchase order (January, 2000) for the aerial ladder truck and its subsequent delivery six to eight months later. The City will deposit the proceeds from the lease purchase financing into a trust or escrow account and begin making semi-annual lease payments prior to the delivery of the aerial ladder truck. However, the City will earn interest on the trust or escrow account at an interest rate higher than the 5.28% paid on the lease purchase contract.

Options:

1. That the City Council adopt a Resolution approving a lease purchase contract (copy attached as Exhibit "A") for the acquisition of an aerial ladder truck and authorize the Director of Administrative Services to execute a lease purchase contract and undertake any and all necessary actions to consummate the financing arrangements; or
- b. Amend, modify, or reject the above option.

RESOLUTION NO. 00-

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF EL PASO DE ROBLES
APPROVING A CONTRACT FOR LEASE PURCHASE
CONTRACT WITH ZION FIRST NATIONAL BANK
FOR THE ACQUISITION OF AN AERIAL LADDER TRUCK

WHEREAS, the Council has authorized the acquisition of an aerial ladder truck; and

WHEREAS, the Council has approved a budget appropriation for its acquisition; and

WHEREAS, the Council has determined that the acquisition of the aerial ladder truck shall be made via lease purchase financing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of El Paso de Robles the lease purchase contract with Zion First National Bank is hereby approved and the Director of Administrative Services is authorized to execute said contract and undertake any other actions necessary to complete the lease purchase financing.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 4th day of January, 2000, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Duane Picanco, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

LEASE/PURCHASE AGREEMENT

Dated as of **January 5, 2000**

by and between

ZIONS FIRST NATIONAL BANK
as Lessor

and

CITY OF EL PASO DE ROBLES,
as Lessee

LEASE/PURCHASE AGREEMENT

This Lease/Purchase Agreement, dated as of January 5, 2000, by and between ZIONS FIRST NATIONAL BANK, a national banking association duly organized and existing under the laws of the United States of America, as lessor (the "Bank"), and the City of El Paso de Robles, a public agency duly organized and existing under the Constitution and laws of the State of California, as lessee (the "Lessee");

WITNESSETH:

WHEREAS, the Lessee desires to finance the acquisition of the equipment described as the "Financed Property" in Exhibit B (the "Financed Property") by entering into this Lease/Purchase Agreement with the Bank (the "Lease"); and

WHEREAS, the Bank agrees to lease the Financed Property to the Lessee the Financed Property sometimes being referred to herein as the "Leased Property"), upon the terms and conditions set forth in this Lease, with rental to be paid by the Lessee equal to the Lease Payments hereunder; and

WHEREAS, it is the intent of the parties that the original term of this Lease, and any subsequent renewal terms, shall not exceed 12 months, and that the payment obligation of the Lessee shall not constitute a general obligation under State law; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease;

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

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1 Definitions and Rules of Construction. Unless the context otherwise requires, the capitalized terms used herein shall, for all purposes of this Lease, have the meanings specified in the definitions below. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Lease, refer to this Lease as a whole.

"Advance" shall have the meaning set forth in Section 2.1(I)(i)(D) hereof.

"Bank" shall have the meaning set forth in the Preamble hereof.

"Business Day" means any day except a Saturday, Sunday, or other day on which banks in Salt Lake City, Utah or the State are authorized to close.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commencement Date" means the date this Lease is executed by the Bank and the Lessee.

"Environmental Law" means all federal, state or local laws, statutes, regulations, ordinances and other provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations and all common law relating to public health and safety, worker health and safety, pollution, the environment, wetlands, the preservation and reclamation of natural resources or waste management, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control or cleanup of any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, solvents, urea formaldehyde, dioxins, polychlorinated biphenyls, noise or radiation, each as amended and as now or hereafter in effect. The term Environmental Law shall include (by way of illustration rather than limitation) the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 135, et seq., and the Hazardous Materials Transportation Act, 39 U.S.C. Section 1801, et seq. and any regulations, guidelines, directives or other interpretations of any such enactment, all as amended from time to time.

"Financed Property" shall have the meaning set forth in the Whereas clauses hereof.

"Fiscal Year" means the period extending from July 1 of each calendar year to June 30 of the subsequent calendar year.

"Governing Body" means the governing body of the Lessee.

"Hazardous Materials" means any hazardous, dangerous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance the manufacture, storage, transport, generation, use, treatment, exposure to, release, threatened release, discharge, remediation, cleanup, abatement, removal, possession, recycling, disposal or other disposition of which is prohibited or regulated (including without limitation, being subjected to notice, reporting, record keeping, or clean-up requirements) by any Environmental Law.

"Lease" shall have the meaning set forth in the Whereas clauses hereof.

"Lease Payment Date" shall have the meaning set forth in Section 3.4(a) hereof.

"Lease Payments" means the rental payments described in Exhibit A hereto.

"Leased Property" shall have the meaning set forth in the Whereas clauses hereof.

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"Lessee" shall have the meaning set forth in the Preamble hereof.

"Net Proceeds" means insurance or eminent domain proceeds received with respect to the Leased Property, less expenses incurred in connection with the collection of such proceeds.

"Obligation Instrument" shall have the meaning set forth in Section 2.1(c) hereof.

"Permitted Encumbrances" means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the Lessee may, pursuant to provisions of Section 6.3 hereof, permit to remain unpaid; (ii) this Lease; (iii) any contested right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law to the extent permitted under Section 6.4(b) hereof; (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the execution date of this Lease and which the Lessee hereby certifies will not materially impair the use of the Leased Property by the Lessee; and (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of execution of this Lease and to which the Bank and the Lessee consent in writing.

"Rebate Exemption" shall have the meaning set forth in Section 2.1(l)(ii)(A) hereof.

"Regulations" shall have the meaning set forth in Section 2.1(l)(i) hereof.

"Term" means the term of this Lease as described in Section 3.2 hereof.

"State" shall have the meaning set forth in the Preamble hereof.

SECTION 1.2 Exhibits The Exhibits attached to this Lease are by this reference made a part of this Lease.

ARTICLE II :

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1 Representations, Covenants and Warranties of the Lessee. The Lessee represents, covenants and warrants to the Bank as follows:

(a) Due Organization and Existence. The Lessee is a public agency of the State duly organized and existing under the Constitution and laws of the State.

