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8/29/13

EQUIPMENT LEASE-PURCHASE AGREEMENT  
Dated as of October 10, 2013

This Equipment Lease-Purchase Agreement (the "*Lease*") is made and entered into by and between Kansas State Bank of Manhattan, a Kansas corporation ("*Lessor*") and the City of Fresno, a California municipal corporation ("*Lessee*"). *Lessor* and *Lessee* are sometimes referred to herein as a "Party" or the "Parties."

CITY OF FRESNO  
City of Fresno, California

1. LEASE OF EQUIPMENT.

Subject to the terms and conditions of this Lease, *Lessor* agrees to finance the lease-purchase to *Lessee*, and *Lessee* agrees to have *Lessor* finance the lease-purchase of all Equipment described in Schedule A attached hereto. This Lease is not a commitment by *Lessor* or *Lessee* to enter into any other Lease not currently in existence, and nothing in this Lease shall be construed to impose any obligation upon *Lessor* or *Lessee* to enter into any proposed Lease, it being understood that whether *Lessor* or *Lessee* enter into any proposed Lease shall be a decision solely within their respective discretion.

2. CERTAIN CONDITIONS.

All terms defined in the Lease are equally applicable to both the singular and plural form of such terms.

(a) "*Equipment*" means the property described in Schedule A, together with all attachments, additions, accessions, parts, repairs, improvements, modifications, replacements and substitutions thereon and thereto.

(b) "*Lease*" means this Lease together with Schedule A and all addenda, riders, attachments, certificates and exhibits to this Lease.

(c) "*Lien*" means any security interest, lien, mortgage, pledge, encumbrance, judgment, execution, attachment, warrant, writ, levy, other judicial process or claim of any nature whatsoever by or of any person.

(d) "*Schedule*" means Schedule A signed and delivered by *Lessee* and *Lessor*, together with any addenda, riders, attachments, certificates and exhibits thereto, as the same may from time to time be amended, modified or supplemented.

3. LEASE TERM.

The term of this Lease ("Lease Term") commences on, and interest accrues from, the date identified in Schedule A as the Commencement Date and, unless earlier terminated as expressly provided in this Lease, continues until *Lessee's* payment and performance in full of all of *Lessee's* obligations under this Lease for the sixty (60) month payment term identified in the Payment Schedule.

4. RENT PAYMENTS.

4.1. *Lessee* agrees to pay to *Lessor* the rent payments ("*Rent Payments*") in the amounts and on the dates set forth in the Payment Schedule attached to Schedule A ("*Payment Schedule*"). A portion of each Rent Payment under this Lease is paid as and represents the payment of interest as

set forth in Schedule A. Rent Payments under this Lease are payable out of those funds that the governing body of *Lessee* duly appropriates and that are available for the purpose of making payments under this Lease ("*Legally Available Funds*"), in U.S. dollars, without notice or demand, at the office of *Lessor* identified below (or such other place as *Lessor* may designate from time to time in writing). *Lessor* shall have the option to charge interest at the highest lawful rate on any Rent Payments received later than the due date for the number of days that the Rent Payment(s) were late. *Lessee* agrees to pay any fees associated with payment systems other than check, wire transfer or ACH.

4.2. *Lessor* and *Lessee* understand and intend that the obligation of *Lessee* to pay Rent Payments under this Lease shall constitute a current expense of *Lessee* payable exclusively from Legally Available Funds and shall not in any way be construed to be a debt of *Lessee* in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by *Lessee*, nor shall anything contained in this Lease constitute a pledge of the full faith and credit or taxing power of *Lessee*. *Lessee* shall not permit any person or entity (including the federal government) to guarantee any Rental Payments under this Lease.

## 5. DELIVERY; ACCEPTANCE; FUNDING CONDITIONS.

5.1. *Lessee* shall select the type, quantity and Equipment supplier of each item of Equipment designated in Schedule A. Once *Lessor* and *Lessee* have executed this Lease, *Lessee* shall prepare a purchase order for the Equipment identified in Schedule A. Once the Equipment listed on said purchase order has been approved by *Lessee*, *Lessee* shall submit the purchase order to the Equipment supplier.

5.2. *Lessee* shall, at its sole expense, arrange for the transportation, delivery and installation of all Equipment to the location specified in Schedule A ("*Location*") by Equipment suppliers ("*Suppliers*") selected by *Lessee*.

5.3. *Lessee* shall accept Equipment for purposes of this Lease as soon as it has been delivered and is operational. *Lessee* shall evidence its acceptance of any Equipment by signing and delivering to *Lessor* a final receipt certificate as soon as practicable after receipt of the Equipment.

5.4. If *Lessee* signs and delivers a final receipt certificate and if all Funding Conditions have been satisfied in full, then *Lessor* will (a) pay or cause to be paid the costs to acquire and install the Equipment as stated in Schedule A ("*Purchase Price*") to the applicable Supplier or (b) reimburse *Lessee* for all or any portion of the Purchase Price to the extent previously paid by *Lessee*, in either case as *Lessee* shall direct.

5.5. *Lessor* shall have no obligation to pay any Purchase Price unless all reasonable conditions established by *Lessor* ("*Funding Conditions*") have been satisfied, including, without limitation, the following: (a) *Lessee* has signed and delivered to *Lessor* an executed, original copy of the Agreement and all required Schedules and attachments; (b) no Event of Default shall have occurred and be continuing under this Lease; (c) no material adverse change shall have occurred in the financial condition of *Lessee* or any Supplier; (d) the Equipment is reasonably satisfactory to *Lessee* and is free and clear of any Liens (except *Lessor's* Liens); all representations of *Lessee* in the Lease remain true, accurate and complete; (f) the amount (if any) that *Lessor* may require in advance that *Lessee* apply to the payment of Equipment costs; and (g) *Lessor* has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to *Lessor*: (1) evidence of insurance coverage or self-insurance required by the Lease; (2) reasonably detailed invoices for the Equipment; (3) to the extent applicable, certificates of title or certificates of origin (or applications therefor) noting *Lessor's* interest

thereon; (4) copies of resolutions by *Lessee's* governing body, duly authorizing the Lease and incumbency certificates for the person(s) who will sign the Lease; and (5) such other documents and information previously identified by *Lessor* or otherwise reasonably requested by *Lessor*.

5.6. *Lessor* and *Lessee* agree that interest earnings on unspent proceeds from the date of funding to the date that they are exhausted will accrue to the benefit of the City, as listed in Section 2.03 of the attached Escrow Agreement.

5.7. In the event both *Lessee* and *Lessor* mutually agree to utilize an Escrow Account, then immediately following the execution and delivery of this Lease, *Lessor* and *Lessee* agree to execute and deliver and cause Escrow Agent to execute and deliver the Escrow Agreement. This Lease shall take effect only upon execution and delivery of the Escrow Agreement by the parties thereto. *Lessor* shall deposit or cause to be deposited with the Escrow Agent for credit to the Equipment Acquisition Fund the sum of TWO MILLION, THREE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$2,350,000.00), which shall be held, invested and disbursed in accordance with the Escrow Agreement.

