

**CALIFORNIA FIXED DIRECT ALL PROPERTY LEASE**

Long Name of Entity: Malaga County Water District

Address: 3580 S. Frank Street

City, State Zip: Fresno, CA 93725

Attention: Jim Anderson

Public Finance Office: General Manager

County: Fresno

Amount: 1,026,500

Rate: 3.690

Maturity Date: December 1, 2033

First Pmt Date: June 1, 2019

Payment Dates: June 1, and December 1

Auto Extend: 14

Governing Body: Malaga County Water District

Resolution Date: December \_\_, 2018

Dated Date: December 28, 2018

Day: 28th

State: California

\$1,026,500

FIXED-RATE ALL PROPERTY  
LEASE/PURCHASE AGREEMENT

Dated as of December 28, 2018

by and between

ZIONS BANCORPORATION, N.A., as Lessor

and

MALAGA COUNTY WATER DISTRICT, as Lessee

BANK QUALIFIED

## TABLE OF CONTENTS

ARTICLE I.....	2
Section 1.1 <u>Definitions and Rules of Construction</u> .....	2
Section 1.2 <u>Exhibits</u> .....	3
ARTICLE II .....	3
Section 2.1 <u>Representations, Covenants and Warranties of the District</u> .....	3
Section 2.2 <u>Representations, Covenants and Warranties of the Bank</u> .....	10
ARTICLE III.....	10
Section 3.1 <u>Lease</u> .....	10
Section 3.2 <u>Term</u> .....	11
Section 3.3 <u>Extension of Lease Term</u> .....	11
Section 3.4 <u>Lease Payments</u> .....	12
Section 3.5 <u>Fair Rental Value</u> .....	12
Section 3.6 <u>Budget and Appropriation</u> .....	12
Section 3.7 <u>Use and Possession</u> .....	13
Section 3.8 <u>Abatement of Lease Payments in Event of Loss of Use</u> .....	13
Section 3.9 <u>Possession of Leased Property Upon Termination</u> .....	13
Section 3.10 <u>No Withholding</u> .....	13
Section 3.11 <u>Net-Net-Net Lease</u> .....	13
Section 3.12 <u>Offset</u> .....	14
ARTICLE IV .....	14
Section 4.1 <u>Casualty and Theft Insurance</u> .....	14
Section 4.2 <u>Rental Interruption Insurance</u> .....	14
Section 4.3 <u>General Insurance Provisions</u> .....	15
ARTICLE V .....	15
Section 5.1 <u>Application of Net Proceeds</u> .....	15
ARTICLE VI.....	16
Section 6.1 <u>Use of the Leased Property</u> .....	16
Section 6.2 <u>Interest in the Leased Property and the Lease</u> .....	16
Section 6.3 <u>Maintenance, Utilities, Taxes and Assessments</u> .....	16
Section 6.4 <u>Modification of the Leased Property</u> .....	17
Section 6.5 <u>Permits</u> .....	17
Section 6.6 <u>Bank's Right to Perform for Lessee</u> .....	17
Section 6.7 <u>Bank's Disclaimer of Warranties</u> .....	17
Section 6.8 <u>Indemnification</u> .....	18
Section 6.9 <u>Annual Financial Information</u> .....	18
ARTICLE VII .....	18
Section 7.1 <u>Assignment by the Bank</u> .....	18
Section 7.2 <u>Assignment and Subleasing by the Lessee</u> .....	18

<b>ARTICLE VIII</b> .....	19
Section 8.1 <b><u>Events of Default Defined</u></b> .....	19
Section 8.2 <b><u>Remedies on Default</u></b> .....	19
Section 8.3 <b><u>No Remedy Exclusive</u></b> .....	20
Section 8.4 <b><u>Agreement to Pay Attorneys' Fees and Expenses</u></b> .....	20
Section 8.5 <b><u>Waiver of Certain Damages</u></b> .....	20
 <b>ARTICLE IX</b> .....	 20
Section 9.1 <b><u>Extraordinary Prepayment From Net Proceeds</u></b> .....	20
Section 9.2 <b><u>Prepayment</u></b> .....	20
 <b>ARTICLE X</b> .....	 21
Section 10.1 <b><u>Notices</u></b> .....	21
Section 10.2 <b><u>System of Registration</u></b> .....	21
Section 10.4 <b><u>Binding Effect</u></b> .....	22
Section 10.5 <b><u>Amendments</u></b> .....	22
Section 10.6 <b><u>Section Headings</u></b> .....	22
Section 10.7 <b><u>Severability</u></b> .....	22
Section 10.8 <b><u>Entire Agreement</u></b> .....	22
Section 10.9 <b><u>Execution in Counterparts</u></b> .....	22
Section 10.10 <b><u>Arbitration</u></b> .....	22
Section 10.11 <b><u>Applicable Law</u></b> .....	23