(b) Authorization: Enforceability. The Constitution and laws of the State authorize the Lessee to enter into this Lease and to enter into the transactions contemplated by, and to carry out its obligations under, this Lease. The Lessee has duly authorized, executed and delivered this Lease in accordance with the Constitution and laws of the State. This Lease constitutes the legal, valid and binding special obligation of the Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Conflicts or Default: Other Liens or Encumbrances. Neither the execution and delivery of this Lease nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby (i) conflicts with or results in a breach of the terms, conditions, provisions, or restrictions of any existing law, or court or administrative decree, order, or regulation, or agreement or instrument to which the Lessee is now a party or by which the Lessee is bound, including without limitation any agreement or instrument pertaining to any bond, note, lease, certificate of participation, debt instrument, or any other obligation of the Lessee (any such bond, note, lease, certificate of participation, debt instrument, and other obligation being referred to herein as an "Obligation Instrument"), (ii) constitutes a default under any of the foregoing; or (iii) results in the

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creation or imposition of any pledge, lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessee, or upon the Leased Property except for Permitted Encumbrances.

By way of example, and not to be construed as a limitation on the representations set forth in the immediately preceding paragraph:

(A) no portion of the Leased Property is pledged to secure, and

(B) the interests of the Lessor in the Leased Property hereunder do not violate the terms, conditions or provisions of any restriction or revenue pledge in any agreement or instrument pertaining to,

any Obligation Instrument.

If any Obligation Instrument existing on the date of execution of this Lease creates any pledge, lien, charge or encumbrance on any revenues, property or assets associated with the Existing Property and/or the Financed Property that is higher in priority to the Bank's interests therein under this Lease, the Bank hereby subordinates its interests therein, but only to the extent required pursuant to such existing Obligation Instrument.

(d) Compliance with Open Meeting Requirements. The Governing Body has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which the Lessee's execution of this Lease was authorized.

(e) Compliance with Bidding Requirements. Either there are no procurement or public bidding laws of the State applicable to the acquisition and leasing of the Leased Property pursuant to this Lease, or the Governing Body and the Lessee have complied with all such procurement and public bidding laws as may be applicable hereto.

(f) No Adverse Litigation. There are no legal or governmental proceedings or litigation pending, or to the best knowledge of the Lessee threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling, or finding might adversely affect the transaction contemplated in or the validity of this Lease.

(g) Opinion of Lessee's Counsel. The letter attached to this Lease as Exhibit D is a true opinion of Lessee's Counsel.

(h) Governmental Use of Leased Property. During the Term of this Lease, the Leased Property will be used solely by the Lessee, and only for the purpose of performing one or more governmental or proprietary functions of the Lessee consistent with the permissible scope of the Lessee's authority, and the Leased Property will not be subject to any direct or indirect private business use.

(i) Other Representations and Covenants. The representations, covenants, warranties, and obligations set forth in this Article are in addition to and are not intended to limit any other representations, covenants, warranties, and obligations set forth in this Lease.

(j) No Defaults. The Lessee has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any municipal lease of the same general nature as this Lease, or under any of its bonds, notes, or other obligations of indebtedness for which its revenues or general credit are pledged.

(k) No Legal or Environmental Violation. The Leased Property is not, and at all times during the Term of this Lease will not be in violation of any federal, state or local law, statute, ordinance or regulation, including without limitation, any Environmental Law, to the best of the Lessee's knowledge. Neither the Lessee nor, to the best of Lessee's knowledge, any third party, has used, generated, manufactured, stored or disposed of on, under or about the Leased Property or transported to or from the

Leased Property any Hazardous Materials.

In the event Hazardous Materials are discovered, and must be removed or remediated, and to the extent permitted by applicable law, the Lessee hereby agrees to indemnify and hold harmless the Bank, and its directors, officers, shareholders, employees, and agents, and successors to the Bank's interest in the chain of title to the Leased Property, and their directors, officers, shareholders, employees, and agents, from and against any and all loss, claim, damages, expense or liability, including reasonable attorneys' fees and other litigation expenses, to the full extent of such action as attributable, directly or indirectly, to:

- (i) the presence or use of, generation, storage, release, threatened release, or disposal of Hazardous Materials by any person on, in or under the Leased Property;
- (ii) use of the Leased Property or any part thereof as a dump site, permanent or temporary storage site or transfer station for any Hazardous Materials;
- (iii) violation of any Environmental Law affecting the Leased Property or any part thereof or any activity conducted on any part of the Leased Property; and
- (iv) any action or proceeding before any court, quasi-judicial body or administrative agency relating to the enforcement of any Environmental Law affecting the Leased Property or any part thereof or any activity conducted on any part of the Leased Property;

including, without limitation, all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, manufacture, storage, or disposal of Hazardous Materials, by the Lessee or any prior owner or operator of the Leased Property, including, without limitation, the cost of any required and necessary repair, cleanup, remediation, or detoxification and the preparation of any disclosure, or other required plans, whether such action is required or necessary prior to or following transfer of title to the Leased Property.

(I) General Tax and Arbitrage Representations and Covenants

(i) The certifications and representations made by the Lessee in this Lease are intended, among other purposes, to be a certificate permitted in Section 1.148-2(b) of the Treasury Regulations promulgated pursuant to Section 148 of the Code (the "Regulations"), to establish the reasonable expectations of the Lessee at the time of the execution of this Lease made on the basis of the facts, estimates and circumstances in existence on the date hereof. The Lessee further certifies and covenants as follows:

(A) The Lessee has not been notified of any disqualification or proposed disqualification of it by the Commissioner of the Internal Revenue Service as an issuer which may certify bond issues.

(B) To the best knowledge and belief of the Lessee, there are no facts, estimates or circumstances that would materially change the conclusions, certifications or representations set forth in this Lease, and the expectations herein set forth are reasonable.

(C) The Scheduled Term of this Lease does not exceed the useful life of the Financed Property, and the weighted average term of this Lease does not exceed the weighted average useful life of the Financed Property.

(D) Each advance of funds by the Bank to finance Financed Property under this Lease (each an "Advance") will occur only when and to the extent that the Lessee has reasonably determined and identified the nature, need, and cost of each item of Financed Property pertaining to such Advance.

(E) No use will be made of the proceeds of this Lease or any such Advance, or any funds or accounts of the Lessee which may be deemed to be proceeds of this Lease or any such Advance, which use, if it had been reasonably expected on the date of the execution of this Lease or of any such Advance, would have caused this Lease or any such Advance to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code.

(F) The Lessee will at all times comply with the rebate requirements of Section 148(f) of the Code as they pertain to this Lease, to the extent applicable.

(G) In order to preserve the status of this Lease and the Advances as other than "private activity bonds" as described in Sections 103(b)(1) and 141 of the Code, as long as this Lease and any such Advances are outstanding and unpaid:

(I) none of the proceeds from this Lease or the Advances or any facilities or assets financed therewith shall be used for any "private business use" as that term is used in Section 141(b) of the Code and defined in Section 141(b)(6) of the Code;

(II) the Lessee will not allow any such "private business use" to be made of the proceeds of this Lease or the Advances or any facilities or assets financed therewith; and

(III) none of the Advances or Lease Payments due hereunder shall be secured in whole or in part, directly or indirectly, by any interest in any property used in any such "private business use" or by payments in respect of such property, and shall not be derived from payments in respect of such property.

