

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: March 2, 2006

SUBJECT: Voting Equipment Financing

ATTACHMENTS: Bank of America Proposal
Draft Installment Purchase Contract Documents
Draft Resolution

SUMMARY OF REQUEST:

At a previous meeting of the Board of Commissioners, Staff presented the results of proposals from financial institutions to do an installment contract purchase financing for new voting equipment not to exceed \$625,000. The Board of Elections Director has determined that the total County cost for the new voting equipment will be \$560,000 after Federal and State grant funds of \$524,882 have been utilized.

Bank of America has been certified as the lowest responsive proposal (Exhibit A) to finance the new voting equipment for a 5-year term at a bank-qualified interest rate of 3.70 percent. The total annual debt service payments required would be \$123,204.84. The first quarterly payment of \$30,801.21 would be due in June 2006. Also attached for the Board's review are draft copies of the Installment Purchase Contract and Acquisition Fund and Account Control Agreement (Exhibit B).

Staff recommends that the Board consider approving the attached resolution (Exhibit C) accepting and approving the Bank of America financing proposal and authorizing the Chairman and staff to execute the required financing documents. No formal approval by the Local Government Commission or a public hearing is required to enter into this installment purchase contract financing.

COUNTY MANAGER'S RECOMMENDATION:

It would be appropriate for the Board to adopt the attached resolution at this evening's meeting approving the Bank of America financing proposal for new voting equipment and authorizing the Chairman and staff to execute the required documents to close this transaction.



SUMMARY OF TERMS AND CONDITIONS

Date: January 9, 2006

Borrower: County of Henderson, NC ("Borrower")

Lender: Banc of America Leasing & Capital, LLC or its designee ("Lender")

Maximum

Purchase Price: The lower of **\$560,000.00** and the fair market value of the Equipment, which may with Lender's prior consent include soft costs such as freight, installation and taxes paid up-front by Lender not to exceed a percentage of the Maximum Purchase Price approved by Lender. The fair market value of the Equipment is subject to verification by an independent third party appraiser.

Commencement Date: No later than March 22, 2006

Term: 5 Years

Interest Rate: **3.703% Fixed**

A sample Amortization Schedule is attached to this proposal.

The above indicative interest rate will be held until March 22, 2006. Subsequently, the fixed interest rate will be calculated at funding according to the following formula: Five-year U.S. Treasury times .65, plus 91 basis points.

Index: The index on which the above tax-exempt rate is based on the Treasury Constant Maturities for 5-Year U.S. Treasury obligations. As of January 5, 2006, the 5-Year U.S. Treasury Rate was 4.29%. The interest rate used in the formula may be obtained from the Federal Reserve H.15 Statistical Release through the Federal Reserve Website www.federalreserve.gov/releases/H15.

Type of

Financing: Installment Financing Agreement. The Installment Financing Agreement will include language intended to comply with NC General Statute Section 160A-20. The Installment Financing Agreement will include non-appropriation of funds language.

Title and Security

Interest: Banc of America Leasing & Capital, LLC will have a first lien on the equipment reflected on the Certificate of Title.

Early

Termination: Borrower may, upon 30 days notice, prepay in full all amounts then outstanding under the Loan, including accrued interest, principal balance, other unpaid charges, with **no prepayment penalty**.

Documents: Documents in form and substance satisfactory to Lender and its local counsel must be executed and delivered.

Non-Appropriation

Termination: Borrower affirms that funds are available for the current fiscal year and reasonably believes that sufficient funds can be obtained to make all payments during each subsequent fiscal year. Borrower will regularly budget for and otherwise use its best efforts to obtain funds for the continuation of the payments in this transaction.

Insurance: Borrower will provide, at its expense, liability and casualty insurance (with such deductibles as Lender may approve).

Opinion of

Counsel: Borrower's counsel shall deliver an opinion to Lender at closing in form and substance satisfactory to Lender concerning the due authorization, execution, delivery, and enforceability of the contract.

Assignment by

Lender: Lender may sell, assign or encumber all or any part of its right, title and interest in the financing without Borrower's prior written consent; however, in no event shall Lender assign this agreement as a public offer of participation. Borrower's consent is to a private placement transaction only, within the meaning of applicable federal securities laws. This financing may be offered and sold solely to one or more persons who are reasonably believed to be qualified institutional buyers or accredited investors and who make certain other representations concerning their status as experienced investors.

Escrow

Account: If Borrower so desires, subject to compliance with applicable regulations under the Internal Revenue Code, including, but not limited to arbitrage regulations, the proceeds of the financing may be deposited in an escrow acceptable to Lender, and disbursements made therefrom to pay for Equipment upon the execution and delivery of an acceptance certificate (and related documents) by Borrower and approved by Lender.

Credit Due

Diligence: In order to complete its credit due diligence, Lender will require Borrower to provide:

- Three years of most recent financial statements;
- Most recent fiscal year budget;
- Insurance Certificate.

Utilization Period

Expiration Date: The latest date for any funding will be December 31, 2006.

Banc of America Leasing & Capital, LLC
MUNI Equivalent
Amortization Schedule

Borrower HENDERSON COUNTY
Prepared Feb-22-2006 9:29 by MARK STANLEY
Comment VOTING EQUIPMENT

Date	debt service number	interest 3.703%	principal	debt service	balance
3/15/2006	-	-	-	-	560,000.00
6/15/2006	1.00	5,184.44	25,616.77	30,801.21	534,383.23
9/15/2006	2.00	4,947.28	25,853.93	30,801.21	508,529.29
12/15/2006	3.00	4,707.93	26,093.29	30,801.21	482,436.01
3/15/2007	4.00	4,466.36	26,334.86	30,801.21	456,101.15
6/15/2007	5.00	4,222.55	26,578.66	30,801.21	429,522.49
9/15/2007	6.00	3,976.49	26,824.73	30,801.21	402,697.76
12/15/2007	7.00	3,728.15	27,073.07	30,801.21	375,624.70
3/15/2008	8.00	3,477.51	27,323.71	30,801.21	348,300.99
6/15/2008	9.00	3,224.55	27,576.67	30,801.21	320,724.32
9/15/2008	10.00	2,969.24	27,831.97	30,801.21	292,892.35
12/15/2008	11.00	2,711.58	28,089.64	30,801.21	264,802.71
3/15/2009	12.00	2,451.52	28,349.69	30,801.21	236,453.02
6/15/2009	13.00	2,189.07	28,612.15	30,801.21	207,840.87
9/15/2009	14.00	1,924.18	28,877.04	30,801.21	178,963.84
12/15/2009	15.00	1,656.83	29,144.38	30,801.21	149,819.46
3/15/2010	16.00	1,387.02	29,414.20	30,801.21	120,405.26
6/15/2010	17.00	1,114.70	29,686.51	30,801.21	90,718.75
9/15/2010	18.00	839.87	29,961.35	30,801.21	60,757.40
12/15/2010	19.00	562.49	30,238.73	30,801.21	30,518.67
3/15/2011	20.00	282.54	30,518.67	30,801.21	-
TOTAL		56,024.29	560,000.00	616,024.29	

**INSTALLMENT PURCHASE CONTRACT
EQUIPMENT**



THIS INSTALLMENT PURCHASE CONTRACT, dated as of _____, 20____, between BANC OF AMERICA LEASING & CAPITAL, LLC, a Delaware limited liability company (“Lender”), and _____, a body politic and corporate of the State of North Carolina (“Purchaser”);

WITNESSETH:

WHEREAS, Purchaser is a duly and validly created, organized and existing public body politic, duly created and existing under and by virtue of the Constitution and laws of the State of North Carolina; and

WHEREAS, Purchaser has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, to enter into installment contracts to finance the purchase of personal property; including property to be affixed or attached to real estate as fixtures; and

WHEREAS, Lender desires to advance certain funds to enable Purchaser to finance the purchase and installation of the Equipment (as hereinafter defined) and Purchaser desires to obtain said advance from Lender and to purchase and install the Equipment pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, the obligation of Purchaser to make Installment Payments (as hereinafter defined) and other payments required under Section 3 hereof shall constitute a limited obligation payable solely from currently budgeted appropriations of Purchaser and shall not constitute a pledge of the faith and credit of Purchaser within the meaning of any constitutional debt limitation or as otherwise prohibited by the North Carolina Constitution; and

WHEREAS, Lender and Purchaser each have duly authorized the execution and delivery of this Contract.