EXHIBIT A	SCHEDULE OF LEASE PAYMENTS
EXHIBIT B	DESCRIPTION OF FINANCED PROPERTY
EXHIBIT C	RESOLUTION OF GOVERNING BODY
EXHIBIT D	OPINION OF LESSEE'S COUNSEL
EXHIBIT E	SECURITY DOCUMENTS
EXHIBIT F	DELIVERY AND ACCEPTANCE CERTIFICATE
EXHIBIT G:	FORM 8038
EXHIBIT H:	ESCROW AGREEMENT

## LEASE/PURCHASE AGREEMENT

This Lease/Purchase Agreement, dated as of December 28, 2018, by and between ZIONS BANCORPORATION, N.A., a national banking association duly organized and existing under the laws of the United States of America, as lessor (the "Bank"), and MALAGA COUNTY WATER DISTRICT, as lessee (the "Lessee"), a public agency duly organized and existing under the Constitution and laws of the State of California (the "State");

### WITNESSETH:

WHEREAS, the Lessee desires to finance the acquisition and/or construction of the real property and/or improvements, and/or 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 ("Lease"); and

WHEREAS, the Lessee owns the real property and/or improvements, if any, described as the "Existing Property" in Exhibit B upon which the Financed Property is to be constructed and/or located (the "Existing Property"); and

WHEREAS, the Lessee agrees to lease the Existing Property, if any, to the Bank upon the terms and conditions set forth in this Lease; and

WHEREAS, the Bank agrees to sublease the Existing Property, if any, back to the Lessee, and to lease the Financed Property to the Lessee (the Existing Property, if any, and the Financed Property sometimes being referred to collectively 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, 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.

“*Acquisition Amount*” means \$1,026,500.00 and is the amount represented by Lessee to be sufficient to acquire the Leased Property and pay any ancillary costs associated therewith.

“*Advance*” shall have the meaning set forth in Section 2.1(1)(i)(D) hereof.

“*Authorizing Resolution*” means the Resolution adopted by the Governing Body authorizing this Lease, in substantially the form attached hereto as Exhibit C.

“*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 and shall be the date on which the Acquisition Amount is deposited with the Escrow Agent.

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

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

“*Escrow Agreement*” means the Escrow Agreement dated December 28, 2018 executed by Lessee, Bank and the Escrow Agent, pursuant to which the Escrow Account is established and administered. A copy of the Escrow Agreement shall be found in Exhibit H.

“*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.

“*Existing Property*” shall have the meaning set forth in the Whereas clauses hereof.

“*Existing Property Limited Lease Purposes*” shall have the meaning set forth in Section 3.1(a) hereof.

“Existing Property Limited Lease Purposes Rental Value” shall have the meaning set forth in Section 3.1(a) hereof.

“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 and in Exhibit B.

“Lessee” shall have the meaning set forth in the Preamble hereof.

“Net Proceeds” means insurance or eminent domain proceeds received with respect to the Financed 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 Financed 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, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State.

(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 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 or encumbered to secure or support any Obligation Instrument; and**
- (B) **the interests of the Bank 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 copy of the 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 failed to make an appropriation 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.

(l) 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) [RESERVED]
  - (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, Ogden, UT 84201, 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 \$15,000,000 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 (\$15,000,000 for the financing of public school facilities 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.

- or -

- (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.