(H) The Lessee will not take any action, or omit to take any action, which action or omission would cause the interest component of the Lease Payments to be ineligible for the exclusion from gross income as provided in Section 103 of the Code.

(I) The Lessee is a "governmental unit" within the meaning of Section 141(b)(6) of the Code.

(J) The obligations of the Lessee under this Lease are not federally guaranteed within the meaning of Section 149(b) of the Code.

(K) This Lease and the Advances to be made pursuant hereto will not reimburse the Lessee for any expenditures incurred prior to the date of this Lease and do not constitute a "refunding issue" as defined in Section 1.150-1(d) of the Regulations, and no part of the proceeds of this Lease or any such Advances will be used to pay or discharge any obligations of the Lessee the interest on which is or purports to be excludable from gross income under the Code or any predecessor provision of law.

(L) In compliance with Section 149(e) of the Code relating to information reporting, the Lessee will file or cause to be filed with the Internal Revenue Service Center, Philadelphia, PA 19255, within fifteen (15) days from the execution of this Lease, IRS Form 8038-G or 8038-GC, as appropriate, reflecting the total aggregate amount of Advances that can be made pursuant to this Lease.

(M) None of the proceeds of this Lease or the Advances to be made hereunder will be used directly or indirectly to replace funds of the Lessee used directly or indirectly to acquire obligations at a yield materially higher than the yield on this Lease or otherwise invested in any manner. No portion of the Advances will be made for the

purpose of investing such portion at a materially higher yield than the yield on this Lease.

(N) Inasmuch as Advances will be made under this Lease only when and to the extent the Lessee reasonably determines, identifies and experiences the need therefor, and will remain outstanding and unpaid only until such time as the Lessee has moneys available to repay the same, the Lessee reasonably expects that (I) the Advances will not be made sooner than necessary; (II) no proceeds from the Advances will be invested at a yield higher than the yield on this Lease; and (III) the Advances and this Lease will not remain outstanding and unpaid longer than necessary.

(O) The Lessee will either (i) spend all of the moneys advanced pursuant to this Lease immediately upon receipt thereof, without investment, on the portion of the Financed Property that is to be financed thereby; or (ii) invest such moneys at the highest yield allowable and practicable under the circumstances until they are to be spent on the portion of the Financed Property that is to be financed thereby, and track, keep records of, and pay to the United States of America, all rebatable arbitrage pertaining thereto, at the times, in the amounts, in the manner, and to the extent required under Section 148(f) of the Code and the Treasury Regulations promulgated in connection therewith. At least five percent (5%) of the total amount of moneys that are expected to be advanced pursuant to this Lease are reasonably expected to have been expended on the Financed Property within six (6) months from the date of this Lease. All moneys to be advanced pursuant to this Lease are reasonably expected to have been expended on the Financed Property no later than the earlier of: (I) the date twelve (12) months from the date such moneys are advanced; and (II) the date three (3) years from the date of this Lease.

(P) This Lease and the Advances to be made hereunder are 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 and the regulations promulgated in connection therewith (I) enabling the Lessee to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (II) overburdening the tax-exempt bond market, as those terms are used in Section 1.148-10(a)(2) of the Regulations.

(Q) To the best of the knowledge, information and belief of the Lessee, the above expectations are reasonable. On the basis of the foregoing, it is not expected that the proceeds of this Lease and the Advances to be made hereunder will be used in a manner that would cause this Lease or such Advances to be "arbitrage bonds" under Section 148 of the Code and the regulations promulgated thereunder, and to the best of the knowledge, information and belief of the Lessee, there are no other facts, estimates or circumstances that would materially change the foregoing conclusions.

(ii) Arbitrage Rebate Under Section 148(f) of the Code. With respect to the arbitrage rebate requirements of Section 148(f) of the Code, either (check applicable box):

(A) Lessee Qualifies for Small Issuer Exemption from Arbitrage Rebate. The Lessee hereby certifies and represents that it qualifies for the exception contained in Section 148(f)(4)(D) of the Code from the requirement to rebate arbitrage earnings from investment of proceeds of the Advances made under this Lease (the "Rebate Exemption") as follows:

(1) The Lessee has general taxing powers.

(2) Neither this Lease, any Advances to be made hereunder, nor any portion thereof are private activity bonds as defined in Section 141 of the Code ("Private Activity Bonds").

(3) Ninety-five percent (95%) or more of the net proceeds of the Advances to be made hereunder are to be used for local government activities of the Lessee (or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the Lessee).

(4) Neither the Lessee nor any aggregated issuer has issued or is reasonably expected to issue any tax-exempt obligations other than Private Activity Bonds (as those terms are used in Section 148(f)(4)(D) of the Code) during the current calendar year, including the Advances to be made hereunder, which in the aggregate would exceed \$5,000,000 in face amount, or \$10,000,000 in face amount for such portions, if any, of any tax-exempt obligations of the Lessee and any aggregated issuer as are attributable to construction of public school facilities within the meaning of Section 148(f)(4)(D)(vii) of the Code.

For purposes of this Section, "aggregated issuer" means any entity which (a) issues obligations on behalf of the Lessee, (b) derives its issuing authority from the Lessee, or (c) is subject to substantial control by the Lessee.

The Lessee hereby certifies and represents that it has not created, does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 148(f)(4)(D)(i)(IV) of the Code.

Accordingly, the Lessee will qualify for the Rebate Exemption granted to governmental units issuing less than \$5,000,000 under Section 148(f)(4)(D) of the Code (\$10,000,000 for the financing of public school facilities construction as described above), and the Lessee shall be treated as meeting the requirements of Paragraphs (2) and (3) of Section 148(f) of the Code relating to the required rebate of arbitrage earnings to the United States with respect to this Lease and the Advances to be made hereunder.

(B) Lessee Will Keep Records of and Will Rebate Arbitrage. The Lessee does not qualify for the small issuer Rebate Exemption described above, and the Lessee hereby certifies and covenants that it will account for, keep the appropriate records of, and pay to the United States, the rebate amount, if any, earned from the investment of gross proceeds of this Lease and the Advances to be made hereunder, at the times, in the amounts, and in the manner prescribed in Section 148(f) of the Code and the applicable Regulations promulgated with respect thereto.