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

SECTION 1. DEFINITIONS.

For purposes of this Contract, the following definitions will apply:

- 1.1. “Equipment” means all of the property described in Exhibit A.
- 1.2. “Acquisition Fund and Account Control Agreement” means the Acquisition Fund and Account Control Agreement dated as of _____, 20____ and attached as Exhibit B between Purchaser and the Acquisition Fund Custodian pursuant to which the Acquisition Fund Custodian agrees to hold the Acquisition Funds on behalf of Purchaser and to advance such Acquisition Funds in accordance with the terms thereof.



1.3. "Acquisition Fund" means the funds deposited by Purchaser with the Acquisition Fund Custodian pursuant to the terms of the Acquisition Fund and Account Control Agreement.

1.4. "Date of Taxability" shall mean the first date upon which Interest is included in the gross income of Lender for federal income tax purposes as a result of an Event of Taxability or a Determination of Taxability.

1.5. "Determination of Taxability" shall mean a determination that the interest portion of the Installment Payments is included in the gross income of Lender for federal income tax purposes, as described more fully in Section 14.2.

1.6. "Event of Taxability" means a determination that the interest component is includible for federal income tax purposes in the gross income of Lender thereof due to Purchaser's action or failure to take any action.

1.7. "Fixtures" means all or any part of the Equipment to be installed, constructed or repaired as fixtures on the Real Property.

1.8. "Installment Payments" means those payments made by Purchaser to Lender as described in Section 3 of this Contract and in the Payment Schedule.

1.9. "Net Proceeds," when used with respect to any proceeds from policies of insurance required hereunder or proceeds of any condemnation award arising out of the condemnation of all or any portion of the Equipment, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys' fees and costs) incurred in the collection of such proceeds.

1.10. "Payment Schedule" means the document labeled "Payment Schedule" attached hereto as Exhibit C and incorporated herein by reference which describes Purchaser's Installment Payments.

1.11. "Purchase Price" means the amount described in Exhibit C hereto which will be advanced by Lender, subject to fulfillment of the conditions in Section 5, to enable Purchaser to finance the purchase and construction, installation or repair of the Equipment, under the terms of this Contract.

1.12. "Taxable Rate" means, with respect to the interest component of Installment Payments, the annual rate of interest specified in the applicable Exhibit C.

1.13. "Utilization Period" is defined in Section 5.9.

1.14. "Vendor" is defined in Section 5.9.

SECTION 2. ADVANCE OF PURCHASE PRICE.

Lender agrees to advance the Purchase Price to Purchaser and Purchaser agrees to borrow the Purchase Price from Lender to be applied in accordance with the terms and conditions of this Contract. The proceeds of the Purchase Price shall be used to purchase and to install the

Equipment. The advance by Lender shall be made by the deposit by Lender to the Acquisition Fund of the Purchase Price. The Purchase Price may be invested pending disbursement, and shall be disbursed to acquire the Equipment in accordance with the Acquisition Fund and Account Control Agreement. Purchaser shall pay any additional sums necessary to purchase and install the Equipment and shall provide evidence of the payment of such additional sums to Lender upon request.

SECTION 3. INSTALLMENT PAYMENTS AND OTHER PAYMENTS.

3.1. Amounts and Times of Installment Payments and Other Payments. Purchaser shall repay, subject to the provisions of Section 13 hereof entitled "Limited Obligation of Purchaser," the Purchase Price in installments as provided in Exhibit C to this Contract. Each installment shall be deemed to be an Installment Payment and shall be paid in the amounts and at the times set forth in the Payment Schedule except as provided herein. Installment Payments shall be sufficient in the aggregate to repay the Purchase Price together with interest thereon at a per annum rate equal to the rate per annum described in Exhibit C hereto. A portion of each Installment Payment is interest.

Interest on the Purchase Price as set forth on Exhibit C is based upon a 360-day year, with twelve (12) thirty (30) day months, actual days elapsed. The amortization schedule is based on all payments being received by Lender on the scheduled due date. Lender reserves the right to increase the initial payment to reflect any additional interest accruing prior to the end of the initial interest period.

3.2. Place of Payments. All payments required to be made to Lender hereunder shall be made at Lender's principal office or as may be otherwise directed by Lender or its assignee.

3.3. Late Charges. Should Purchaser fail to pay any Installment Payment or any other sum required to be paid to Lender within fifteen (15) days after the due date thereof, Purchaser shall pay a late payment charge equal to the rate of 16% per annum or the maximum amount permitted by law, whichever is less, from such date of the delinquent payment.

3.4. Abatement of Installment Payments. Subject to Section 13 hereof entitled "Limited Obligation of Purchaser," there shall be no abatement or reduction of the Installment Payments or other payments by Purchaser for any reason, including but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or contingent) arising out of or related to the Equipment, and any failure of the Equipment after it has been accepted by Purchaser, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances. Purchaser assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever, it being the intention of the parties that the Installment Payments and other payments shall be made in all events unless the obligation to make such Installment Payments and other payments is terminated as otherwise provided herein.

3.5. Prepayment of Installment Payments. Provided Purchaser is not in default of its obligations hereunder, it shall have the option to prepay the outstanding Installment Payments designated as principal, in full and limited to the second half of Installment Purchase term, at a



prepayment price equal to one hundred ____ percent (10__%) of the principal balance at the time of prepayment, together with accrued interest to the date of prepayment and with penalty, upon thirty (30) days prior written notice to Lender.

SECTION 4. NATURE OF CONTRACT.

This contract is an installment contract and security agreement pursuant to Section 160A-20 and Article 9 of Chapter 25 (the "Uniform Commercial Code - Secured Transactions") of the General Statutes of North Carolina.

SECTION 5. RESPONSIBILITIES AND COVENANTS OF PURCHASER.

5.1. Care and Use. Purchaser shall use the Equipment in a careful and proper manner, in compliance with all applicable laws and requisitions, and, at its sole cost and expense or at the cost or expense of a third party other than Lender, shall service, repair and maintain the Equipment so as to keep the Equipment in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear expected, and shall replace any part of the Equipment as may from time to time become worn out, lost, stolen, destroyed or damaged or is unfit for use. Any and all additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Contract and included in the term "Equipment" as used in this Contract. Purchaser shall enter into or cause to be entered into, and maintained in full force and effect during the term of this Contract, manufacturer's or supplier's standard maintenance contracts satisfactory to Lender covering the Equipment and shall comply with all of its obligations thereunder. Purchaser shall furnish evidence to Lender upon Lender's request of such signed maintenance contracts at or prior to the date of this Contract and the payment of all charges and premiums therefor.