## 6. RENT ABATEMENT AND RENTAL INTERRUPTION INSURANCE.

6.1. During any period in which there is substantial interference with the use and possession by *Lessee* of any part of any Equipment covered by a Lease caused by material damage or destruction to such Equipment, Rent Payments due under such Lease shall be abated as provided below. The amount of abatement shall be such that the resulting Rent Payments represent fair consideration for the use and possession of the portions of the Equipment that are not materially damaged or destroyed. Such abatement shall continue for the period commencing with the date of such damage or destruction and ending with the substantial completion of the work of repair or replacement of the affected Equipment or portions thereof ("Abatement Period"). In the event of any such damage or destruction, the Lease shall continue in full force and effect including, without limitation, *Lessee's* obligation to repair or replace the damaged or destroyed Equipment. *Lessee* waives the benefits of California Civil Code sections 1932(2) and 1933(4) and any and all other statutory rights to terminate this Lease by virtue of any damage or destruction to any Equipment covered by this Lease.

6.2. *Lessee* at its sole expense shall at all times maintain rental interruption insurance in an amount not less than the greatest amount of Rent Payments payable by *Lessee* in any twelve (12) month period of the Lease Term. This insurance coverage shall insure against loss or reduction of Rent Payments payable to *Lessor* due to a rental abatement described in Subsection 6.1 above resulting from *Lessee's* loss of use or possession of the Equipment or any substantial portion thereof and caused by any and all perils, including, without limitation, Acts of God and other events of force majeure. Such insurance proceeds shall be payable to *Lessor* in amounts proportionate to the loss of use or possession of the affected Equipment and shall supplement *Lessee's* abated Rent Payments (if any) during the repair or reconstruction period so that the aggregate of *Lessee's* abated Rent Payments and the amount of the rental interruption insurance payments equals the scheduled Rent Payments due under the Lease during the Abatement Period. The insurer shall be reasonably satisfactory to *Lessor*. *Lessee* shall promptly deliver to *Lessor* satisfactory evidence of such required insurance coverage and all renewals and replacements thereof. Each insurance policy will require that the insurer give *Lessor* at least 30 days prior written notice of any cancellation or reduction of such policy and will require that *Lessor's* interests remain insured regardless of any act, error, misrepresentation, omission or neglect of *Lessee*.

## 7. WARRANTIES.

For and during the Lease Term under this Lease, *Lessor* assigns to *Lessee* any manufacturer or Supplier product warranties, express or implied, applicable to any Equipment and to obtain the customary services furnished in connection with such warranties at *Lessee's* sole expense. *Lessee* agrees that (a) all Equipment will have been purchased in accordance with *Lessee's* specifications from Suppliers selected by *Lessee*, (b) *Lessor* assumes no obligation with respect to any manufacturer's or Supplier's product warranties or guaranties, (c) no manufacturer or Supplier or any representative of said parties is an agent of *Lessor*, and (d) any warranty, representation, guaranty or agreement made by any manufacturer or Supplier or any representative of said parties shall not be binding upon *Lessor*.

## 8. TITLE; SECURITY INTEREST.

8.1. Upon *Lessee's* acceptance of Equipment under this Lease, title to such Equipment shall vest in *Lessee*, subject to *Lessor's* security interest therein and all of *Lessor's* other rights under this Lease including, without limitation, Sections 6, 20 and 21 hereof.

8.2. As collateral security for *Lessee's* obligations to pay all Rent Payments and all other amounts due and payable under this Lease and to perform and observe all covenants, agreements and conditions (direct or indirect, absolute or contingent, due or to become due or existing or hereafter arising) of *Lessee* under this Lease, *Lessee* hereby grants to *Lessor* a first priority, exclusive security interest in any and all of the Equipment (now existing or hereafter acquired) under this Lease and any and all proceeds thereof. *Lessee* agrees to execute and deliver to *Lessor* all necessary documents to evidence and perfect such security interest, including, without limitation, Uniform Commercial Code (UCC) financing statements and any amendments thereto and certificates of title or certificates of origin (or applications thereof) noting *Lessor's* interest thereon.

## 9. PERSONAL PROPERTY.

All Equipment is and will remain personal property and will not be deemed to be affixed or attached to real estate or any building thereon.

## 10. MAINTENANCE AND OPERATION.

*Lessee* shall, at its sole expense: (a) repair and maintain all Equipment in good condition and working order, in accordance with manufacturer's instructions, and supply and install all replacement parts or other devices when required to so maintain the Equipment or when required by applicable law or regulation, which parts or devices shall automatically become part of the Equipment; (b) use and operate all Equipment solely for the purpose of performing one or more governmental functions of *Lessee* and in a careful manner in the normal course of its operations and only for the purposes for which it was designed in accordance with the manufacturer's warranty requirements; and (c) comply with all laws and regulations relating to the Equipment. If any Equipment is customarily covered by a maintenance agreement, *Lessee* will furnish *Lessor* with a maintenance agreement by a party reasonably satisfactory to *Lessor*. No maintenance or other service for any Equipment will be provided by *Lessor*.

## 11. USE OF EQUIPMENT; LOCATION & INSPECTION

11.1. During the term of this Lease, *Lessee* shall be entitled to quiet enjoyment of the Equipment and may possess and use the Equipment in accordance with this Lease, provided that *Lessee* is in compliance in all respects with the terms of this Lease and in conformity with all applicable laws, any

insurance policies and any installation requirements (including environmental specifications) or warranties of the manufacturer, seller/and or Suppliers with respect to the Equipment.

11.2. *Lessee* shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment under this Lease. *Lessor* shall have the right, upon reasonable prior notice to *Lessee* and during regular business hours, to inspect the Equipment at the premises of *Lessee* or wherever the Equipment may be located. *Lessee* shall promptly notify *Lessor* of any alleged encumbrances on the Equipment identified in this Lease.

## 12. LIENS, SUBLEASES AND TAXES.

12.1. *Lessee* shall keep all Equipment free and clear of all Liens except those Liens created under this Lease. *Lessee* shall not sublet or lend any Equipment to be used by anyone other than *Lessee* or *Lessee's* employees.

12.2. *Lessee* shall pay when due all Taxes that may now or hereafter be imposed upon: any Equipment or its ownership, leasing, rental, sale, purchase, possession or use; this Lease; or any Rent Payments or any other payments due under this Lease. If *Lessee* fails to pay such Taxes when due, *Lessor* shall have the right, but not the obligation, to pay such Taxes. If *Lessor* pays any such Taxes, then *Lessee* shall, upon demand, immediately reimburse *Lessor* therefore. "Taxes" means present and future taxes, levies, duties, assessments or other governmental charges that are not based on the net income of *Lessor*, whether they are assessed to or payable by *Lessee* or *Lessor*, including, without limitation (a) sales, use, excise, licensing, registration, titling, gross receipts, stamp and personal property taxes and (b) interest, penalties or fines on any of the foregoing.