SECTION 2.2 Representations, Covenants and Warranties of the Bank. The Bank is a national banking association, duly organized, existing and in good standing under and by virtue of the laws of the United States of America, has the power to enter into this Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same, and has duly authorized the execution and delivery of this Lease. This Lease, constitutes the legal, valid and binding obligation of the Bank, enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

ARTICLE III

AGREEMENT TO LEASE; TERM OF LEASE; LEASE PAYMENTS

SECTION 3.1 Lease.

(a) Lease of Financed Property to Lessee. Bank hereby leases the Financed Property to the Lessee for a rental that the Lessee hereby agrees to pay to the Bank at the times and in the amounts described in Section 3.4, and the Lessee hereby leases the Leased Property from the Bank, upon the terms and conditions set forth herein.

Concurrently with its execution of this Lease, the Lessee shall deliver to the Bank fully completed documents substantially in the forms attached hereto as Exhibits B, C, and D hereto.

SECTION 3.2 Term. The Term of this Lease shall commence on the date of execution hereof and shall end on December 7, 2004 (the "Maturity Date"), unless extended pursuant to Section 3.3, or unless terminated prior thereto upon the earliest of any of the following events; provided that in the event of termination pursuant to paragraph (a) below, the lease of the Existing Property, if any, to the Bank pursuant to Section 3.1(a) shall continue in full force and effect:

(a) Default and Termination. A default by the Lessee and the Bank's election to terminate this Lease under Section 8.2 hereof;

(b) Payment of All Lease Payments. The payment by the Lessee of all Lease Payments required under Section 3.4 hereof;

(c) Prepayment. Upon a prepayment of Lease Payments pursuant to Article IX hereof.

SECTION 3.3 Extension of Lease Term. If on the Maturity Date, the Lease Payments shall not be fully paid, or if the Lease Payments hereunder shall have been abated at any time and for any reason, then the Term shall be extended until all Lease Payments shall be fully paid, except that the Term shall in no event be extended ten years beyond the Maturity Date.

SECTION 3.4 Lease Payments.

(a) **Time and Amount.** Subject to the provisions of Section 3.8 (regarding abatement in event of loss of use of any portion of the Leased Property), and Article IX (regarding prepayment of Lease Payments), in addition to the annual Existing Property Limited Lease Purposes Rental Value to be paid by the Lessee to the Bank for the sublease by the Lessee of the Existing Property from the Bank pursuant to Section 3.1(a), the Lessee agrees to pay to the Bank, its successors and assigns, as annual rental for the use and possession of the Financed Property, the Lease Payments (denominated into components of principal and interest) in the amounts specified in Exhibit A, to be due and payable in arrears on each payment date identified in Exhibit A (or if such day is not a Business Day, the next succeeding Business Day) specified in Exhibit A (the "Lease Payment Date").

In the event the Lessee does not pay a Lease Payment due on the respective Lease Payment Date, the Bank shall provide prompt written notice to the Lessee of such failure to pay; provided, however, that failure to give such notice shall not excuse any event of default under such Section 8.1 hereof.

(b) **Rate on Overdue Payments.** In the event the Lessee should fail to make any of the Lease Payments required in this Section, the Lease Payment in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same with interest thereon, to the extent permitted by law, from the date such amount was originally payable at the rate equal to the original interest rate payable with respect to such Lease Payments.

(c) **Additional Payments.** Any additional payments required to be made by the Lessee hereunder, including but not limited to Sections 4.1, 4.2, 4.3, and 6.3 of this Lease, shall constitute additional rental for the Leased Property.

SECTION 3.5 Fair Rental Value. The Lease Payments shall be paid by the Lessee in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Leased Property during each such period for which said Lease Payments are to be paid. The parties hereto have agreed and determined that such total rental represents the fair rental value of the Leased Property. In making such determination, consideration has been given to the value of the Leased Property, other obligation of the parties under this Lease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the Lessee and the general public, and the transfer of the Bank's leasehold interest in the Leased Property at the end of the Term.

SECTION 3.6 Budget and Appropriation. The Lessee covenants to take such action as may be necessary to include all Lease Payments due hereunder in its annual budget and to make the necessary annual appropriations therefor, and to maintain such items to the extent unpaid for that Fiscal Year in its budget throughout such Fiscal Year. The covenants on the part of the Lessee herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the ministerial duty of each and every public official of the Lessee to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Lessee to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the Lessee.

SECTION 3.7 Use and Possession. The total Lease Payments due in any Fiscal Year shall be for the Lessee's right to use and possession of the Leased Property for such Fiscal Year.

SECTION 3.8 Abatement of Lease Payments in Event of Loss of Use.

(a) **Period.** The obligation of the Lessee to pay Lease Payments shall be abated during any period in which by reason of damage, destruction or taking by eminent domain or condemnation with respect to any portion of the Leased Property there is substantial interference with the Lessee's right to use and possession of such portion of the Leased Property.

(b) **Amount.** The amount of such abatement shall be determined by the Lessee such that the resulting Lease Payments represent fair consideration for the Lessee's right to use and possession of the portion of the Leased Property not damaged, destroyed or taken. Such abatement shall commence with such damage, destruction or

taking and end with the substantial completion of the replacement or work or repair; provided, however, that during abatement, special sources of money, including without limitation proceeds of rental interruption insurance, shall be applied to pay the Lease Payments.

(c) Repair or Replacement. In the event of such abatement, the Lessee will use its best efforts to repair or replace the damaged or destroyed or taken portion of the Leased Property, as the case may be, from Net Proceeds, subject to the requirements of Section 5.1 hereof, or special funds of the Lessee or other moneys the application of which would not result in the obligations of the Lessee hereunder constituting indebtedness of the Lessee in contravention of the Constitution and laws of the State.

SECTION 3.9 Possession and Sublease of Leased Property Upon Termination... Upon termination of this Lease pursuant to Section 3.2(a), the Lessee shall transfer the Financed Property to the Bank in such manner as may be specified by the Bank, and the Bank shall have the right to take possession of the Financed Property by virtue of the Bank's ownership interest as lessor of the Financed Property, and to take possession of the Existing Property by virtue of the Bank's leasehold interest in the Existing Property under Section 3.1(a) and at the Bank's discretion, sublease the Existing Property to another entity for a term not to exceed the Scheduled Term plus an additional term as provided in Section 3.2 hereof; provided, however, that in such event, the Bank's use of the Existing Property, if any, shall be solely for the Existing Property Limited Lease Purposes described in Section 3.1(a) and the Bank will pay to the Lessee the annual Existing Property Limited Lease Purposes Rental Value described in Section 3.1(a) for such minimal use of the Existing Property during the term of such use.