(m) Qualified Tax-Exempt Obligations. Based on the following representations of the Lessee, the Lessee hereby designates this Lease and the interest components of the Lease Payments hereunder as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code:

- (i) this Lease and the Lease Payments hereunder are not private activity bonds within the meaning of Section 141 of the Code;
- (ii) the Lessee reasonably anticipates that it, together with all aggregated issuers, 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 this Lease, will exceed an aggregate principal amount of \$10,000,000;
- (iii) and notwithstanding clause (ii) above, Lessee and its aggregated issuers 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.

For purposes of this subsection, “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 265(b)(3)(C) or (D) of the Code.

**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 Existing Property to Bank. The Lessee hereby leases the Existing Property, if any, to the Bank, for the sole purpose, and to the limited extent necessary, to provide access, ingress, egress, support, and/or parking, to, from, and for the Financed Property (the “Existing Property Limited Lease Purposes”). The Bank shall pay annually, to the Lessee, as rental for the Existing Property, the fair rental value of the Existing Property Limited Lease Purposes (the “Existing Property Limited Lease Purposes Rental Value”), plus the sum of \$1.00. For the sake of the Lessee’s ease and convenience, for so long as the Lessee subleases the Existing Property from the Bank under Section 3.1(b) below:

- (i) the subrental payment due under Section 3.1(b) from the Lessee to the Bank, for the Lessee’s subrental of the Existing Property from the Bank; and

(ii) the rental payment (in excess of \$1.00) due under this Section 3.1(a) from the Bank to the Lessee, for the Bank's rental of the Existing Property from the Lessee;

both such amounts being equal to the Existing Property Limited Lease Purposes Rental Value, shall be netted against each other, and both of such payments shall be deemed to have occurred simultaneously, leaving the balance of \$1.00 net to be paid by the Bank to the Lessee annually for the limited rental of the Existing Property pursuant to this Section 3.1(a); provided, however, that the Bank shall continue to pay the Existing Property Limited Lease Purposes Rental Value to the Lessee as the annual lease payment for the limited rental of the Existing Property under this Section 3.1(a) in the event the Bank subleases the Existing Property to other parties as provided herein; and further provided that in an event of default hereunder, as provided in Section 8.2, the Bank may take possession of the Existing Property and sublease the Existing Property to other parties solely for the Existing Property Limited Lease Purposes.

(b) Sublease of Existing Property, if any, and Lease of Financed Property to Lessee. The Bank hereby subleases the Existing Property, if any, to the Lessee for an annual rental that the Lessee hereby agrees to pay to the Bank equal to the Existing Property Limited Lease Purposes Rental Value described in Section 3.1(a), and 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. This Lease shall not operate as a merger of the Lessee's leasehold estate in the Financed Property pursuant to this Lease and its fee estate in the Existing Property and shall not cause the extinguishment of the leasehold interest in the Existing Property granted to the Bank under Section 3.1(a).

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.

**Section 3.2** Term.

The Term of this Lease shall commence on the date of execution hereof which is also the date on which the Acquisition Amount is deposited with the Escrow Agent, and shall end on December 1, 2033 (the "Maturity Date"), unless extended pursuant to Section 3.3, or unless terminated prior thereto upon the earliest of any of the following events:

(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 Financed Property), and Article IX (regarding prepayment of Lease Payments), 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 that 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 Financed 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 Financed Property. In making such determination, consideration has been given to the value of the Financed 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 Financed 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 Financed Property at the end of the Term.

**Section 3.6**     Budget and Appropriation.

Subject to the provisions of Section 3.8, 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 Financed 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 Financed Property there is substantial interference with the Lessee's right to use and possession of such portion of the Financed 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 Financed 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 Financed 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 of Financed 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.

To the extent the Financed Property is equipment or fixtures, the Lessee at the Bank's direction shall ship such Financed Property to the destination designated by the Bank, by loading such 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 Financed 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 Financed 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 Financed 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.* 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 payable in any one year period (calculated based upon the maximum principal component hereunder as provided in Exhibit A and an interest rate as provided in Exhibit A hereto), to insure against abatement of Lease Payments caused by perils covered by the insurance required to be maintained as provided in Section 4.1 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 against the risks described in Section 4.1 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 public agencies 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 that 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 provided at the time, 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 provided at the time, 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 Financed 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 Financed 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 Financed 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 Financed Property as described herein from legally available funds in the then current Fiscal Year.