## 13. RISK OF LOSS.

13.1. *Lessee* bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part from any reason whatsoever ("Casualty Loss"). No Casualty Loss to any Equipment shall relieve *Lessee* from the obligation to make any Rent Payments or to perform any other obligation under this Lease. Proceeds of any insurance recovery will be applied to *Lessee's* obligations under this Section 13.

13.2. If a Casualty Loss occurs to any Equipment, *Lessee* shall immediately notify *Lessor* of the same and *Lessee* shall, unless otherwise directed by *Lessor*, immediately repair the same.

13.3. If *Lessor* determines that any item of Equipment has suffered a Casualty Loss beyond repair ("Lost Equipment"), then *Lessee* shall either: (a) as soon as reasonable practical, replace the Lost Equipment with similar equipment in good repair, condition and working order free and clear of any Liens (except *Lessor's* Liens) and deliver to *Lessor* a purchase order, bill of sale or other evidence of sale to *Lessee* covering the replacement equipment, in which event such replacement equipment shall automatically be Equipment under the applicable Lease, or (b) on the next scheduled Rent Payment due date, pay *Lessor* (i) all amounts owed by *Lessee* under the applicable Lease, including the Rent Payment due on such date, plus (ii) an amount equal to the applicable Termination Value set forth in the Payment Schedule. If *Lessee* is making such payment with respect to less than all of the Equipment under a Lease, then *Lessor* will provide *Lessee* with the pro rata amount of the Termination Value to be paid by *Lessee* with respect to the Lost Equipment.

13.4. *Lessee* shall bear the risk of loss for, shall pay directly and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to any

Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of *Lessee* shall survive any expiration or termination of this Lease. If any Equipment is returned by *Lessee* to *Lessor* in accordance with the terms of this Lease, *Lessee* shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses which arise directly from events occurring after any Equipment has been returned by *Lessee*, or which arise directly from the gross negligence or willful misconduct of *Lessor*.

#### 14. INSURANCE.

14.1. (a) *Lessee* at its sole expense shall at all times keep all Equipment insured against all risks of loss or damage from every cause whatsoever (including collision in the case of vehicles) for an amount not less than the Termination Value of the Equipment under this Lease. *Lessor* shall be named as lender loss payee with respect to all insurance covering damage to or loss of any Equipment, and the proceeds of any such insurance shall be payable to *Lessor* as loss payee to be applied as provided in Section 13.3. (b) The Total Amount Financed as set forth on the Payment Schedule does not include the payment of any premium for any liability insurance coverage for bodily injury and/or property damage caused to others and no such insurance will be purchased by *Lessor*. (c) *Lessee* at its sole expense shall at all times carry public liability and property damage insurance in amounts reasonably satisfactory to *Lessor* protecting *Lessee* and *Lessor* from liabilities for injuries to persons and damage to property of others relating in any way to any Equipment. *Lessor* shall be named as additional insured with respect to all such public liability and property damage insurance, and the proceeds of any such insurance shall be payable first to *Lessor* as additional insured to the extent of its liability, and then to *Lessee*.

14.2. All insurers shall be reasonably satisfactory to *Lessor*. *Lessee* shall promptly deliver to *Lessor* satisfactory evidence of required insurance coverage and all renewals and replacements thereof. Unless otherwise indicated in writing by *Lessor*, such insurance shall be deemed reasonably satisfactory to *Lessor*. Each insurance policy will require that the insurer give *Lessor* at least 30 days prior written notice of any cancellation of such policy and will require that *Lessor's* interests remain insured regardless of any act, error, misrepresentation, omission or neglect of *Lessee*. The insurance maintained by *Lessee* shall be primary without any right of contribution from insurance which may be maintained by *Lessor*.

14.3. If *Lessee* is self-insured under an actuarially sound self-insurance program that is acceptable to *Lessor* with respect to equipment such as the Equipment under this Lease, *Lessee* shall maintain during the Lease Term such actuarially sound self-insurance program and shall provide evidence thereof in form and substance satisfactory to *Lessor*.

14.4. *Lessee* shall make all reasonable efforts to timely make claims for, receive payment of and execute and endorse all documents, checks or drafts for loss, theft, damage or destruction to the Equipment under any insurance policy.

#### 15. EQUIPMENT PURCHASE.

15.1. Upon thirty (30) days' prior written notice by *Lessee* to *Lessor*, and so long as there is no Event of Default then existing, *Lessee* shall have the option to purchase all, but not less than all, of the Equipment subject to this Lease on any Rent Payment due date by paying to *Lessor* all Rent Payments then due (including accrued interest, if any) plus the Termination Value set forth on the Payment Schedule for such date. Upon satisfaction by *Lessee* of such purchase conditions, *Lessor* shall release its Lien on such Equipment and *Lessee* shall retain its title to such Equipment "As-IS, WHERE-IS," without representation or warranty by *Lessor*, express or implied, except for a representation that such Equipment is free and clear of any Liens created by *Lessor*.

15.2. Upon final Rent Payment set forth on the Payment Schedule, and so long as there is no Event of Default then existing, title to all Equipment shall vest in *Lessee* without any written notice required of *Lessee*. Within three (3) days of such final Rent Payment, *Lessor* shall complete and file a Release of Lien with the California Department of Motor Vehicles for all Equipment vehicles, and forward the released (signed) Certificates of Title to City of Fresno- Fleet Management. *Lessee* shall retain its title to such Equipment "As-IS, WHERE-IS," without representation or warranty by *Lessor*, express or implied, except for a representation that such Equipment is free and clear of any Liens created by *Lessor*.

16. *LESSEE'S REPRESENTATIONS AND WARRANTIES.*

With respect to this Lease and the Equipment subject hereto, *Lessee* hereby represents and warrants to *Lessor* that:

(a) *Lessee* has full power, authority and legal right to execute and deliver the Lease and to perform its obligations under the Lease, and all such actions have been duly authorized by appropriate findings and actions of *Lessee's* governing body;

(b) the Lease has been duly authorized, executed and delivered by *Lessee* and constitutes a legal, valid and binding obligation of *Lessee*, enforceable in accordance with its terms;

(c) the Lease is authorized under, and the authorization, execution and delivery of the Lease complies with, all applicable federal, state and local laws and regulations (including, but not limited to, all open meeting, public bidding and property acquisition laws) and all applicable judgments and court orders;

(d) the execution, delivery and performance by *Lessee* of its obligations under the Lease will not result in a breach or violation of, nor constitute a default under, any agreement, lease or other instrument to which *Lessee* is a party or by which *Lessee's* properties may be bound or affected;

(e) there is no pending, or to the best of *Lessee's* knowledge threatened, litigation of any nature that may have a material adverse effect on *Lessee's* ability to perform its obligations under the Lease; and

(f) *Lessee* is duly organized and legally existing as a political subdivision, municipal corporation or similar public entity under the Constitution and laws of the State in which it is located and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such.