To the extent the Financed Property is equipment, the Lessee at the Bank's direction shall ship the Financed Property to the destination designated by the Bank by loading the Financed Property at the Lessee's cost and expense, on board such carrier as the Bank shall specify.

SECTION 3.10 No Withholding. Notwithstanding any dispute between the Bank and the Lessee, including a dispute as to the failure of any portion of the Leased Property in use by or possession of the Lessee to perform the task for which it is leased, the Lessee shall make all Lease Payments when due and shall not withhold any Lease Payments pending the final resolution of such dispute.

SECTION 3.11 Net-Net-Net Lease. This Lease shall be deemed and construed to be a net-net-net lease and the Lessee hereby agrees that the Lease Payments shall be an absolute net return to the Bank, free and clear of any expenses, charges or set-offs whatsoever, except as expressly provided herein.

SECTION 3.12 Offset. Subject to the provisions of Section 3.8, Lease Payments or other sums payable by the Lessee pursuant to this Lease shall not be subject to offset or counterclaim and the Lessee shall not be entitled to any credit against such Lease Payments or other sums by reason of any dispute between the Lessee and the Bank, any vendor or manufacturer of any part of the Leased Property, or any other person.

ARTICLE IV

INSURANCE

SECTION 4.1 Casualty and Theft Insurance

(a) Casualty and Theft Insurance: Coverage. The Lessee shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, insurance against loss or damage to any portion of the Leased Property caused by fire and lightning, with extended coverage and theft, vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance.

(b) Amount. Such insurance shall be in an amount (except that such insurance may be subject to deductible clauses of not to exceed \$50,000 for any one loss) not less than the replacement cost of the Leased Property.

(c) Joint or Self-Insurance. Such insurance may be maintained as part of or in conjunction with any other insurance carried or required to be carried by the Lessee, and, subject to Bank's consent and compliance with Section 4.3(b) hereof, may be maintained in the form of self-insurance by the Lessee.

(d) Payment of Net Proceeds. The Net Proceeds of such insurance shall be applied as provided in Section 5.1.

SECTION 4.2 Rental Interruption Insurance.

(a) Coverage and Amount. If the Property leased hereunder is real property, then the Lessee shall maintain or cause to be maintained, rental income or use and occupancy insurance in an amount not less than the maximum Lease Payments in any future 12-month period (calculated based upon the maximum principal component hereunder as provided in Exhibit A and an assumed interest rate of 12% per annum), to insure against loss of rental income from the Leased Property caused by perils covered by the insurance required to be maintained as provided in Section 4.3 hereof.

(b) Joint Insurance. Such insurance may be maintained as part of or in conjunction with any other rental income insurance carried by the Lessee.

(c) Payment of Net Proceeds. The Net Proceeds of such rental interruption insurance shall be paid to the Bank to be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable.

SECTION 4.3 General Insurance Provisions.

(a) Payment of Premiums. The Lessee shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease .

(b) Self Insurance. The Lessee may only self insure pursuant to Sections 4.1, 4.2 and 4.3 hereof if and to the extent such self-insurance method or plan of protection shall afford reasonable protection to the Bank in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by other cities in the State other than the Lessee. Insurance provided through a California joint powers authority of which the Lessee is a member or with which the Lessee contracts for insurance shall be deemed to be self-insurance for purposes hereof. Any self-insurance maintained by the Lessee pursuant to this Article IV shall comply with the following terms:

(1) The self-insurance program shall include an actuarially sound claims reserve fund out of which each self-insured claim shall be paid; the adequacy of such fund shall be evaluated on an annual basis by an independent insurance consultant; and any deficiencies in any self-insured claims reserve fund shall be remedied in accordance with the recommendation of such independent insurance consultant;

(2) [Reserved]

(3) In the event the self-insurance program shall be discontinued, the actuarial soundness of its claims reserve fund, as determined by an independent insurance consultant, shall be maintained.

ARTICLE V

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 5.1 Application of Net Proceeds.

If Net Proceeds received by the Lessee are expected to equal at least 110% of the projected costs of replacement or repair, as demonstrated in an attached reconstruction budget, and, in the event that damage, destruction or taking results or is expected to result in an abatement of Lease Payments, such replacement or repair can be fully completed within a period not in excess of the period in which rental interruption insurance proceeds, as described in Section 4.2 together with other identified available moneys, will be available to pay in full all Lease Payments coming due during such period as demonstrated in an attached reconstruction schedule, then such Net Proceeds shall be used by the Lessee to replace or repair the damaged or taken facilities.

If the Lessee cannot make the representations regarding repair or reconstruction in the paragraph above or replacement or repair of any portion of the Leased Property is not economically feasible or in the best interest of the Lessee, then the Net Proceeds shall be applied to prepayment of Lease Payments as provided in Article IX hereof; provided that in the event of damage or destruction in whole of the Leased Property and in the event such Net Proceeds, together with any other funds then on hand are not sufficient to prepay all the Lease Payments then outstanding, then the Lessee shall not be permitted to certify that repair, replacement or improvement of all of the Leased Property is not economically feasible or in the best interest of the Lessee. In such event, the Lessee shall proceed to repair, replace or improve the Leased Property as described herein from legally available funds in the then current Fiscal Year.

ARTICLE VI

COVENANTS WITH RESPECT TO THE LEASED PROPERTY

SECTION 6.1 Use of the Leased Property. The Lessee represents and warrants that it has an immediate need for, and expects to make immediate use of, all of the Leased Property, which need is not temporary or expected to diminish in the foreseeable future.

SECTION 6.2 Interest in the Leased Property and the Lease.

(a) **Lessor Holds Leasehold Interest During Term.** During the Term of this Lease, the Bank does and shall hold a leasehold interest in the Existing Property. The Lessee shall take any and all actions reasonably required, including but not limited to executing and filing any and all documents reasonably required, to maintain and evidence such title and interest at all times during the Term of this Lease.

(b) **Title Transferred to Lessee at End of Term.** Upon expiration of the Term as provided in Section 3.2(b) or 3.2(c) hereof, all right, title and interest of the Bank in and to all of the Leased Property shall be transferred to and vest in the Lessee, without the necessity of any additional document of transfer.

SECTION 6.3 Maintenance, Utilities, Taxes and Assessments.

(a) **Maintenance: Repair and Replacement.** Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all repair and maintenance of the Leased Property shall be the responsibility of the Lessee, and the Lessee shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the Lessee or any sublessee thereof. In exchange for the Lease Payments herein provided, the Bank agrees to provide only the Leased Property, as hereinbefore more specifically set forth. The Lessee waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the Lessee under the terms of this Lease.