## ARTICLE VI

### COVENANTS WITH RESPECT TO THE FINANCED 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 to carry out and give effect to the public purposes of the Lessee, which need is not temporary or expected to diminish in the foreseeable future.

#### **Section 6.2**     Interest in the Financed Property and the Lease.

(a)     *Bank Holds Leasehold Interest During Term.* During the Term of this Lease, the Bank does and shall hold an ownership interest in the Financed Property as lessor thereof. 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 Financed 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 Financed 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 Leased 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 OR VENDOR OF ALL OR ANY PORTION 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 Financed 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 Financed 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.

**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 subjection 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 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.**

The Bank shall have the right to terminate the Escrow Agreement and apply the proceeds in the Escrow Account to the Lease Payments due hereunder.

**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.

**Section 8.5**     Waiver of Certain Damages.

With respect to all of the remedies provided for in this Article VIII, the Lessee hereby waives any damages occasioned by the Bank's repossession of the Financed Property upon an event of default.

**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. To exercise this option, the Lessee must deliver to the Bank written notice specifying the date on which the prepayment is to be made (the "Closing Date"), which notice must be delivered to the Bank at least thirty (30) days prior to the Closing Date specified therein.



**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 BANCORPORATION, N.A.  
Public Financial Services  
One South Main, 17<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
Attention: \_\_\_\_\_

If to the Lessee:

Malaga County Water District  
3580 S. Frank Street  
Fresno, CA 93725  
Attention: Jim Anderson

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 an overnight courier service, 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**    [RESERVED]

**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 10.9** 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.

**Section 10.11** Applicable Law.

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

[SIGNATURE PAGES TO FOLLOW]

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 BANCORPORATION, N.A., as Lessor

By \_\_\_\_\_

Title \_\_\_\_\_

MALAGA COUNTY WATER DISTRICT, as Lessee

By \_\_\_\_\_

Authorized Officer

STATE OF CALIFORNIA }  
COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(NOTARY SEAL)

STATE OF CALIFORNIA }  
COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(NOTARY SEAL)

## EXHIBIT A

### SCHEDULE OF LEASE PAYMENTS

**1. Interest.**

Interest components have been computed at the rate of three and sixty-nine hundredths percent (3.690%) per annum calculated based on actual number of days elapsed during a 360 day year.

**2. Payment Dates and Amounts.**

SEE ATTACHED PAYMENT SCHEDULE, WHICH BREAKS OUT PRINCIPAL AND INTEREST SEPARATELY.

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
12/28/2018	-	-	-	-	-
06/01/2019	28,500.00	3.690%	16,098.09	44,598.09	-
12/01/2019	26,500.00	3.690%	18,413.10	44,913.10	89,511.19
06/01/2020	27,000.00	3.690%	17,924.18	44,924.18	-
12/01/2020	27,500.00	3.690%	17,426.03	44,926.03	89,850.21
06/01/2021	28,000.00	3.690%	16,918.65	44,918.65	-
12/01/2021	28,500.00	3.690%	16,402.05	44,902.05	89,820.70
06/01/2022	29,000.00	3.690%	15,876.23	44,876.23	-
12/01/2022	29,500.00	3.690%	15,341.18	44,841.18	89,717.41
06/01/2023	30,000.00	3.690%	14,796.90	44,796.90	-
12/01/2023	30,500.00	3.690%	14,243.40	44,743.40	89,540.30
06/01/2024	31,000.00	3.690%	13,680.68	44,680.68	-
12/01/2024	31,500.00	3.690%	13,108.73	44,608.73	89,289.41
06/01/2025	32,000.00	3.690%	12,527.55	44,527.55	-
12/01/2025	32,500.00	3.690%	11,937.15	44,437.15	88,964.70
06/01/2026	33,500.00	3.690%	11,337.53	44,837.53	-
12/01/2026	34,000.00	3.690%	10,719.45	44,719.45	89,556.98
06/01/2027	34,500.00	3.690%	10,092.15	44,592.15	-
12/01/2027	35,000.00	3.690%	9,455.63	44,455.63	89,047.78
06/01/2028	36,000.00	3.690%	8,809.88	44,809.88	-
12/01/2028	36,500.00	3.690%	8,145.68	44,645.68	89,455.56
06/01/2029	37,000.00	3.690%	7,472.25	44,472.25	-
12/01/2029	38,000.00	3.690%	6,789.60	44,789.60	89,261.85
06/01/2030	38,500.00	3.690%	6,088.50	44,588.50	-
12/01/2030	39,500.00	3.690%	5,378.18	44,878.18	89,466.68
06/01/2031	40,000.00	3.690%	4,649.40	44,649.40	-
12/01/2031	41,000.00	3.690%	3,911.40	44,911.40	89,560.80
06/01/2032	41,500.00	3.690%	3,154.95	44,654.95	-
12/01/2032	42,500.00	3.690%	2,389.28	44,889.28	89,544.23
06/01/2033	43,000.00	3.690%	1,605.15	44,605.15	-
12/01/2033	44,000.00	3.690%	811.80	44,811.80	89,416.95
<b>Total</b>	<b>\$1,026,500.00</b>	<b>-</b>	<b>\$315,504.75</b>	<b>\$1,342,004.75</b>	<b>-</b>