17. [RESERVED].

18. *ASSIGNMENT.*

18.1. *Lessee* shall not sell, assign, transfer, pledge, hypothecate or grant any Lien on, nor otherwise dispose of, this Lease or any Equipment or any interest in this Lease or Equipment.

18.2. *Lessor* may assign its rights, title and interest in and to this Lease or any Equipment, and/or may grant or assign a security interest in this Lease and its Equipment, in whole or in part, to any party at any time and from time to time without *Lessee's* consent. Any such assignee or lien holder (an "Assignee") shall

have all of the rights of *Lessor* under the applicable Lease. *LESSEE* AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH *LESSEE* MAY HAVE AGAINST *LESSOR*. Unless otherwise agreed by *Lessee* in writing, any such assignment transaction shall not release *Lessor* from any of *Lessor's* obligations under this Lease. An assignment or reassignment of any of *Lessor's* right, title or interest in the Lease or Equipment shall be enforceable against *Lessee* only after *Lessee* receives a written notice of assignment that discloses the name and address of each such Assignee. *Lessee* shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code. *Lessee* agrees to acknowledge in writing any such assignments if so requested.

18.3. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the successors and assigns of the parties hereto.

#### 19. EVENTS OF DEFAULT.

For this Lease, "*Event of Default*" means the occurrence of any one or more of the following events: (a) *Lessee* fails to make any Rent Payment (or any other payment) as it becomes due in accordance with the terms of this Lease, and any such failure continues for ten (10) days after the due date thereof; (b) *Lessee* fails to perform or observe any of its obligations under Section 12.1, 14 or 18.1 hereof; (c) *Lessee* fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Lease and such failure is not cured within thirty (30) days after receipt of written notice thereof by *Lessor*; (d) any statement, representation or warranty made by *Lessee* in the Lease or in any writing delivered by *Lessee* pursuant thereto or in connection therewith proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; or (e) *Lessee* applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of *Lessee* or of all or a substantial part of its assets, or a petition for relief is tiled by *Lessee* under any federal or state bankruptcy, insolvency, moratorium or similar law.

#### 20. REMEDIES.

If any Event of Default occurs, then *Lessor* may, at its option, exercise any one or more of the following remedies:

(a) *Lessor* may require *Lessee* to pay (and *Lessee* agrees that it shall pay) all amounts then currently due under the Lease and all remaining Rent Payments due during the fiscal year in effect when the default occurs together with accrued interest on such amounts at the respective rates provided in the Lease from the date of *Lessor's* demand for such payment;

(b) *Lessor* may require *Lessee* to promptly return all Equipment to *Lessor* in the manner set forth in Section 21 (and *Lessee* agrees that it shall so return the Equipment), or *Lessor* may, at its option, enter upon the premises where any Equipment is located and repossess such Equipment without demand or notice, without any court order or other process of law and without liability for any damage occasioned by such repossession;

(c) *Lessor* may sell, lease or otherwise dispose of any Equipment, in whole or in part, in one or more public or private transactions, and if *Lessor* so disposes of any Equipment, then *Lessor* shall apply the entire proceeds of such disposition as follows: first to pay costs that *Lessor* has incurred in connection with exercising its remedies; second, to payment of amounts that are payable by *Lessee* under clause (a) above; and then to payment of the Termination Value set forth in the Payment

Schedule for the last Rent Payment due date for the fiscal year in which the related default occurs; provided, however, that any disposition proceeds in excess of payment of all of the foregoing amounts shall be paid promptly by *Lessor* to *Lessee*;

(d) *Lessor* may terminate, cancel or rescind this Lease as to any and all Equipment;

(e) *Lessor* may exercise any other right, remedy or privilege that may be available to *Lessor* under applicable law or, by appropriate court action at law or in equity, *Lessor* may enforce any of *Lessee's* obligations under this Lease; and/or

(f) *Lessor* may require *Lessee* to pay (and *Lessee* agrees that it shall pay) all out-of-pocket costs and expenses incurred by *Lessor* as a result (directly or indirectly) of the Event of Default and/or of *Lessor's* actions under this Section, including, without limitation, any attorney fees and expenses and any costs related to the repossession, safekeeping, storage, repair, reconditioning or disposition of any Equipment.

None of the above remedies is exclusive, but each is cumulative and in addition to any other remedy available to *Lessor*. *Lessor's* exercise of one or more remedies shall not preclude its exercise of any other remedy. No delay or failure on the part of *Lessor* to exercise any remedy under this Lease shall operate as a waiver thereof, nor as acquiescence in any default, nor shall any single or partial exercise of any remedy preclude any other exercise thereof or the exercise of any other remedy.

## 21. RETURN OF EQUIPMENT.

If *Lessor* is entitled under the provisions of this Lease, including any termination thereof pursuant to Section 6 or 20 hereof, to obtain possession of any Equipment or if *Lessee* is obligated at any time to return any Equipment, then (a) title to the Equipment shall vest in *Lessor* immediately upon *Lessor's* notice thereof to *Lessee*, and (b) *Lessee* shall, at its sole expense and risk, immediately de-install, disassemble, pack, crate, insure and return the Equipment to *Lessor* (all in accordance with applicable industry standards) at any location in the continental United States selected by *Lessor*. Such Equipment shall be in the same condition as when received by *Lessee* (reasonable wear, tear and depreciation resulting from normal and proper use excepted), shall be in good operating order and maintenance as required by this Lease, shall be free and clear of any Liens (except *Lessor's* Lien) and shall comply with all applicable laws and regulations. Until Equipment is returned as required above, all terms of the applicable Lease shall remain in full force and effect including, without limitation, obligations to pay Rent Payments and to insure the Equipment. *Lessee* agrees to execute and deliver to *Lessor* all documents reasonably requested by *Lessor* to evidence the transfer of legal and beneficial title to such Equipment to *Lessor* and to evidence the termination of *Lessee's* interest in the Equipment.

## 22. LAW GOVERNING & VENUE.

This Lease shall be governed by the laws of the state of California (the "State") and venue shall be proper in any competent court situated in the County of Fresno, State of California.

## 23. NOTICES.

All notices to be given under this Lease shall be made in writing and either personally delivered or mailed by certified mail to the other party at its address set forth herein or at such address

as the party may provide in writing from time to time. Any such notices shall be deemed to have been received five (5) days subsequent to mailing if sent by regular or certified mail, or on the next business day if sent by overnight courier, or on the day of delivery if delivered personally.