5.2. Inspection. Lender shall have the right upon reasonable prior notice to Purchaser to enter into and upon the premises where the Equipment is located to inspect the Equipment and observe its use during normal business hours.

5.3. Alterations. Without the prior written consent of Lender, which consent shall not be unreasonably withheld, Purchaser shall not make any alterations, modifications or attachments to the Equipment which cannot be removed without materially damaging the functional capabilities or economic value of the Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lender.

5.4. Utilities. Purchaser shall pay, when due, all charges for utility services used in connection with the Equipment. There shall be no abatement of the Installment Payments on account of interruption of any such services.

5.5. Taxes. Purchaser shall pay, when due, any and all taxes levied by any governmental body as a result of Purchaser's ownership, possession, or use of the Equipment or as a direct or indirect result of the purchase or the Equipment by Purchaser.

5.6. Risk of Loss. Subject to the provisions of Section 13 hereof entitled "Limited Obligation of Purchaser," Purchaser shall bear all risk of loss to and condemnation of the

Equipment. In the event of loss or damage to or condemnation of the Equipment, Purchaser shall, at the option of Lender, either (a) continue to make the Installment Payments due hereunder and repair or replace the Equipment; or (b) prepay in full the principal components of the outstanding Installment Payments in accordance with Section 3.5. hereof. Said repair or replacement of the Equipment shall meet with the satisfaction of Lender.

5.7. Performance by Lender of Purchaser's Responsibilities. Any performance required of Purchaser of any payments required to be made by Purchaser may, if not timely performed or paid, be performed or paid by Lender, and, in that event, Lender shall be immediately reimbursed by Purchaser for such payments and for any costs and expenses, legal or otherwise, associated with the payments or other performance by Lender, with interest thereon at a per annum rate equal to the 16% (but not exceeding the maximum rate, if any, permitted by applicable law).

5.8. Financial Statements. Purchaser shall report its financial results on an annual basis in accordance with accounting principles and practices generally accepted in the United States of America applicable to governmental entities, and the standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and shall deliver to Lender (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows and notes, and (4) schedules and attachments to the financial statements) within 180 days of its fiscal year end, (ii) such other financial statements and information as Lender may reasonably request, and (iii) its annual budget for the following fiscal year within 90 days of the current fiscal year end. The financial statements described in subsection (i) shall be accompanied by an unqualified opinion of Purchaser's auditor. Credit information relating to Purchaser may be disseminated among Lender and any of its affiliates and any of their respective successors and assigns. Purchaser agrees that it will permit Lender or its agents and representatives to inspect Purchaser's books and records and make extracts therefrom at its own expense during regular business hours and in a manner which will not disrupt the normal business routine of Purchaser. Purchaser represents and warrants to Lender that all financial statements which have been delivered to Lender in connection with this Contract fairly and accurately reflect Purchaser's financial condition and there has been no material adverse change in Purchaser's financial condition as reflected in the financial statements since the date thereof.

5.9. Other Responsibilities and Conditions. As conditions precedent to Lender's obligations under this Contract and prior to the advancement of any funds hereunder by Lender, Purchaser shall cause to be provided to Lender the following:

- (a) An Incumbency and Authorization Certificate in the form of Exhibit D attached hereto;
- (b) An Opinion of Counsel for Purchaser in the form of Exhibit E attached hereto;
- (c) A Federal Income Tax Certificate in the form of Exhibit F attached hereto;



(d) Certified copies of resolutions of Purchaser's governing body authorizing Purchaser to enter into this Contract and carry out its terms;

(e) Properly executed UCC financing statements as required by Section 6.1 hereof sufficient in form and substance and filed in all necessary locations to perfect a first lien in the Equipment;

(f) An opinion letter from bond counsel, in form and substance and from an attorney satisfactory to Lender, which states that the interest on Purchaser's obligations under the Contract will not be included in the gross income of Lender for Federal and North Carolina income tax purposes, and will not be an item of tax preference for purposes of the Federal alternative minimum income tax;

(g) A properly filled-out and executed Form 8038 or 8038G, as applicable;

(h) An Acquisition Fund and Account Control Agreement in a form satisfactory to Lender;

(i) A Certificate of Acceptance/Essential Use Certificate for the Equipment in the form of Exhibit G attached hereto; and

(j) Executed originals of any other documents and instruments required by Lender in connection with this Contract.

In addition, the performance by Lender of any of its obligations pursuant to this Contract shall be subject to: (i) no material adverse change in the financial condition of Purchaser since the date of this Contract, (ii) no Event of Default having occurred, and (iii) if no Acquisition Fund has been established, the Equipment must be accepted by Purchaser no later than _____ (the "Utilization Period").

Subject to satisfaction of the foregoing, Lender will pay the Purchase Price for Equipment described in a Schedule to the applicable Seller, manufacturer, dealer or other party designated by Purchaser ("Vendor") or, if authorized by Purchaser's governing body, will reimburse Purchaser for the prior payment of any such Purchase Price by Purchaser to the Vendor, upon receipt of the documents described in subsections (a) through (k) and fulfillment of the other conditions in this Section 5.9; or if an Acquisition Fund has been established pursuant to an Acquisition Fund and Account Control Agreement, Lender will deposit the Purchase Price for Equipment described in the Schedule with the Acquisition Fund Custodian.

This Agreement is not a commitment by Lender to enter into any Contract not currently in existence, and nothing in this Contract shall be construed to impose any obligation upon Lender to enter into any proposed Contract, it being understood that whether Lender enters into any proposed Contract shall be a decision solely within Lender's discretion. Purchaser will cooperate with Lender in Lender's review of any proposed Contract. Without limiting the foregoing, Purchaser will provide Lender with any documentation or information Lender may request in connection with Lender's review of any proposed Contract. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use



and location and documentation or information concerning the financial status of Purchaser and other matters related to Purchaser.

5.10. Special Tax Covenants. Purchaser covenants that: (a) it will make no use of the moneys advanced by Lender (the "Proceeds") which would cause this Contract to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or the Treasury Regulations promulgated thereunder; (b) so long as the Contract remains in effect, Purchaser will comply with the requirements of the Code and the applicable Treasury regulations promulgated thereunder and will not take or omit to take any action which will cause the interest paid or payable under this Contract to be includible in the gross income of the registered lender hereof; (c) the Equipment shall be used exclusively for essential governmental purposes of Purchaser and no use shall be made of the proceeds or of the Equipment, directly or indirectly, which would cause this Contract to be a "private activity bond" within the meaning of Section 141 of the Code; (d) no part of the payment of principal or interest under this Contract is or shall be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof; (e) no portion of the proceeds shall be used, directly or indirectly, in making loans, the payment of principal or interest with respect to which are to be guaranteed, in whole or in part, by the United States or any agency or any instrumentality thereof; and (f) Purchaser shall not lease or otherwise make any of the Equipment available to any entity if such lease or other availability would cause the interest portion of the Installment Payments to be included in the gross income of Lender under the Code for income tax purposes.