**EXHIBIT B**

**DESCRIPTION OF THE EXISTING PROPERTY, IF ANY**

**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 BANCORPORATION, N.A., Salt Lake City, Utah  
and authorizing the execution and delivery thereof.**

*Whereas*, the Malaga County Water District (the “Governing Body”) of Malaga County Water District (the “Lessee”) have determined that a true and very real need exists for the leasing of the property described in the Lease/Purchase Agreement presented to this meeting; and

*Whereas*, the Lessee has reviewed the form of the Lease/Purchase Agreement and has found the terms and conditions thereof acceptable to 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

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

#### **Section 3.**

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



I hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted by the Malaga County Water District of the Malaga County Water District at a meeting thereof on December \_\_, 2018 by the following vote of the members thereof:

AYES:

NOES:

ABSENT:

MALAGA COUNTY WATER DISTRICT

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Attest:

By \_\_\_\_\_  
Secretary of the Board

## EXHIBIT D

### FORM OF OPINION OF COUNSEL TO LESSEE

To: ZIONS BANCORPORATION, N.A.  
One South Main Street  
Salt Lake City, Utah 84111

Gentlemen:

As counsel for Malaga County Water District (“Lessee”), I have examined duly executed originals of the Lease/Purchase Agreement (the “Lease”) dated this 28th day of December, 2018, between the Lessee and ZIONS BANCORPORATION, N.A., 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 (the “State”).

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 against the Lessee 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. Either there are no usury laws of the State applicable to the Lease, or the Lease is in accordance with and does not violate all such usury laws as may be applicable.

6. Either there are no procurement or public bidding laws of the State applicable to the acquisition and leasing of the Financed Property (as defined in the Lease) from the Bank under the Lease, or the acquisition and leasing of the Financed Property from the Bank under the Lease comply with all such procurement and public bidding laws as may be applicable.

7. 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.

8. 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.

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Attorney for Lessee

**EXHIBIT E**

**SECURITY DOCUMENTS**

[Attach UCC-1 Financing Statements here]

## **EXHIBIT F**

### **DELIVERY AND ACCEPTANCE CERTIFICATE**

To: ZIONS BANCORPORATION, N.A.

Reference is made to the fixed rate Equipment Lease Agreement between the undersigned (“Lessee”), and ZIONS BANCORPORATION, N.A. (“Lessor”), dated December 28, 2018, (“the Lease”) and to the Equipment as such term is defined therein. In connection therewith we are pleased to confirm to you the following:

1. All of the Equipment has been delivered to and received by the undersigned; all installation or other work necessary prior to the use thereof has been completed; said Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said Equipment has been accepted by the undersigned and complies with all terms of the Lease. Consequently, you are hereby authorized to pay for the Equipment in accordance with the terms of any purchase orders for the same.
2. In the future, in the event the Equipment fails to perform as expected or represented we will continue to honor the Lease in all respects and continue to make our rental and other payments thereunder in the normal course of business and we will look solely to the vendor, distributor or manufacturer for recourse.
3. We acknowledge that Bank is neither the vendor nor manufacturer or distributor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment.
4. The serial number for each item of Equipment which is set forth on Exhibit “B” to the Lease is correct.