24. FINANCIAL INFORMATION.

Within thirty (30) days after their completion for each fiscal year of *Lessee* during the Lease Term, *Lessee* will deliver to *Lessor* upon *Lessor's* request the publicly available annual financial information.

25. SECTION HEADINGS.

All section headings contained herein or in any Schedule are for convenience of reference only and do not define or limit the scope of any provision of the Lease.

26. ENTIRE AGREEMENT; WRITTEN AMENDMENTS.

This Lease and other documents or instruments executed by *Lessee* and *Lessor* in connection herewith constitute the entire agreement between the parties with respect to the Lease, and such Lease shall not be modified, amended, altered or changed except with the written consent of *Lessee* and *Lessor*. Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

(Signatures on next page.)

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

CITY OF FRESNO, a California municipal corporation as Lessee

Kansas State Bank of Manhattan, a Kansas corporation as Lessor

By: [Signature]  
Name: KAREN M. BRADLEY  
Title: ASSISTANT CITY CONTROLLER

By: [Signature]  
Name: MARSHA JARVIS  
Title: VICE PRESIDENT  
(Board Chair, President or Vice President)

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: [Signature]  
Name: CURTIS LOUB

By: [Signature]  
Deputy  
10/17/2013

Title: VICE PRESIDENT & GENERAL COUNSEL  
(CFO, Treasurer, Secretary or Assistant Secretary)

APPROVED AS TO LEGAL FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: [Signature] Date: 10/19/2013  
Mary Anne B. Tooke  
Deputy City Attorney

Kansas State Bank of Manhattan:  
1010 Westloop  
P.O. Box 69  
Manhattan, KS 66505-0069

ADDRESS:

CITY:  
City of Fresno 2600 Fresno Street  
Fresno, CA 93721

Attached Schedules:

- A Terms of Payment and Payment Schedule
- B Officer's Certificate
- C Arbitrage and Tax Certificate
- D Opinion of Counsel
- E Escrow Agreement (with Exhibits A, B, C and D thereto)
- F IRS Form 8038

SCHEDULE A

Dated as of October 10, 2013

This Lease Schedule A (this "*Schedule*") relates to the Equipment Lease-Purchase Agreement referenced below and, together with the terms and conditions of the Lease incorporated herein by reference, constitutes a Lease. Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Lease.

Equipment Lease-Purchase Agreement dated October 10, 2013 ("Commencement Date")

1. *Equipment Description.* As used in the Lease, "Equipment" means all of the property described in the Payment Schedule attached to this Schedule and all attachments, additions, accessions, parts, repairs, improvements, modifications, replacements and substitutions thereon and thereto.
2. *Rent Payments; Lease Term.* The Rent Payments to be paid by Lessee to Lessor, the Commencement Date of this Lease and the Lease Term of this Lease are set forth on the Payment Schedule attached to this Schedule.
3. *Essential Use; Current Intent of Lessee.* Lessee represents that (a) the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity, and (c) the useful life of the Equipment is not less than the stated full Lease Term of this Lease. Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. Lessee currently intends for the full Lease Term: to use the Equipment; to continue this Lease; and to make Rent Payments so long as funds are appropriated by its governing body for the succeeding fiscal year.
4. *Re-Affirmation of the Lease Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Lease (particularly Sections 6.1 and 16 thereof) are true and correct as though made on the date of execution of this Schedule.

PAYMENT SCHEDULE

Attached to and made a part of Lease Schedule A dated as of October 10, 2013 by and between Kansas State Bank of Manhattan, as Lessor, and City of Fresno, as Lessee.

Commencement Date: October 10, 2013

1. EQUIPMENT LOCATION & DESCRIPTION:

Various City of Fresno Police Stations and Police Department Facilities  
Fresno, California

Vehicles will be Upfitted with light bars, sirens, MDS systems, and other typical Police Car equipment.

2. LEASE PAYMENT SCHEDULE:

(a) Total Amount Financed: \$2,350,000.00 (Purchase Price)

(b) Payment Schedule:

Rent Pmt No.	Rent Payment Date	Rent Payment Amount	Interest Portion	Principal Portion	Termination Value*
1	10-Apr-14	\$257,453.17	\$39,820.76	\$217,632.41	\$2,171,796.15
2	10-Oct-14	\$257,453.17	\$36,132.98	\$221,320.19	\$1,942,902.10
3	10-Apr-15	\$257,453.17	\$32,382.70	\$225,070.47	\$1,710,998.09
4	10-Oct-15	\$257,453.17	\$28,568.88	\$228,884.29	\$1,476,044.54
5	10-Apr-16	\$257,453.17	\$24,690.44	\$232,762.73	\$1,238,001.36
6	10-Oct-16	\$257,453.17	\$20,746.27	\$236,706.90	\$996,827.91
7	10-Apr-17	\$257,453.17	\$16,735.28	\$240,717.89	\$752,483.03
8	10-Oct-17	\$257,453.17	\$12,656.31	\$244,796.86	\$504,925.01
9	10-Apr-18	\$257,453.17	\$8,508.23	\$248,944.94	\$254,111.60
10	10-Oct-18	\$257,453.17	\$4,289.85	\$253,163.32	\$0.00

CITY OF FRESNO, a California municipal corporation as *Lessee*

By: [Signature]

Name: KAREN M. BRADLEY

Title: ASSISTANT CITY CONTROLLER

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: [Signature]  
Deputy

10/17/2013

Kansas State Bank of Manhattan, a Kansas corporation as *Lessor*

By: [Signature]

Name: MARSHA JARVIS

Title: VICE PRESIDENT  
(President or Vice President)

By: [Signature]

Name: CURTIS LOUB

Title: VICE PRESIDENT & GENERAL COUNSEL  
(President or Vice President)

APPROVED AS TO LEGAL FORM:

DOUGLAS T. SLOAN

City Attorney

By:

Mary Anne B. Tooke

Deputy City Attorney

Date:

*Mary Anne B. Tooke*  
*Oct. 19, 2013*

Kansas State Bank of Manhattan  
1010 Westloop  
Manhattan, Kansas 66502

ADDRESS:

CITY: City of Fresno 2600 Fresno Street  
Fresno, CA 93721

## **DOCUMENTATION INSTRUCTIONS**

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The instructions listed below should be followed when completing the enclosed documentation. Documentation completed improperly will delay funding. If you have any questions regarding the Conditions to Funding, instructions or the documentation, please call us at (877) 587-4054.