Purchaser shall file on or before its due date IRS Form 8038-G. Purchaser shall not take or omit to take any action that may cause a loss of the federal, state or local tax-exempt status of this Contract or the interest thereon.

SECTION 6. SECURITY INTEREST; LIENS.

6.1. Security Interest. Purchaser hereby grants to Lender a security interest in (i) the Equipment and in any and all additions, accessions, repairs, replacements, substitutions, and modifications to the Equipment, (ii) the Acquisition Fund, and (iii) all proceeds of all the foregoing, including any insurance proceeds paid because of loss or damage to the Equipment to the extent necessary to secure Purchaser's payment obligations to Lender under this Contract. Purchaser shall execute and cause to be filed, at Purchaser's expense, financing statements and other related documents that are necessary under Article 9 of Chapter 25 (the "Uniform Commercial Code - Secured Transactions") of the General Statutes of North Carolina to perfect a first lien security interest by filing and to maintain that first lien security interest in perfected form. If the Equipment is or includes one or more motor vehicles, the ownership or lienholder status of which is or are evidenced by a certificate of title(s), Purchaser shall cause Lender's lien to be properly shown on such title(s) as a first lien security interest. The Equipment other than the Fixtures is and shall throughout the term of this Contract be and remain personal property. Upon the occurrence of an Event of Default or a termination of this Contract under Section 13, full and unencumbered legal title to the Equipment shall pass to Lender, and Purchaser shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or termination, Purchaser shall execute and deliver to Lender such documents as Lender may request to evidence the passage of such legal title to Lender and the termination of Purchaser's interest therein, and upon request by Lender shall deliver possession of the Equipment to Lender



in accordance with Section 11.2(c) or Section 13, as applicable. Upon expiration of this Contract and payment and performance in full of all of Purchaser's obligations to Lender, Lender's security interest or other interest in the Equipment shall terminate, and Lender shall execute and deliver to Purchaser such documents as Purchaser may request to evidence the termination of Lender's security interest in the Equipment subject to this Contract.

6.2. Liens. Purchaser shall not directly or indirectly create, incur, assume or suffer to exist any lien, charge, security interest, encumbrance or claim on or with respect to the Equipment (except the security interest granted to Lender). Purchaser shall promptly, at its own expense, take such action as may be necessary to duly discharge any such lien, security interest, charge, encumbrance or claim if the same shall arise at any time. Purchaser shall reimburse Lender for any expense incurred by it in order to discharge or remove any such lien, security interest, encumbrance or claim.

[6.3 Registration.

All Equipment that are motor vehicles are to be registered and titled as follows:

(a) Registered Owner: _____

(b) Lienholder: Banc of America Leasing & Capital, LLC
2059 Northlake Parkway, 4th Floor
Tucker, Georgia 30084

Purchaser shall be responsible for the correct titling of all Equipment leased hereunder. Purchaser will cause the original Certificates of Title to be delivered to Lender for retention in Lender's files throughout the term of the Contract.

All costs associated with the registration and licensing of the Equipment will be for the account of Purchaser.]

SECTION 7. INSURANCE AND UNFORSEEN LOSSES.

7.1. Insurance. Purchaser shall obtain and maintain, at its expense, at all times until termination of this Contract a primary policy of insurance covering the Equipment and providing the insurance protection described in this Section. Purchaser shall maintain at its own expense fire, casualty, public liability, property damage and theft insurance, and such other insurance in such amounts and with such deductibles, if permitted, as required by Lender from time to time. The Equipment shall be insured in an amount that covers the outstanding balance unless the replacement value is higher. All such insurance shall be maintained with such insurance company or companies as shall be satisfactory to Lender and shall provide that losses shall be payable to Lender and Lender shall be named as an additional insured with respect to all such insurance. Purchaser shall deliver to Lender the policies of insurance or duplicates thereof or other evidence satisfactory to Lender of such insurance coverage. Each insurer shall agree by endorsement upon the policy or policies issued by it that (i) it will give thirty (30) days prior written notice to Lender of the cancellation or material modification of such policy; and (ii) the

coverage of Lender shall not be terminated, reduced or affected in any manner regardless of any breach or violation by Purchaser of any warranties, declarations and conditions of such insurance. Purchaser agrees to cooperate fully in all accident insurance investigations, claims and litigation proceedings. Purchaser shall cooperate fully with Lender in filing any proof of loss with respect to any insurance policy described above. In no event shall Purchaser voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Equipment without the written consent of Lender.

7.2. Condemnation. Any condemnation award paid as a result of the exercise of the power of eminent domain over the Equipment or any part thereof by any governmental body or any person or entity acting under governmental authority, which is not utilized by Purchaser to repair or replace the Equipment to the satisfaction of Lender shall be paid to Lender in accordance with Section 3.5 hereof, and Purchaser shall be entitled to the balance, if any.

SECTION 8. WARRANTIES AND REPRESENTATIONS OF PURCHASER.

Purchaser warrants and represents to Lender (all such representations and warranties being continuing) as follows:

(a) Purchaser is a public body politic duly created and existing under the laws of the State of North Carolina as a political subdivision of the State of North Carolina, and has all powers necessary to enter into the transactions contemplated by this Contract and to carry out its obligations hereunder;

(b) This Contract and all other documents relating hereto, have been duly and validly authorized, approved, executed and delivered by Purchaser, and the performance by Purchaser of its obligations under such documents has been approved and authorized under all laws, regulations and procedures applicable to Purchaser, including, but not limited to, compliance with all applicable public meeting and bidding requirements, and the transactions contemplated by this Contract and all other documents relating hereto constitute a public purpose for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina, and, assuming due authorization, execution and delivery hereof by Lender, constitute valid, legal and binding obligations of Purchaser, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by general principles of equity or by bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and as those other laws may be further limited by the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended;

(c) No approval or consent is required from any governmental authority with respect to the entering into or performance by Purchaser of this Contract and the transactions contemplated hereby, or, if any such approval is required, it has been duly obtained, including any applicable approval of the Local Government Commission as evidenced by the Secretary's certificate hereon, and Purchaser has complied with such public bidding requirements as may be applicable to this Contract;

(d) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of Purchaser's knowledge, threatened

against or affecting Purchaser challenging the validity or enforceability of this Contract or any other documents relating hereto, or the performance of Purchaser's obligations hereunder, and compliance with the provisions hereof, under the circumstances contemplated hereby, does not and will not in any material respect conflict with, constitute on the part of Purchaser a breach of our default under, or result in the creation of a lien or other encumbrance on any property of Purchaser (except as contemplated herein) pursuant to any agreement or other instrument to which Purchaser is a party, or any existing law, regulation, court order or consent decree to which Purchaser is subject;

(e) There are no liens or encumbrances on the Equipment other than the lien created by this Contract;

(f) A resolution relating to the performance by Purchaser of this Contract and the transactions contemplated hereby has been duly adopted, is in full force and effect, and has not been in any respect amended, modified, revoked or rescinded;

(g) The purchase of the Equipment is essential to the proper, efficient and economical operation of Purchaser and the delivery of its service and the Equipment will provide an essential use and permit Purchaser to carry out public functions that it is authorized by law to perform; and

(h) The security interest granted by Purchaser to Lender in the Equipment has been duly perfected and shall constitute a first lien security interest in the Equipment.

SECTION 9. INDEMNIFICATION.