This certificate shall not be considered to alter, construe, or amend the terms of the Lease.

Lessee:

MALAGA COUNTY WATER DISTRICT

By: \_\_\_\_\_  
(Authorized Signature)

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

**EXHIBIT G**

**FORM 8038**

**(Attached)**

## EXHIBIT H

### FORM OF ESCROW AGREEMENT

This Escrow Agreement (this “Agreement”), dated December 28, 2018, by and among ZIONS BANCORPORATION, N.A., a national banking association (hereinafter referred to as “Lessor”), Malaga County Water District, a body politic and corporate of the State of California (hereinafter referred to as “Lessee”), and Zions Bank, a division of ZIONS BANCORPORATION, N.A. a national banking association (hereinafter referred to as “Escrow Agent”).

Reference is made to that certain Lease/Purchase Agreement, dated December 28, 2018, between Lessor and Lessee (hereinafter referred to as the “Lease”), covering the acquisition and lease of certain Leased Property described therein (the “Leased Property”). It is a requirement of the Lease that the Acquisition Amount be deposited with the Escrow Agent hereunder for the purpose of providing a mechanism for the application of such amounts to the payment of Leased Property costs.

The parties agree as follows:

1. Creation of Escrow Account.

(a) There is hereby created a special trust fund to be known as the “Malaga County Water District Escrow Account” (the “Escrow Account”) to be held in trust 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. On the date hereof, from proceeds of the Lease, Lessor has caused the amount of \$1,026,500.00 to be transferred to Escrow Agent for deposit into the Escrow Account.

(b) The Escrow Agent shall invest and reinvest moneys on deposit in the Escrow Account in Qualified Investments in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to 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 and is not a trustee or a fiduciary to Lessee. 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 the requirements of investment of public funds by Lessee in accordance with applicable California law and any applicable policy that the governing body of the Lessee has adopted with respect to the investment of public funds.

(c) Lessee covenants that all investments of amounts deposited in the Escrow Account or other fund containing gross proceeds of the Lease will be acquired, disposed of and valued at the fair market value thereof. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Internal Revenue Code of 1986, as amended (the "*Code*") will be valued at their present value. Terms used in this subsection (c) shall have the meanings given them in the applicable provisions of the Code.

(d) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (e) 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 authorization(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 provide any balance of the funds needed to complete the acquisition of the Leased Property. Any moneys remaining in the Escrow Account on or after the date on which Lessee executes the Delivery and Acceptance Certificate (defined in Section 2(c)(3) below) shall be applied as provided in Section 4 hereof.

(e) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account (including delivery to Lessor by Lessee of an executed Delivery and Acceptance Certificate contained in the Lease), or (ii) written notice given by Lessor of the occurrence of a default or non-appropriation of the Lease.

(f) 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. 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.

(g) 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 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.

(h) 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 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.

(i) 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.

(j) 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 extraordinary 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.

(k) 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 90 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.

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

## 2. Acquisition 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 Leased Property, with moneys available in the Escrow Account. Lessee represents the estimated costs of the Leased Property 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 Leased Property, and the operation and maintenance thereof.

(b) Authorized Escrow Account Disbursements. 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 Leased Property Costs and any delivery costs.



(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. Each such requisition shall be signed by Marvin Dodge (including his successors or anyone whom he or his successors may appoint to sign) of Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following:

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

(i)(A) 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 Leased Property identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof); (B) the Leased Property relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee, and (C) Lessee has conducted such inspection and/or testing of the Leased Property relating to such obligation as it deems necessary and appropriate in order to determine the Leased Property's capability and functionality in order to accept such Leased Property; (ii) the Lessee 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 Leased Property 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 and (vi) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof; and

2. Delivery to Lessor invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement); bills of sale (if title to such Leased Property has passed to Lessee); a description, and serial number for each item and any additional documentation reasonably requested by Lessor;

3. Deposit to Escrow Account. Upon execution of the Lease and the satisfaction of any conditions specified in the Lease or otherwise, Lessor will cause the Acquisition Amount of \$1,026,500.00 to be deposited into the Escrow Account. Lessee agrees to pay any costs with respect to the Leased Property in excess of amounts available therefor in the Escrow Account and to pay delivery costs in excess of amounts available therefor in the Escrow Account; provided, however, that any amount required for either such purpose shall be payable solely from moneys that have been appropriated by Lessee for such purpose.