### **I. Attached Documentation**

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- 1. Schedule B - Officer's Certificate**
  - ◆ Sign and print name and title
  - ◆ Please list the Source of Funds for the Rent Payments.
- 2. Schedule C - Arbitrage and Tax Certificate**
  - ◆ List date form signed
  - ◆ Sign and print name and title
- 3. Opinion of Counsel**
  - ◆ Request that your legal counsel retype Opinion of Counsel onto letterhead, sign and date it.
  - ◆ Legal counsel shall not alter the opinion. If counsel would like changes made to the opinion, they must first contact Kansas State Bank.
- 4. Escrow Agreement**
  - ◆ Sign and print name and title
- 5. Exhibit A - Signature Card**
  - ◆ Sign and print name and title
  - ◆ An additional individual may sign as an authorized individual, if desired.
- 6. Exhibit B - Payment Request & Equipment Acceptance Form**
  - ◆ Do Not Return until you need to request funds from the Escrow Account.
- 7. Exhibit C - Obligor Acknowledgement**
  - ◆ Complete information as indicated.
- 8. 8038G IRS Form**
  - ◆ Please read 8038 Review Form
  - ◆ In Box 2, type Employer Identification Number
  - ◆ Sign and print name and title

### **II. Additional Documentation Required**

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- ◆ Original executed copy of the Equipment Lease-Purchase Agreement

### **III. Condition to Funding**

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If, for any reason: (i) the required documentation is not returned by November 27, 2013, is incomplete, or has unresolved issues relating thereto, or (ii) on, or prior to the return of the documentation, there is a change of circumstance which adversely affects the expectations, rights or security of the Lessor or its assignees; then Lessor or its assignees reserve the right to adjust the quoted interest rate or withdraw/void its offer to fund this transaction in its entirety.

**All documentation should be returned to:**  
Kansas State Bank of Manhattan  
1680 Charles Place  
Manhattan, Kansas 66502

**SCHEDULE B  
OFFICER'S CERTIFICATE**

**RE: Equipment Lease-Purchase Agreement dated as of October 10, 2013, between Kansas State Bank of Manhattan (Lessor) and City of Fresno (Lessee)**

---

I, the undersigned, hereby certify that I am a duly qualified representative of Lessee and that I have been given the authority by the governing body of Lessee to sign this Officer's Certificate with respect to the above referenced Lease. I hereby certify that:

1. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rent Payments required to be paid under the Lease during the current budget year of Lessee, and such moneys will be applied in payment of all Rent Payments due and payable during such current budget year.
2. Lessee has obtained insurance coverage as required under the Lease from an insurer qualified to do business in the State.
3. No event or condition that constitutes or would constitute an Event of Default exists as of the date hereof.
4. The governing body of Lessee has approved the authorization, execution and delivery of this Lease on its behalf by the authorized representative of Lessee who signed the Lease.
5. Please list the Source of Funds (Fund Item in Budget) for the Rent Payments that come due under the Payment Schedule attached to Schedule A of this Lease.

Source of Funds : FLEET FUND APPROPRIATIONS

By signing below, Lessee hereby authorizes the General Fund of the Lessee as a backup source of funds from which the Rent Payments can be made.

**City of Fresno**

*Karen M. Bradley*  
Signature  
KAREN M. BRADLEY, ASSISTANT CITY CONTRONER  
Printed Name and Title

SCHEDULE C

ARBITRAGE AND TAX CERTIFICATE

RE: Equipment Lease-Purchase Agreement dated as of October 10, 2013, between Kansas State Bank of Manhattan (Lessor) and City of Fresno (Lessee)

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I, the undersigned, hereby certify that I am a duly qualified representative of Lessee and that I have been given the authority by the Governing Body of Lessee to sign the above referenced Lease and this Arbitrage and Tax Certificate with respect thereto. This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations, Sections 1.103-13, 1.103-14 and 1.103-15 (the "Regulations"). The following facts, estimates and circumstances are in existence on the date of this Certificate or are reasonably expected to occur hereafter.

1. The Lease provides for the financing of certain Equipment (the "Equipment") described in Schedule A thereto from Lessor to Lessee. Pursuant to the Lease, Lessee is required to make Rent Payments with respect to the Equipment, comprising principal and interest, on the dates and in the amounts set forth in the Payment Schedule attached to Schedule A of the Lease.
2. Pursuant to the Lease and for the purpose of meeting its obligations thereunder and assuring Lessee of the availability of moneys needed to pay the cost of the Equipment when due, Lessee, Lessor and Kansas State Bank of Manhattan as Escrow Agent ("Escrow Agent") have executed an Escrow Agreement dated as of October 10, 2013, (the "Escrow Agreement").
3. The Escrow Agreement provides that Lessor shall deposit \$2,350,000.00 into escrow, to be credited to the Equipment Acquisition Fund created by the Escrow Agreement and held, invested and disbursed with respect to the Equipment as provided therein.
4. Lessee and Vendor have entered into a Lease for the acquisition and delivery of the Equipment.
5. The Equipment will be acquired and installed with due diligence and, based upon the provisions of the Lease described in paragraph 4 hereof, the Equipment will be acquired and installed on or before April 30, 2013. It is expected that all gross proceeds of the Lease will be expended on the Equipment no later than this date.
6. All of the spendable proceeds of the Lease will be expended on the Equipment and related expenses within three years from the date of execution of the Lease and Escrow Agreement.
7. The original proceeds of the Lease, and the interest to be earned thereon, do not exceed the amount necessary for the purpose for which the Lease is issued.
8. The interest of Lessee in the Equipment has not been and is not expected during the term of the Lease to be sold or disposed of by Lessee.
9. No sinking fund is expected to be created by Lessee with respect to the Lease and Rent Payments.
10. The Lessee hereby covenants to take all action necessary under the Code and Regulations to ensure that the interest component of the Rent Payments does not become includable as gross income of the recipient for Federal Income Tax purposes, including, without limitation, complying with all requirements of the Code and Regulations relating to the Rebate of Arbitrage profit to the United States of America. It is not presently expected that Lessee will earn arbitrage profit on amounts deposited in the Equipment Acquisition Fund.
11. To the best of the knowledge and belief of the undersigned, the expectations of Lessee, as set forth above, are reasonable; and there are no present facts, estimates and circumstances which would change the foregoing expectations.

WITNESS My hand this 11 day of (October), 20 13

City of Fresno



Signature

KAREN M. BRADLEY, ASSISTANT CITY CONTROLLER

Printed Name and Title



Douglas T. Sloan  
City Attorney

## OPINION OF COUNSEL

October 10, 2013

Kansas State Bank of Manhattan 1010 Westloop, PO Box 69  
Manhattan, KS 66505-0069

RE: Equipment Lease-Purchase Agreement dated as of October 10, 2013, between  
Kansas State Bank of Manhattan (Lessor) and City of Fresno (Lessee)

Ladies and Gentlemen:

As legal counsel to Lessee, I have examined the foregoing Lease and such other opinions, documents and matters of law as I have deemed necessary in connection with this Lease. Based on the foregoing, I am of the following opinions:

1. Lessee is a political subdivision of the State of California, or a constituted authority authorized to issue obligations on behalf of a political subdivision of the State.
2. Lessee has the requisite power and authority to purchase the Equipment and to execute and deliver the Lease and to perform its obligations under the Lease. The Lease and the other documents either attached hereto or required herein have been duly authorized, approved and executed by and on behalf of Lessee, and the Lease is a legal, valid and binding obligation of Lessee enforceable in accordance with its terms.
3. The authorization, approval and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state and federal laws.
4. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body that challenges the authority of the Lessee or any of the Lessee's officers or employees to enter into the Lease.
5. The above opinion is for the sole benefit of the Lessor listed above and can only be relied upon by the Lessor or any permitted assignee or subassignee or successor of Lessor under the Lease.