To the extent permitted by applicable law, Purchaser hereby agrees to indemnify, protect and save Lender and the Acquisition Fund Custodian and the members and employees of each of the foregoing harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Equipment, including without limitation, the operation, ordering, acquisition, purchase, delivery, rejection, storage, return, possession, condition or use thereof. The indemnification arising under this Section shall continue in full force and effect notwithstanding the payment in full of all obligations under this Contract.

SECTION 10. DISCLAIMER OF WARRANTIES.

10.1. No Representations By Lender. Purchaser acknowledges that it has inspected the Equipment and found the Equipment to be satisfactory and acknowledges and agrees that it has selected the Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by Lender with respect thereto.

10.2. Disclaimer By Lender. LENDER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. As to Lender, Purchaser's acquisition of the Equipment shall be on an "as-is" basis. In no event shall Lender be liable for any incidental, indirect,

special or consequential damage in connection with or arising out of this Contract, the Equipment or the existence, furnishing, functioning or Purchaser's use of any item, product or service provided for in this Contract.

SECTION 11. DEFAULT AND REMEDIES.

11.1. Definition of Event of Default. Purchaser shall be deemed to be in default hereunder upon the happening of any of the following events of default (each, an "Event of Default"):

(a) Purchaser shall fail to make any Installment Payment or fail to pay any other sum hereunder when due; or

(b) Purchaser shall fail to perform or observe any term, condition or covenant of this Contract or shall breach any warranty by Purchaser herein or therein contained; or

(c) Proceedings under any bankruptcy, insolvency, reorganization or similar litigation shall be instituted by or against Purchaser, or a receiver, custodian or similar officer shall be appointed for Purchaser or any of its property, and such proceedings or appointments shall not be vacated or fully stayed after the institution or occurrence thereof; or

(d) Any warranty, representation or statement made by Purchaser herein or in any other document executed or delivered in connection herewith is found to be breached, false, incorrect or misleading in any material respect on the date made; or

(e) An attachment, levy or execution of a security interest or lien is levied upon or against the Equipment; or

(f) Any default occurs under any other agreement for borrowing money or receiving credit under which Purchaser may be obligated as borrower, if such default consists of (i) the failure to pay any indebtedness when due, or (ii) the failure to perform any other obligation hereunder and gives the holder of the indebtedness the right to accelerate the indebtedness.

11.2. Remedies on Default. Subject to Section 13 hereof entitled "Limited Obligation of Purchaser," upon the occurrence of any Event of Default, Lender may exercise any one or more of the following remedies as Lender in its sole discretion shall elect:

(a) Declare the entire principal amount of the Installment Payments and all accrued interest and other charges immediately due and payable without notice or demand to Purchaser;

(b) Proceed by appropriate court action to enforce performance by Purchaser of the applicable covenants of this Contract or to recover for the breach thereof;

(c) Exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code of the State of North Carolina and the general laws of the State of North Carolina with respect to the enforcement of the security interest granted or reserved

hereunder, including, without limitation, to the extent permitted by law, take possession of any collateral without any court order or other process of law and without liability for entering the premises and sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of Purchaser, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition costs, toward the balance due under this Contract and, thereafter, shall pay any remaining proceeds to Purchaser;

(d) Terminate this Contract as to all or any part of the Equipment and use, operate, lease or hold all or any part of the Equipment as Lender in its sole discretion may decide;

(e) Require Purchaser to deliver the Equipment, at Purchaser's sole expense, to any location within the State of North Carolina designated by Lender, and take possession of any proceeds of the Equipment, including Net Proceeds; or

(f) Pursue any other remedy available at law or equity to Lender.

11.3. Further Remedies. A termination hereunder shall occur only on notice by Lender to Purchaser and only with respect to such portion of the Equipment as Lender specifically elects to terminate in such notice. Except as to those portions of the Equipment with respect to which there is a termination, this Contract shall remain in full force and effect and Purchaser shall be and remain liable for the full performance of all of its obligations hereunder. All remedies of Lender are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. Purchaser agrees to pay to Lender all court costs and reasonable attorneys' fees incurred by Lender in enforcing Lender's rights and remedies under this Contract.

SECTION 12. ASSIGNMENT.

12.1. Assignment by Purchaser. Purchaser agrees not to sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Contract or the Equipment (except for the lien and security interest of Lender therein) without Lender's prior written consent.

12.2. Assignment by Lender. Lender may, at any time and from time to time, assign all or any part of its interest in the Equipment and/or this Contract, including without limitation, Lender's rights to receive the Installment Payments and any additional payments due and to become due hereunder. No such assignment shall grant or purport to grant any greater interest or rights than those held by Lender pursuant to this Contract. Lender or its designees may assign or reassign either this entire contract or a partial interest therein. All assignments by Lender shall be subject to the following rules and conditions:

(a) Lender shall send written notice of the assignment and its effective date to Purchaser. The notification shall include an executed copy of the assignment document and shall specify the assignee's name and address, and shall provide Purchaser with instructions for making payments after the effective date of the assignment.

(b) Should Purchaser incorrectly make payments to Lender after the conditions specified in the preceding sentence are met, Lender shall pay over those payments to its assignee.

(c) When it receives the notification specified in part (a) of this Section, Purchaser shall send a written acknowledgment of the same to Lender and shall record the assignment in Purchaser's "book entry system."

(d) Lender shall require each of its assignees to conform to the notification requirements of this Section in the event of further assignments.

(e) Purchaser shall execute, at Lender's request, a notice of assignment and other related documents that are reasonably necessary to protect the security interest in the Equipment or in this Contract and to maintain those security interests in perfected form.

After the giving of notice described above to Purchaser, Purchaser shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

SECTION 13. LIMITED OBLIGATION OF PURCHASER.

No provision of this Contract shall be construed or interpreted as creating a pledge of the faith and credit of Purchaser within the meaning of any Constitutional debt limitation. No provision of this Contract shall be construed or interpreted as creating a pledge of the faith and credit of Purchaser within the meaning of the Constitution of the State of North Carolina. This Contract shall not directly or indirectly or contingently obligate Purchaser to make any payments beyond the amount appropriated, if any, in the sole discretion of Purchaser for any fiscal year in which this Contract shall be in effect. Purchaser may at the end of any fiscal year terminate its future Installment Payment obligations under this Contract if Purchaser has not appropriated sufficient funds to make the next fiscal year's scheduled Installment Payments; however, during each fiscal year, Purchaser shall exercise its best efforts to appropriate funds for Installment Payments due in the next fiscal year. If Purchaser elects to terminate this Contract for such reason, it shall deliver the Equipment, at its own expense, to any location within the State of North Carolina designated by Lender. No deficiency judgment may be rendered against Purchaser in any action for breach of a contractual obligation under this Contract and the taxing power of Purchaser is not and may not be pledged directly or indirectly to secure any moneys due under this Contract. No provision of this Contract shall be construed to pledge or create a lien on any class or source of Purchaser's moneys other than the Acquisition Fund created pursuant to the Acquisition Fund and Account Control Agreement referenced in Section 5.9(h). To the extent of any conflict between this Section and any other provision of this Contract, this Section shall take priority.

SECTION 14. TAX-EXEMPT INTEREST.

14.1. Intent of Parties. It is the intention of the parties hereto that the interest portion of the Installment Payments paid by Purchaser to Lender under this Contract shall be tax-exempt under Section 103 of the United States Internal Revenue Code.