(b) **Tax and Assessments; Utility Charges.** The Lessee shall also pay or cause to be paid all taxes and assessments, including but not limited to utility charges, of any type or nature charged to the Lessee or levied, assessed or charged against any portion of the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

- (c) Contests. The Lessee may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided that prior to such nonpayment it shall furnish the Bank with the opinion of an independent counsel acceptable to the Bank to the effect that, by nonpayment of any such items, the interest of the Bank in such portion of the Leased Property will not be materially endangered and that the Leased Property will not be subject to loss or forfeiture. Otherwise, the Lessee shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof in form satisfactory to the Bank.

SECTION 6.4 Modification of the Leased Property.

(a) Additions, Modifications and Improvements. The Lessee shall, at its own expense, have the right to make additions, modifications, and improvements to any portion of the Leased Property if such improvements are necessary or beneficial for the use of such portion of the Leased Property. All such additions, modifications and improvements shall thereafter comprise part of the Leased Property and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage any portion of the Leased Property or cause it to be used for purposes other than those authorized under the provisions of State and federal law or in any way which would impair the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest components of the Lease Payments; and the Leased Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not substantially less than the value of the Leased Property immediately prior to the making of such additions, modifications and improvements.

(b) No Liens. Except for Permitted Encumbrances, the Lessee will not permit (i) any liens or encumbrances to be established or remain against the Financed Property or (ii) any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any additions, modifications or improvements made by the Lessee pursuant to this Section; provided that if any such mechanic's lien is established and the Lessee shall first notify or cause to be notified the Bank of the Lessee's intention to do so, the Lessee may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Bank with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Bank. The Bank will cooperate fully in any such contest.

SECTION 6.5 Permits. The Lessee will provide all permits and licenses necessary for the ownership, possession, operation, and use of the Leased Property, and will comply with all laws, rules, regulations, and ordinances applicable to such ownership, possession, operation, and use. If compliance with any law, rule, regulation, ordinance, permit, or license requires changes or additions to be made to the Leased Property, such changes or additions will be made by the Lessee at its own expense.

SECTION 6.6 Bank's Right to Perform for Lessee. If the Lessee fails to make any payment or to satisfy any representation, covenant, warranty, or obligation contained herein or imposed hereby, the Bank may (but need not) make such payment or satisfy such representation, covenant, warranty, or obligation, and the amount of such payment and the expense of any such action incurred by the Bank, as the case may be, will be deemed to be additional rent payable by the Lessee on the Bank's demand.

SECTION 6.7 Bank's Disclaimer of Warranties. The Bank has played no part in the selection of the Financed Property, the Lessee having selected the Financed Property independently from the Bank. The Bank, at the Lessee's request, has acquired or arranged for the acquisition of the Financed Property and shall lease the same to the Lessee as herein provided, the Bank's only role being the facilitation of the financing of the Financed Property for the Lessee. THE BANK MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE LESSEE OF THE LEASED PROPERTY, OR ANY PORTION THEREOF. THE LESSEE ACKNOWLEDGES THAT THE BANK IS NOT A MANUFACTURER OF PORTIONS OF THE

LEASED PROPERTY, AND THAT THE LESSEE IS LEASING THE LEASED PROPERTY AS IS. In no event shall the Bank be liable for incidental, direct, indirect, special or consequential damages, in connection with or arising out of this Lease, for the existence, furnishing, functioning or Lessee's use and possession of the Leased Property.

SECTION 6.8 Indemnification. To the extent permitted by applicable law, the Lessee hereby agrees to indemnify and hold harmless the Bank, its directors, officers, shareholders, employees, agents, and successors from and against any loss, claim, damage, expense, and liability resulting from or attributable to the acquisition, construction, or use of the Leased Property. Notwithstanding the foregoing, the Bank shall not be indemnified for any liability resulting from the gross negligence or willful misconduct of the Bank.

SECTION 6.9 Annual Financial Information. During the term of this Lease, the Lessee covenants and agrees to provide the Bank as soon as practicable when they are available; (i) a copy of the Lessee's final annual budget for each fiscal year; (ii) a copy of the Lessee's most recent financial statements; and (iii) any other financial reports the Bank may request from time to time.

ARTICLE VII

ASSIGNMENT AND SUBLEASING

SECTION 7.1 Assignment by the Bank. The parties hereto agree that all rights of Bank hereunder may be assigned, transferred or otherwise disposed of, either in whole or in part, provided that notice of any such assignment, transfer or other disposition is given to Lessee at least five (5) days prior thereto.

SECTION 7.2 Assignment and Subleasing by the Lessee. The Lessee may not assign this Lease or sublease all or any portion of the Leased Property unless both of the following shall have occurred: (i) the Bank shall have consented to such assignment or sublease; and (ii) the Bank shall have received assurance acceptable to the Bank that such assignment or sublease: (A) is authorized under applicable state law, (B) will not adversely affect the validity of this Lease, and (C) will not adversely affect the exclusion from gross income for federal income tax purposes of the interest components of the Lease Payments.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1 Events of Default Defined. The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) **Payment Default.** Failure by the Lessee to pay any Lease Payment required to be paid hereunder by the corresponding Lease Payment Date.

(b) **Covenant Default.** Failure by the Lessee to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Lessee by the Bank; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Bank shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected.

(c) **Bankruptcy or Insolvency.** The filing by the Lessee of a case in bankruptcy, or the subsection of any right or interest of the Lessee under this Lease to any execution, garnishment or attachment, or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of creditors, or the entry by the Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceedings instituted under

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the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

SECTION 8.2 Remedies on Default. Whenever any event of default referred to in Section 8.1 hereof shall have happened and be continuing, it shall be lawful for the Bank to exercise any and all remedies available pursuant to law or granted pursuant to this Lease. Notwithstanding anything herein to the contrary, THERE SHALL BE NO RIGHT UNDER ANY CIRCUMSTANCES TO ACCELERATE THE LEASE PAYMENTS OR OTHERWISE DECLARE ANY LEASE PAYMENTS NOT THEN IN DEFAULT TO BE IMMEDIATELY DUE AND PAYABLE.

SECTION 8.3 No Remedy Exclusive. No remedy conferred herein upon or reserved to the Bank is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or 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 and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank 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 or by law.

SECTION 8.4 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will pay on demand to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1 Extraordinary Prepayment From Net Proceeds. The Lessee shall be obligated to prepay the Lease Payments in whole or in part on any Lease Payment Date, from and to the extent of any Net Proceeds or other moneys pursuant to Section 5.1 hereof. The Lessee and the Bank hereby agree that such Net Proceeds or other moneys shall be credited towards the Lessee's obligations hereunder (except in the case of such prepayment of the Lease Payments in whole) pro rata among Lease Payments so that following prepayment, the remaining annual Lease Payments will be proportional to the initial annual Lease Payments.