A handwritten signature in blue ink that reads "Mary Anne B. Tooke".

MARY ANNE B. TOOKE  
Deputy City Attorney

MAT:prn [63066prn/mat]

## ESCROW AGREEMENT

THIS AGREEMENT, made and entered into as of October 10, 2013, by and among Kansas State Bank of Manhattan, (Hereinafter referred to as the Escrow Agent), Kansas State Bank of Manhattan, a Kansas corporation duly organized and existing under the laws of the State of Kansas (Hereinafter referred to as the Lessor), and the City of Fresno, a political subdivision of the State of California (Hereinafter referred to as the Lessee):

WITNESSETH THAT, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

### Section 1. Recitals.

- 1.01. Lessor and Lessee have entered into Equipment Lease-Purchase Agreement dated as of October 10, 2013, (Hereinafter referred to as the Lease), a duplicate original of which has been furnished to the Escrow Agent, whereby Lessor has agreed to finance and sell certain personal property described therein (Hereinafter referred to as the Equipment) to Lessee, and Lessee has agreed to finance and purchase the Equipment from Lessor, in the manner and on the terms set forth in the Lease.
- 1.02. This Agreement is not intended to alter or change in any way the rights and obligations of Lessor and Lessee under the Lease, but is entirely supplemental thereto.
- 1.03. The terms capitalized in this Agreement but not defined herein shall have the meanings given to them in the Lease.
- 1.04. Under Section 5.7 of the Lease, Lessor is required to deposit or cause to be deposited with the Escrow Agent the principal amount listed in that section, which is required to be credited to the Equipment Acquisition Fund established in Section 2 hereof and used to pay the Equipment Cost of the items of Equipment, and, to the extent not needed for this purpose, is required to be repaid to Lessor. Unless otherwise agreed to by the parties, the principal amount remaining in the Equipment Acquisition Fund will be used to reduce the outstanding principal amount of the Lease.
- 1.05. Under the Lease, either Lessor or Lessee will cause each item of Equipment to be ordered by the Contractor therefor. The Equipment Cost to be paid to the Contractor supplying the item of Equipment shall be paid solely from the amount deposited with the Escrow Agent as described in Section 1.04 hereof, in accordance with this Agreement.
- 1.06. Subject to such control by Lessee as is provided for herein, Lessor and Lessee agree to employ the Escrow Agent to receive, hold, invest and disburse the money to be paid to the Escrow Agent by Lessor as described in Section 1.04, all as hereinafter provided; however, the Escrow Agent shall not be obligated to assume or perform any obligation of Lessee or Lessor or any Contractor with respect thereto or under the Lease by reason of anything contained in this Agreement.
- 1.07. Each of the parties has authority to enter into this Agreement, and has taken all actions necessary to authorize the execution of this Agreement by the officers whose signature are affixed hereto.

### Section 2. Equipment Acquisition Fund.

- 2.01. The Escrow Agent shall establish a special escrow fund designated as the "Equipment Acquisition Fund" (the Equipment Acquisition Fund), shall keep such Equipment Acquisition Fund separate and apart from all other funds and moneys held by it, and shall administer such Equipment Acquisition Fund as provided in this Section 3 hereof.
- 2.02. All moneys paid to the Escrow Agent by Lessor pursuant to Section 1.04 of this Agreement shall be credited to the Equipment Acquisition Fund. The Escrow Agent shall use the moneys in the Equipment Acquisition Fund to pay the Equipment Cost of each item of Equipment subject to the Lease, upon receipt with respect thereto of a Payment Request and Equipment Acceptance Form attached hereto as Exhibit B, executed by Lessee, fully completed and with all supporting documents described therein attached hereto. Upon receipt of a Payment Request and Equipment Acceptance Form with respect to any item of Equipment, an amount equal to the Equipment Cost as shown therein shall be paid directly to the person or entity entitled to payment as specified therein. The Payment Request and Equipment Acceptance Form must be signed by an authorized individual acting on behalf of Lessee. The authorized individual or individuals designated by the Lessee must sign the Signature Card which will be kept in the possession of the Escrow Agent. Each Payment Request and Equipment Acceptance Form will be checked against this Signature Card by the Escrow Agent. The Lessor may elect to independently verify the representations of the Lessee on the Payment Request and Equipment Acceptance Form. If the Lessor does not make such election then the Escrow Agent is allowed to rely on such signatures and such statements as provided for herein.
- 2.03. Lessee shall furnish to the Escrow Agent as soon as available, a copy of the order for all Equipment ordered pursuant to the Lease, showing the Equipment Cost and the estimated delivery date. If funds remain in the Equipment Acquisition Fund, excluding the principal amount referred to in Section 1.04 above and the accrued interest earned in the Equipment Acquisition Fund up to the amount equal to the sum of the draws listed in Section 2.06 below, after the full delivery and acceptance of the Equipment, then the Escrow Agent shall return the accrued interest to the Lessee either by check or by applying the amount to the next payment.
- 2.04. The Escrow Agent shall only be responsible for the safekeeping and investment of the moneys held in the Equipment Acquisition Fund, and the disbursement thereof in accordance with this Section, and shall not be responsible for the authenticity or accuracy of such certifications or documents, the application of amounts paid pursuant to such certifications by the persons or entities to which they are paid, or the sufficiency of the moneys credited to the Equipment Acquisition Fund to make the payments herein required.
- 2.05. If Lessor delivers to the Escrow Agent written notice of the occurrence of an Event of Default under the Lease or of a termination of the Lease due to a non-appropriation event or non-renewal event under the Lease, then the Escrow Agent shall immediately remit to Lessor the remaining balance of the Equipment Acquisition Fund.  
Lessor and Lessee hereby agree that the Escrow Agent is authorized to release funds from the Equipment Acquisition Fund as described in this Section only after such funds have remained in the Equipment Acquisition Fund for the time periods and in the amounts as follows: Immediately: \$2,350,000.00
- 2.06. Prior to the disbursement of any funds from the Equipment Acquisition Fund, the Lessee must either (1) deposit all the down payment funds that the Lessee has committed towards the purchase of the Equipment into the Equipment Acquisition Fund or (2) Lessee must provide written verification to the satisfaction of both the Lessor and Escrow Agent that all the down payment funds Lessee has committed towards the purchase of the Equipment have already been spent or are simultaneously being spent with the funds requested from the initial Payment Request and Equipment Acceptance Form. For purposes of this Section, the down payment funds committed towards the Equipment from the Lessee are the down payment funds that were represented to the Lessor at the time this transaction was submitted for credit approval by the Lessee to the Lessor.