14.2. Event/Determination of Taxability. If at any time there is a Determination of Taxability or Event of Taxability, the interest component shall be at a Taxable Rate retroactive to the Date of Taxability, and Purchaser will pay such additional amount as will result in Lender receiving the interest component at the Taxable Rate identified in the related Exhibit C. In such event, Purchaser also shall be required to pay to Lender all amounts, if any, which may be necessary to reimburse Lender for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against Lender by reason of Lender's failure to include the interest portion of the Installment Payments in its gross income for income tax purposes. Installment Payment amounts under this Contract shall be increased as a result of the increased interest rate and additional interest as a result of said rate increase on all previous payments shall be paid to Lender upon demand therefore. Purchaser shall pay to Lender the above-mentioned alternative rate of interest notwithstanding any transfer by Lender or payment or prepayment by Purchaser prior to the date such Determination of Taxability was made.

A Determination of Taxability shall mean a determination that the interest portion of the Installment Payments is included in the gross income of Lender for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which Lender is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an action, or failure to act, by Purchaser, the interest portion of the Installment Payments (hereinafter called "Interest") is included in the gross income of Lender for federal income tax purposes; (b) the date on which Purchaser receives notice from Lender that Lender has been advised (i) in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to Lender which asserts, in effect, that Interest received by Lender is included in the gross income of Lender for federal income tax purposes, as a result of an action, or failure to act, by Purchaser, or (ii) by an opinion of counsel received by Lender which concludes, in effect, that Interest is included in the gross income of Lender for federal income tax purposes as a result of an action, or failure to act, by Purchaser; (c) the day on which Purchaser is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the Interest is included in the gross income of Lender for federal income tax purposes as a result of an action, or failure to act, by Purchaser; or (d) the day on which Purchaser is advised in writing by counsel to Lender that a determination has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which Purchaser has been given written notice and an opportunity to participate and defend that the Interest is included in the gross income of Lender for federal income tax purposes, as a result of an action, or failure to act, by Purchaser.

14.3. Duty to Notify Lender. Purchaser agrees to give prompt written notice to Lender upon Purchaser's receipt of any oral or written notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability has occurred.

SECTION 15. MISCELLANEOUS.

15.1. Waiver. No covenant or condition of this Contract can be waived except by the written consent of Lender. Any failure of Lender to require strict performance by Purchaser or



any waiver by Lender of any terms, covenants or conditions herein shall not be construed as a waiver of any other breach of the same or any other term, covenant or condition herein.

15.2. Severability. In the event any portion of this Contract shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Contract shall continue in full force and effect.

15.3. Governing Law. This Contract shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina.

15.4. Notices. Any and all notices, requests, demands, and other communications given under or in connection with this Contract shall be effective only if in writing and either personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the address of the recipient as described in this document, and shall be deemed to be received on the third day after the day it was deposited in the United States mail or on the day it was actually received, whichever is earlier.

15.5. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

15.6. Entire Contract. This Contract, together with the Exhibits and attachments hereto, constitute the entire Contract between the parties and this Contract shall not be modified, amended, altered or changed except by written agreement signed by the parties.

15.7. Binding Effect. Subject to the specific provisions of this Contract, this Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

15.8. Execution in Counterparts. This Contract 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.



IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the day and year first above written.

(seal) _____

Attest: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

(seal)

BANC OF AMERICA LEASING &
CAPITAL, LLC

Attest: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

Purchaser Finance Director

Purchaser's Address:

Attn: _____

Lender's Address:

Banc of America Leasing & Capital, LLC
555 California Street, 4th Floor
San Francisco, CA 94104
Attn: Contract Administration
Fax No. 415-765-7373



List of Exhibits:

- Exhibit A - Description of Equipment
- Exhibit B - Acquisition Fund and Account Control Agreement
- Exhibit C - Payment Schedule
- Exhibit C-1 - Amortization Schedule
- Exhibit D - Incumbency and Authorization Certificate
- Exhibit E - Opinion of Counsel
- Exhibit F - Federal Income Tax Certificate
- Exhibit G - Certificate of Acceptance / Essential Use Certificate



EXHIBIT A

DESCRIPTION OF EQUIPMENT

Installment Purchase Contract Date: _____, 20__

Purchaser: _____

Purchase Price: \$ _____

Equipment Description to be more fully described upon acquisition and in subsequent lien filings.

Purchaser:

By: _____

Name: _____

Title: _____

Date: _____



EXHIBIT B

ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement, dated as of _____, 20____, by and among Banc of America Leasing & Capital, LLC, a Delaware limited liability company (hereinafter referred to as "Lender"), _____, a political subdivision of the state of _____ (hereinafter referred to as "Purchaser") and _____, a _____ (hereinafter referred to as "Acquisition Fund Custodian").

Reference is made to that certain Installment Purchase Contract dated as of _____, 20____ between Lender and Purchaser (hereinafter referred to as the "Contract"), covering the acquisition of certain Equipment described therein (the "Equipment"). It is a requirement of the Contract that the Equipment Cost of the Equipment (an amount not to exceed \$ _____) be deposited into an escrow under terms satisfactory to Lender, for the purpose of fully funding the Contract, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

The parties agree as follows:

1. Creation of Acquisition Fund.

(a) There is hereby created a special trust fund to be known as the "[_____] Acquisition Fund" (the "Acquisition Fund") to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lender and Purchaser, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from Purchaser. Purchaser 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 Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian nor Lender shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and Purchaser agrees to and does hereby release the Acquisition Fund Custodian and Lender from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements of North Carolina.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the



Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lender, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, Purchaser shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Acquisition Fund after _____ (the "Acquisition Period") shall be applied as provided in Section 4 hereof.

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

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Purchaser agrees to and does hereby release and indemnify the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this agreement; and in connection therewith, does to the extent permitted by law indemnify the Acquisition Fund Custodian against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim. The Acquisition Fund Custodian shall be vested with a lien on and is hereby granted a security interest in all property deposited hereunder, for indemnification, for reasonable attorneys' fees, court costs, for any suit, interpleader or otherwise, or any other expense, fees or charges of any character or nature, which may be incurred by the Acquisition Fund Custodian by reason of disputes arising between Purchaser and Lender as to the correct interpretation of the Contract and instructions given to the Acquisition Fund Custodian hereunder, or otherwise, with the right of Acquisition Fund Custodian, regardless of the instructions aforesaid, to hold the said property until and unless said additional expenses, fees and charges shall be fully paid.

(g) If Purchaser and Lender shall be in disagreement about the interpretation of the Contract, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Acquisition Fund Custodian shall be reimbursed by Purchaser 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 Contract until a final judgment in such action is received.



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

(i) Purchaser shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extra-ordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Contract, or in connection with any dispute between Lender and Purchaser concerning the Acquisition Fund.

2. Acquisition of Property.

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

(b) Authorized Acquisition Fund Disbursements. Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to Purchaser for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Requisition Procedure. No disbursement from the Acquisition Fund shall be made unless and until Lender has approved such requisition. Prior to disbursement from the Acquisition Fund there shall be filed with the Acquisition Fund Custodian 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 an authorized representative of Purchaser (an "Authorized Representative") and by Lender, and shall be subject to the following:

1. Delivery to Lender of a certificate of Purchaser to the effect that:

- (i) an obligation in the stated amount has been incurred by Purchaser, and that the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Contract, and has not been paid;
- (ii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made;
- (iii) such requisition contains no item representing payment on account, or any retained percentages which



Purchaser is, at the date of such certificate, entitled to retain; and (iv) the Equipment is insured in accordance with the Contract.