SECTION 9.2 Prepayment. Subject to the terms and conditions of this Section, the Bank hereby grants an option to the Lessee to prepay in whole or in part on any Lease Payment Date at a prepayment price equal to the outstanding principal component of the Lease Payments, without premium, plus the accrued interest component of the Lease Payments to such prepayment date.

ARTICLE X

MISCELLANEOUS

SECTION 10.1 Notices. Unless otherwise specifically provided herein, all notices shall be in writing addressed to the respective party as set forth below (or to such other address as the party to whom such notice is intended shall have previously designated by written notice to the serving party), and may be personally served, telecopied, or sent by overnight courier service or United States mail:

If to Bank:

Zions First National Bank

If to the Lessee:

City of El Paso de Robles

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Investment Division
Gateway Tower East, Thirteenth Floor
Salt Lake City, Utah 84133
Attention: Robert Howell

1000 Spring Street
Paso Robles, CA 93446
Attention: Vita Cumming

Such notices shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by telecopy, on the date of transmission if transmitted by 4:00 p.m. (Salt Lake City time) on a Business Day or, if not, on the next succeeding Business Day; (c) if delivered by overnight courier, two Business Days after delivery to such courier properly addressed; or (d) if by United States mail, four Business Days after depositing in the United States mail, postage prepaid and properly addressed.

SECTION 10.2 System of Registration. The Lessee shall be the Registrar for this Lease and the rights to payments hereunder. The Bank shall be the initial Registered Owner of rights to receive payments hereunder. If the Bank transfers its rights to receive payments hereunder, the Registrar shall note on this Lease the name and address of the transferee.

SECTION 10.3 Instruments of Further Assurance. To the extent, if any, that the Lessor's interest in the Leased Property as Lessor under this Lease is deemed to be a security interest in the Leased Property, then the Lessee shall be deemed to have granted, and in such event the Lessee does hereby grant, a security interest in the Leased Property to the Lessor, which security interest includes proceeds, and this Lease shall constitute a security agreement under applicable law. Concurrently with the execution of this Lease, the Lessee has executed, delivered, and filed and/or recorded all financing statements, UCC forms, mortgages, deeds of trust, notices, filings, and/or other instruments, in form required for filing and/or recording thereof, as are required under applicable law to fully perfect such security interest of the Lessor in the Leased Property (collectively, "Security Documents"). Attached hereto as Exhibit E are copies of all such Security Documents. The Lessee will do, execute, acknowledge, deliver and record, or cause to be done, executed, acknowledged, delivered and recorded, such additional acts, notices, filings and instruments as the Bank may require in its sole discretion to evidence, reflect and perfect the title, ownership, leasehold interest, security interest and/or other interest of the Bank in and to any part or all of the Leased Property, including without limitation the filing and/or recording of this Lease, to the extent necessary, promptly upon the request of the Bank.

SECTION 10.4 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Bank and the Lessee and their respective successors and assigns.

SECTION 10.5 Amendments. This Lease may be amended or modified only upon the written agreement of both the Bank and the Lessee.

SECTION 10.6 Section Headings. Section headings are for reference only, and shall not be used to interpret this Lease.

SECTION 10.7 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by a court of competent jurisdiction, to the extent permitted by law, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 10.8 Entire Agreement. This Lease and the attached Exhibits constitute the entire agreement between the Bank and the Lessee and supersedes any prior agreement between the Bank and the Lessee with respect to the Leased Property, except as is set forth in an Addendum, if any, which is made a part of this Lease and which is signed by both the Bank and the Lessee.

SECTION 10.09 Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 10.10 Arbitration. To the extent permitted by law, any dispute, controversy or claim arising out of or based upon the terms of this Lease or the transactions contemplated hereby shall be settled exclusively and finally by binding arbitration. Upon written demand for arbitration by any party hereto, the parties to the

dispute shall confer and attempt in good faith to agree upon one arbitrator. If the parties have not agreed upon an arbitrator within thirty (30) days after receipt of such written demand, each party to the dispute shall appoint one arbitrator and those two arbitrators shall agree upon a third arbitrator. Any arbitrator or arbitrators appointed as provided in this section shall be selected from panels maintained by, and the binding arbitration shall be conducted in accordance with the commercial arbitration rules of, the American Arbitration Association (or any successor organization), and such arbitration shall be binding upon the parties. The arbitrator or arbitrators shall have no power to add or detract from the agreements of the parties and may not make any ruling or award that does not conform to the terms and conditions of this Lease. The arbitrator or arbitrators shall have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages. Judgement upon an arbitration award may be entered in any court having jurisdiction. The prevailing party in the arbitration proceedings shall be awarded reasonable attorney fees and expert witness costs and expenses, unless the arbitrator or arbitrators shall for good cause determine otherwise.

SECTION 10.11 Year 2000 Compliance.

The Lessee has reviewed areas within its business and operations which could reasonably be expected to be adversely affected by, and has developed a plan (the "Year 2000 Plan") to address on a timely basis, the "Year 2000 Problem" (that is, the risk that computer applications, networks, equipment, hardware, software, systems, and embedded chip technology ["Information Systems"] used by the Lessee may be unable to recognize and perform properly date-sensitive functions involving certain dates prior to and any date after December 31, 1999). As part of its Year 2000 Plan, the Lessee:

- (i) is in the process of conducting a detailed inventory and assessment of all components of its Information Systems to ensure that they are Year 2000 compliant;
- (ii) has initiated a process to determine whether its material suppliers, vendors, and customers have taken meaningful steps to become Year 2000 compliant on a timely basis;
- (iii) has requested and received, or will pursue receipt of, written confirmation from all vendors and suppliers of any component of its Information Systems that their products supplied to or used by the Lessee are Year 2000 compliant; and
- (iv) is developing and implementing a feasible contingency plan to ensure the uninterrupted and unimpaired conduct of its business and operations in the event of failure of the Information Systems of such third parties or of its own Information Systems.

The Lessee does not reasonably anticipate that the Year 2000 Problem will have a material adverse effect on the ability of the Lessee to conduct its business or operations or to perform its obligations hereunder.

SECTION 10.12 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Bank has caused this Lease to be executed in its name by its duly authorized officer, and the Lessee has caused this Lease to be executed in its name by its duly authorized officer, as of the date first above written.