4. Excessive Escrow Account. Any funds remaining in the Escrow Account on or after the date on which Lessee executes the Delivery and Acceptance Certificate, or upon a termination of the Escrow Account as otherwise provided herein, shall be delivered by the Escrow Agent to Lessor, and Lessor shall apply such funds to amounts owed under the Lease.

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

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

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

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

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

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

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

(f) Lessee hereby irrevocably authorizes Escrow Agent to comply with all instructions and entitlement orders delivered by Lessor to Escrow Agent.

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

(h) Escrow Agent and Lessee hereby agree that any property held in the Escrow Account shall be treated as a financial asset under such section of the Commercial Code, notwithstanding any contrary provision of any other agreement to which Escrow Agent may be a party.

(i) Escrow Agent is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 7 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Escrow Account statements or reports issued or sent to Lessee with respect to the Escrow Account.

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to 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 formation documents such as articles of incorporation or other identifying documents to be provided.

8. Fee Schedule; Initial Fee. [To be Provided by Escrow Agent]

9. Miscellaneous.

(a) 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:

If to Lessor:                    ZIONS BANCORPORATION, N.A.  
   1 South Main Street 17<sup>th</sup> Floor  
   Salt Lake City, UT 84133  
   Attn: Jon Dunfield, Vice President

If to Lessee:                    Malaga County Water District  
   3580 S. Frank Street  
   Fresno, CA 93725  
   Attn: Jim Anderson, General Manager

If to Acquisition                Zions Bank, a division of ZIONS BANCORPORATION, N.A.  
Fund Custodian:                Corporate Trust Department  
   1 South Main Street  
   Salt Lake City, UT 84037  
   Attn: [Insert appropriate Trust Officer name and Title]

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

above written.

ZIONS BANCORPORATION, N.A.  
as Lessor

MALAGA COUNTY WATER DISTRICT  
as Lessee

By: \_\_\_\_\_  
Christian Ward, Vice President

By: \_\_\_\_\_  
Jim Anderson, General Manager

Zions Bank, a division of ZIONS BANCORPORATION, N.A.  
as Escrow Agent

By: \_\_\_\_\_  
[Insert Appropriate Trust Officer name and Title]

**SCHEDULE 1**

**TO THE ESCROW AGREEMENT**

**FORM OF DISBURSEMENT REQUEST**

Re: Lease/Purchase Agreement, dated December 28, 2018 (the “*Lease*”), between ZIONS BANCORPORATION, N.A., as Lessor, and MALAGA COUNTY WATER DISTRICT, as Lessee (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow Agreement, dated December 28, 2018 (the “*Escrow Agreement*”) by and among ZIONS BANCORPORATION, N.A., a national banking association (“*Lessor*”), MALAGA COUNTY WATER DISTRICT (“*Lessee*”) and Zions Bank, a division of ZIONS BANCORPORATION, N.A., (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 Agreement for the following purposes:

PAYEE’S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE (INCLUDE SERIAL NUMBER)

The undersigned hereby certifies as follows:

(i) The date on which “acceptance” occurred with respect to the portion of the Leased Property for which disbursement is hereby requested is \_\_\_\_\_, and such portion of Leased Property is hereby accepted by Lessee for all purposes of the Lease.

(ii) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Escrow Account for costs relating to the Leased Property identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Leased Property relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Leased Property relating to such obligation as it deems necessary and appropriate in order to determine the Leased Property's capability and functionality in order to accept such Leased Property.

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 Leased Property 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) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

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

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

By: \_\_\_\_\_  
Authorized Representative

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

ZIONS BANCORPORATION, N.A.,  
as Lessor under the Lease

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