2. Delivery to Lender of an Acceptance Certificate executed by Purchaser, together with any purchase agreement assignment or bill of sale and invoice therefor as required by Section 3.04 of the Contract;
3. The disbursement shall occur during the Acquisition Period set forth in the Schedule applicable to such Equipment;
4. There shall exist no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default); and
5. No material adverse change in Purchaser's or any guarantor's financial condition shall have occurred since the date of the Contract.


3. Deposit to Acquisition Fund. Upon satisfaction of the conditions specified in Section 5.9 of the Contract, Lender will cause the Purchase Price to be deposited in the Acquisition Fund. Purchaser agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Acquisition Fund.

4. Excessive Acquisition Fund. Following the final disbursement from the Acquisition Fund at the end of the Acquisition Period, or termination of the Acquisition Fund as otherwise provided herein, the Acquisition Fund Custodian shall transfer any remainder from the Acquisition Fund to Lender for application to amounts the principal component of owed under the Contract.

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

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

(a) All terms used in this Section 6 which are defined in the Commercial Code of the state of _____ ("Commercial Code") but are not otherwise



defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

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

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

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

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

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

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



If to Acquisition
Fund Custodian:

Attn: _____
Phone: _____
Fax: _____

In Witness Whereof, the parties have executed this Acquisition Fund and Account Control Agreement as of the date first above written.

Banc of America Leasing & Capital, LLC,
as Lender

_____,
as Purchaser

By: _____

By: _____

Title: _____

Title: _____

_____,
as Acquisition Fund Custodian

By: _____

Title: _____



SCHEDULE 1

FORM OF DISBURSEMENT REQUEST

Re: Installment Purchase Contract dated as of _____, 20__ by
and between Banc of America Leasing & Capital, LLC, as Lender and
_____, as Purchaser (the "Contract")

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of _____, 20__ (the "Acquisition Fund and Account Control Agreement") by and among Banc of America Leasing & Capital, LLC ("Lender"), _____ ("Purchaser") and Bank of America, N.A., _____ branch (the "Acquisition Fund Custodian"), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement (the "Acquisition Fund") for the following purposes.

Payee's Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Purchaser, and the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Contract, and has not been paid. Attached hereto is the original invoice with respect to such obligation.

(ii) 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.

(iii) This requisition contains no item representing payment on account, or any retained percentages which Purchaser is, at the date hereof, entitled to retain.

(iv) The Equipment is insured in accordance with the Contract.

(v) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Contract has occurred and is continuing at the date hereof.



(vi) The disbursement shall occur during the Acquisition Period set forth in the Schedule applicable to such Equipment.

(vii) No material adverse change in Purchaser's or any guarantor's financial condition shall have occurred since the date of the Contract.

Dated: _____

By: _____
Authorized Representative

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

as Lender under the Contract

By: _____
Title: Vice President



EXHIBIT C

PAYMENT SCHEDULE

Installment Purchase Contract Date: _____

Purchaser: _____

Purchase Price: \$ _____ / Interest Rate / Payment Terms (Mark one)

___ Fixed Rate

The interest rate is _____% per annum fixed. Interest is calculated and imposed on the unpaid balance of the Purchase Price based on the payment schedule described herein. The Purchase Price plus interest shall be repaid by Purchaser to Banc of America Leasing & Capital, LLC in twelve (12) equal consecutive quarterly installments of principal and interest in the amount of \$ _____ each, commencing _____, 20____.

___ Variable

Interest shall accrue at a variable rate of _____% adjusted _____ . Interest is calculated and imposed on the unpaid balance of the Purchase Price based on the payment schedule described herein. The Purchase Price plus interest shall be repaid by Purchaser to Banc of America Leasing & Capital, LLC as follows: _____.

“Taxable Rate”, with respect to the interest component of Installment Payments, means an annual rate of interest equal to ____%.

An amortization schedule is attached hereto as Exhibit C-1.

Purchaser:

By: _____

Name: _____

Title: _____

Date: _____



EXHIBIT C-1

AMORTIZATION SCHEDULE

Banc of America Leasing and Capital Group, LLC
MUNI Equivalent Amortization Schedule

Purchaser: _____
Installment Purchase Term: _____ Months
Average Life: _____ years
Average Rate: _____ %

Date	Debt Service Number	Interest _____ %	Principal	Debt Service	Balance



EXHIBIT D

INCUMBENCY AND AUTHORIZATION CERTIFICATE

In connection with the execution and delivery by _____ (the "Purchaser") of an Installment Purchase Contract dated _____, 20____, by Banc of America Leasing & Capital, LLC, I _____ do hereby certify that I am duly appointed Clerk to the [Board of Commissioners] of _____, a political subdivision and body corporate and politic existing under the laws of the State of North Carolina, and that I have custody of the official minutes and other pertinent records of that body.

I further certify that:

1. As of the date of this certificate, the persons named below hold the positions listed opposite their names;

2. The persons named below were authorized by a resolution of the governing body of _____, passed in the regular meeting held on _____, 20____ to execute and deliver on behalf of Purchaser the aforesaid Installment Purchase Contract to evidence the obligation of Purchaser in connection with the purchase of personal property, including any fixtures (the "Equipment") and the creation of a security interest in the Equipment, together with all other documents and instruments required and contemplated by said Installment Purchase Contract, and to carry out the terms of all of the foregoing, all under and pursuant to the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended. Attached hereto is a true, complete and accurate copy of such resolution. Such resolution has not been amended, rescinded, terminated or otherwise revoked and is in full force and effect.

3. The signatures set opposite the names and positions of the persons named below are such persons' true and authentic signatures.

<u>Name</u>	<u>Position</u>	<u>Signature</u>
_____	[County] [City] Manager	_____
_____	Finance Officer	_____

IN WITNESS WHEREOF, I have duly executed this certificate and have affixed to it the seal of _____, on this the _____ day of _____, 20____.

By: _____

Name: _____



EXHIBIT E

OPINION OF COUNSEL

Banc of America Leasing & Capital, LLC
555 California Street, 4th Floor
San Francisco, California 94104

Re: Installment Purchase Contract, dated as of _____, 20 ____,
between Banc of America Leasing & Capital, LLC, as Lender, and
_____, as Purchaser

Ladies and Gentlemen:

As legal counsel to _____ (“Purchaser”), I have examined (a) an executed counterpart of a certain Installment Purchase Contract, dated as of _____, 20 ____, and Exhibits thereto by and between Banc of America Leasing & Capital, LLC (“Lendor”) and Purchaser (the “Agreement”), which, among other things, provides for the financing of certain property listed in Exhibit A attached to the Agreement (the “Equipment”) and a certain Acquisition Fund and Account Control Agreement among Lender, Purchaser, and _____ as Acquisition Fund Custodian, dated _____, 20 ____, (b) an executed counterpart of the ordinances or resolutions of Purchaser which, among other things, authorize Purchaser to execute the Agreement and the Schedule and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Schedule and the terms and provisions of the Agreement incorporated therein by reference together with the Payment Schedule attached to the Agreement are herein referred to collectively as the “Contract”, and the Contract and the Acquisition Fund and Account Control Agreement are referred to collectively as the “Transaction Documents.”