ZIONS FIRST NATIONAL BANK, as Lessor

By: _____
Authorized Officer

CITY OF EL PASO DE ROBLES, as Lessee

By: _____
Authorized Officer

Title _____

EXHIBIT A

SCHEDULE OF LEASE PAYMENTS

1. **Interest.** Interest components have been computed at the rate of 5.28 percent (5.28%) per annum calculated based on actual number of days elapsed during a 360 day year (the "Stated Interest Rate"); provided, however, that in the event: (A) the Lease to which this Exhibit is attached and the Lessee's payment obligations thereunder do not constitute a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"); (B) the interest components thereof do not qualify for exclusion from gross income of the owner thereof for federal income tax purposes under Section 103 of the Code; (C) the combined federal and state corporate income tax rate applicable to the Bank is less than 25%; or (D) revisions in the federal tax laws, including without limitation the adoption of a flat tax or a modified flat tax, result in the Bank's losing 50% or more of its tax benefit in owning the Lease, then the interest components shall be increased payable at the rate equal to the sum of: (I) the Stated Interest Rate described above; plus (ii) zero percentage points (0%).

2. **Payment Dates and Amounts.**

3.

[SEE ATTACHED SCHEDULE OF PAYMENTS]

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EXHIBIT B

DESCRIPTION OF THE EXISTING PROPERTY, IF ANY

NONE

DESCRIPTION OF THE FINANCED PROPERTY

DESCRIPTION OF THE LEASED PROPERTY

The "Leased Property" shall consist of the "Existing Property," if any, and the "Financed Property" described above.

EXHIBIT C

RESOLUTION OF GOVERNING BODY

A resolution approving the form of the Lease/Purchase Agreement with Zions First National Bank, Salt Lake City, Utah and authorizing the execution and delivery thereof.

Whereas, City Council (the "Governing Body") has determined that a true and very real need to exists for the leasing of the property described in the Lease/Purchase Agreement presented to this meeting; and

Whereas, the Governing Body has reviewed the form of the Lease/Purchase Agreement and has found the terms and conditions thereof acceptable to City of El Paso de Robles (the "Lessee"); and

Whereas, the Governing Body has taken the necessary steps under applicable law to arrange for the leasing of such property under the Lease/Purchase Agreement; and

Whereas, pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), under certain circumstances, certain obligations the interest on which is exempt from federal income tax under Section 103 of the Code may be designated by the issuer thereof as "qualified tax-exempt obligations," thereby allowing certain financial institutions that are holders of such qualified tax-exempt obligations to deduct for federal income tax purposes a portion of such institution's interest expense that is allocable to such qualified tax-exempt obligations, all as determined in accordance with Sections 265 and 291 of the Code.

Be it resolved by the Governing Body as follows:

SECTION 1. The terms of said Lease/Purchase Agreement are in the best interests of Lessee for the leasing of the property described therein.

SECTION 2. The officers of the Lessee are hereby authorized to execute and deliver the Lease/Purchase Agreement in substantially the form presented to this meeting and any related documents necessary to the consummation of the transactions contemplated by the Lease/Purchase Agreement for and on behalf of the Lessee. The officers of the Lessee may make such changes to the Lease/Purchase Agreement as such officers deem necessary or desirable, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 3. The officers of the Governing Body and the Lessee are hereby authorized and directed to fulfill all obligations under the terms of the Lease/Purchase Agreement.

SECTION 4. Based on the following representations, the interest components of the lease payments under the Lease/Purchase Agreement are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code: (i) such lease payments are not private activity bonds within the meaning of Section 141 of the Code; (ii) the Lessee reasonably anticipates that it, together with its subordinate entities, will not issue during the current calendar year obligations (other than those obligations described in clause (iii) below) the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code which, when aggregated with all obligations described in clause (ii) above, will exceed an aggregate principal amount of \$10,000,000; (iii) and notwithstanding clause (ii) above, Lessee and its subordinate entities may have issued in the current calendar year and may continue to issue during the remainder of the current calendar year private activity bonds other than qualified 501(c)(3) bonds as defined in Section 145 of the Code.

Adopted and approved this ___ day of _____, 1999.

By _____

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Print Name _____

Title _____

Attest:

By _____

Print Name _____

Title _____

STATE OF CALIFORNIA

)
) ss.
)

COUNTY OF SAN LUIS OBISPO

I, _____ hereby certify that I am the duly qualified and acting
_____ of City of El Paso de Robles (the "Lessee").
(Title)

I further certify that the above and foregoing instrument constitutes a true and correct copy of the minutes of a regular meeting of the governing body including a Resolution adopted at said meeting held on January 5, 2000, as said minutes and Resolution are officially of record in my possession, and that a copy of said Resolution was deposited in my office on _____.

In witness whereof, I have hereunto set my hand on behalf of the Lessee this _____ day of _____, 199__.

By _____

Print Name _____

Title _____

...

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EXHIBIT D
Opinion of Lessee's Counsel
(Use Attorney's Letterhead)

To: Zions First National Bank
One South Main Street, Suite 1390
Salt Lake City, Utah 84111

Gentlemen:

As counsel for City of El Paso de Robles ("Lessee"), I have examined duly executed originals of Lease/Purchase Agreement (the "Lease") dated January 5, 2000, between the Lessee and Zions First National Bank, Salt Lake City, Utah ("Bank"), and the proceedings taken by Lessee to authorize and execute the Lease (the "Proceedings"). Based upon such examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a body corporate and politic, legally existing under the laws of the State of California.
2. The Lease and the Proceedings have been duly adopted, authorized, executed, and delivered by Lessee, and do not require the seal of Lessee to be effective, valid, legal, or binding.
3. The governing body of Lessee has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which the Proceedings were adopted and the Lessee's execution of the Lease was authorized.
4. The Lease is a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms except as limited by the state and federal laws affecting remedies and by bankruptcy, reorganization, or other laws of general application affecting the enforcement of creditor's rights generally.
5. The Lease is in accordance with and does not violate the usury statutes of the State of California, if any.
5. Either there are no procurement or public bidding laws of the State applicable to the acquisition and leasing of the Leased Property (as defined in the Lease) from the Bank under the Lease, or the acquisition and leasing of the Leased Property from the Bank under the Lease comply with all such procurement and public bidding laws as may be applicable.
6. There are no legal or governmental proceedings or litigation pending or, to the best of my knowledge, threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling or finding might adversely affect the transactions contemplated in or the validity of the Lease.

The adoption, execution and/or delivery of the Lease and the Proceedings, and the compliance by the Lessee with their provisions, will not conflict with or constitute a breach of or default under any court decree or order or any agreement, indenture, lease or other instrument or any existing law or administrative regulation, decree or order to which the Lessee is subject or by which the Lessee is or may be bound.

Attorney for Lessee

EXHIBIT E

SECURITY DOCUMENTS

[Attach Security Documents here]