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

1. Purchaser is a public body corporate and politic, duly organized and existing under the laws of the State, and [has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power][is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the “Code”) and the obligations of Purchaser under the Agreement will constitute an obligation of Purchaser within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code].

2. Purchaser has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Contract.



3. The Contract has been duly authorized, approved, executed and delivered by and on behalf of Purchaser and the Transaction Documents are valid and binding obligations of Purchaser enforceable in accordance with their respective terms.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Purchaser relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws; and

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lender or its assigns, as the case may be, in the Equipment or other collateral thereunder.

[6. The portion of Installment Payments designated as and constituting interest paid by Purchaser and received by Lender is excluded from Lender's gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of _____ personal income taxes; and such interest is not a specific item of tax preference or other collateral for purposes of the federal individual or corporate alternative minimum taxes.]

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

Printed Name: _____

Signature: _____

Firm: _____

Dated: _____

Address: _____

Telephone No.: _____



EXHIBIT F

FEDERAL INCOME TAX CERTIFICATE

The _____ (the "Purchaser") and Banc of America Leasing & Capital, LLC (the "Lender") are parties to an Installment Purchase Contract dated _____, 20__ herein called the "Contract" relating to the purchase of the following described equipment (the "Equipment"):

See Exhibit A to the Contract.

The undersigned officer of Issues hereby certifies to Bank of America Leasing & Capital, LLC the following:

1. Pursuant to the Contract, Banc of America Leasing & Capital, LLC will advance to Purchaser \$_____ with interest in installments (the "Obligation").

2. Purchaser has entered into a binding contract to purchase the Equipment. Purchaser will proceed with due diligence to expend all amounts received by Purchaser for the Obligation and earnings thereon by prior to three (3) years from the date of the Contract, unless Purchaser shall have selected Section 4(b) below, in which event such funds must be expended prior to six (6) months from the date of the Contract, for (a) purchasing the Equipment; and (b) if applicable, paying certain legal, accounting and financing expenses incurred in connection with the issuance of the Obligation.

3. Purchaser does not expect to sell or otherwise dispose of any property comprising a part of the Equipment prior to the date of payment of the final Installment Payment under the Contract.

4. Select the applicable statement below:

___ a. Pursuant to Section 148(f)(4)(D) of the Internal Revenue Code of 1986, as amended (the "Code"), (i) Purchaser is a governmental unit with general taxing powers; (ii) the Obligation is not a "private activity bond" (as defined in Section 141 of the Code); (iii) at least ninety-five percent (95%) of the net proceeds of the Obligation are to be used for "local governmental activities" of Purchaser (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of Purchaser) within the meaning of Section 148(f)(4)(D)(i)(111) of the Code; and (iv) the aggregate amount of tax-exempt obligations (other than private activity bonds and refunding obligations described in Section 148(f)(4)(D)(iii)) issued and reasonably expected as of the date hereof to be issued in this calendar year by (A) Purchaser, (B) all entities on behalf of which Purchaser issues tax-exempt obligations, (C) all entities that issue tax-exempt obligations on behalf of the same such entities, and (D) all governmental units that are "subordinate" to Purchaser, within the meaning of Section 148(f)(4)(D)(ii)



of the Code, does not exceed Five Million and No/100 Dollars (\$5,000,000.00). None of the entities described in clauses (A) through (D) of this paragraph, has formed, availed itself of or been benefited by the formation of any entity formed or availed of to avoid the purposes of Section 148(f)(4)(D)(i)(IV) of the Code.

- ___ b. Purchaser will expend all of the gross proceeds of the obligation and earnings thereon for the Equipment within six (6) months from the date of the Obligation.
- ___ c. Purchaser will comply with any applicable rebate requirements of Section 148(f) of the Code.

5. No proceeds received under the Contract, or earnings thereon, will be used in the place of funds that (a) were available, are now available or that will become available to Purchaser to pay the cost of the Equipment; or (b) will be used to acquire, directly or indirectly, investment property producing a yield to Purchaser in excess of the yield under the Contract.

6. There are no funds to be accumulated or held which are pledged as security for, or will be used to pay, the Obligation.

7. The undersigned certifies that he/she is an officer of Purchaser responsible for issuing the Obligation. To the best of the knowledge and belief of the undersigned certifying officer, the expectations of Purchaser as stated herein are reasonable.

8. This Certificate is executed and delivered on behalf of Purchaser pursuant to Sections 103, 141 and 148 of the Code and the Treasury regulations promulgated thereunder.

Purchaser:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT G



CERTIFICATE OF ACCEPTANCE / ESSENTIAL USE CERTIFICATE

Banc of America Leasing & Capital, LLC
555 California Street, 4th Floor
San Francisco, California 94104

Re: Installment Purchase Contract dated _____, 20____, between Banc
of America Leasing & Capital, LLC and _____
("Purchaser")

This certificate confirms and affirms that the Equipment described in the Agreement referenced above is essential to the functions of Purchaser or to the services Purchaser provides its citizens. Further, Purchaser has an immediate need for, and expects to make immediate use of, substantially all such Equipment, which need is not temporary or expected to diminish in the foreseeable future. Such Equipment will be used by Purchaser only for the purpose of performing one or more of Purchaser's governmental or proprietary functions consistent with the permissible scope of its authority.

Purchaser expects and anticipates adequate funds to be available for all future payments or rent due after the current budgetary period.

Signature: _____

Name: _____

Title: _____

RESOLUTION



Exhibit C

WHEREAS, staff requested proposals to finance the purchase of new voting equipment by installment contract and Bank of America was certified as the lowest responsive proposal received; and

WHEREAS, there had been presented to the Board of Commissioners ("the Board") a draft Installment Purchase Contract and Acquisition Fund and Account Control Agreement ("the Agreements") to finance the purchase of new voting equipment at a total cost not to exceed \$560,000 by installment contract as allowed by N.C.G.S. 160A-20; and

WHEREAS, the Board desires to accept the Agreements to finance the purchase of the new voting equipment with Bank of America at an annual non-bank qualified interest rate of 3.70 percent, making level, quarterly payments over a five (5) year term.

NOW THEREFORE, it is hereby resolved by the Henderson County Board of Commissioners:

1. The County hereby accepts the proposal from Bank of America to finance the purchase of new voting equipment for the County.
2. The Agreements are hereby approved, and the Chairman of the Board, the County Manager, the County Attorney, and the Finance Director as the case may be, are hereby authorized and directed to execute the Agreements and to deliver the same to the appropriate counter parties, and the Clerk to the Board is hereby authorized and directed to affix the Unit's seal to the Agreements and to attest the same. The Agreements shall be in substantially the form submitted at this meeting, which is hereby approved, with such changes as may be approved by the officer executing such agreement, such officer's execution to constitute conclusive evidence of approval of any such changes. The final agreements will provide for the County to finance a total of not more than \$560,000; for the County to repay the amounts advanced to bear interest at an annual rate of not more that 3.70 percent; the term of the Agreements shall not exceed five (5) years; and the level, quarterly payments to be made under the Agreements.
3. This resolution shall become effective immediately upon its adoption.

This the 2nd day of March, 2006.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

[OFFICAL SEAL]

Elizabeth W. Corn, Clerk to the Board