### Section 3. Moneys in Equipment Acquisition Fund: Investment.

- 3.01. The moneys and investments held by the Escrow Agent under this Agreement are irrevocably held in trust for the benefit of Lessee and Lessor, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Agreement, and shall not be subject to levy or attachment of lien by or for the benefit of any creditor of either Lessee or Lessor.
- 3.02. Moneys held by Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent upon order of Lessee only in Qualified Investments, which Qualified Investments include any investment from time to time authorized by law for the investment of moneys. The Escrow Agent may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. Such investments and reinvestments shall be made giving full consideration for the time at which funds are required to be available. No investment shall be made that would cause the Lease to be deemed an "arbitrage bond" within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended.
- 3.03. The Escrow Agent shall, without further direction from Lessee, sell such investments as and when required to make any payment from the Equipment Acquisition Fund. Any income received on such investments shall be credited to the Fund.
- 3.04. The Escrow Agent shall, upon written request, furnish to Lessee and Lessor, an accounting of all investments. The Escrow Agent shall not be responsible or liable for any loss suffered in connection with any investment moneys made by it in accordance with this Section.

### Section 4. Escrow Agent's Authority: Indemnification.

- 4.01. The Escrow Agent may act in reliance upon any writing or instrument including, without limitation, the Payment Request and Equipment Acceptance Form or signature which is, in good faith, believed to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency for correctness as to form, manner and execution, or validity of any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder shall be limited to those specifically provided herein.
- 4.02. Unless the Escrow Agent is guilty of willful misconduct with regard to its duties hereunder, Lessee and Lessor jointly and severally hereby agree to 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 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, to 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. The Escrow Agent shall be vested with a lien on 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 Escrow Agent by reason of disputes arising between Lessee and Lessor as to the correct interpretation of the Lease or this Agreement and instruction given to the Escrow Agent hereunder, or otherwise, with the right of the Escrow Agent, regardless of the instructions aforesaid, to hold the said property until and unless said additional expenses, fees and charges shall be fully paid.
- 4.03. If Lessee and Lessor shall be in disagreement about the interpretation of the Lease or this Agreement, 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 indemnified 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 this Agreement until a final judgment in such action is received.

4.04. 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 or facts or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

**Section 5. Escrow Agent's Compensation.**

5.01. Lessee hereby agrees to pay the Escrow Agent N/A as compensation for the services to be rendered hereunder, and will pay and/or reimburse the Escrow Agent upon request for all expenses, disbursements and advances, including reasonable attorneys' fees, incurred or made by it in connection with carrying out its duties hereunder. The first twenty disbursements made from the Equipment Acquisition Fund shall be made without cost to the Lessee. There will be a \$25 fee assessed to the Lessee debited from the Equipment Acquisition Fund for each additional disbursement made thereafter. The Escrow Agent's fee shall be payable upon execution of this Agreement.

**Section 6. Change of Escrow Agent.**

6.01. A national banking association located in the State of , or a state bank organized under the laws of the State of , qualified as a depository of public funds, may be substituted to act as Escrow Agent under this Agreement, upon agreement of the parties hereto. Such substitution shall not be deemed to affect the rights or obligations of the parties. Upon any such substitution, the Escrow Agent agrees to assign to such substitute Escrow Agent its rights under this Agreement.

6.02. 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, which shall be a date not less than thirty (30) days after such notice is deposited in the United States mail with postage fully prepaid, unless an earlier resignation date and appointment of a successor Escrow Agent shall have been or are approved by Lessee and Lessor.

6.03. The Escrow Agent may appoint an agent to exercise any of the powers, rights or remedies granted to the Escrow Agent under this Agreement, and to hold title to property or to take any other action which may be desirable or necessary.

**Section 7. Administrative Provisions.**

7.01. The Escrow Agent shall keep complete and accurate records of all moneys received and disbursed under this Agreement, which shall be available for inspection by Lessee or Lessor, or the agent of either of them, at any time during regular business hours.

7.02. All written notices to be given under this Agreement shall be given by mail to the party entitled thereto at this address set forth in the attached Exhibit D or at such address as the party may provide to the other parties hereto in writing from time to time. Any such notice shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered form, with postage fully prepaid.

7.03. This Agreement shall be construed and governed in accordance with the laws of the State of Kansas.

7.04. Any provision of this Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Agreement.

7.05. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The term "Lessor" as used herein means any person or entity to whom Lessor has assigned its right to receive Rent Payments under the Lease and any payments due to Lessor hereunder from and after the date when a duplicate original of such assignment is filed with the Escrow Agent.

7.06. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Lease.

7.07. This Agreement shall terminate upon disbursement by the Escrow Agent of all moneys held by it hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

**Kansas State Bank of Manhattan, Escrow Agent**

Signature

**CURTIS LOUB, VICE PRES & GENERAL COUNSEL**

Printed Name and Title

**Kansas State Bank of Manhattan, Lessor**

Signature

**MARSHA JARVIS, VICE PRESIDENT**

Printed Name and Title

**City of Fresno, Lessee**

Signature

**KAREN M. BRADLEY, ASSISTANT CITY CONTROLLER**

Printed Name and Title

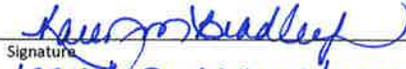
EXHIBIT A  
SIGNATURE CARD

RE: Escrow Agreement dated as of October 10, 2013, between Kansas State Bank of Manhattan (Escrow Agent), Kansas State Bank of Manhattan (Lessor) and City of Fresno (Lessee)

---

The below signatures will be used for purposes of verifying the signature on a Payment Request and Equipment Acceptance Form prior to making payments from the Equipment Acquisition Fund. By signing below, the undersigned represents and warrants that s/he has received all appropriate authority from the City of Fresno.

City of Fresno

  
Signature  
KAREN M. BRADEN, ASSISTANT CITY CONTROLLER  
Printed Name and Title

Signature of additional authorized individual (optional) of Lessee

  
Signature  
S. Kim Jackson Management Analyst III  
Printed Name and Title

EXHIBIT B

PAYMENT REQUEST AND EQUIPMENT ACCEPTANCE FORM

RE: Escrow Agreement dated as of October 10, 2013, between Kansas State Bank of Manhattan (Escrow Agent), Kansas State Bank of Manhattan (Lessor) and City of Fresno (Lessee)

---

In accordance with Section 2.02, by executing this Payment Request and Equipment Acceptance Form the Lessee hereby represents that the Payee or Payees listed below who are requesting payment have delivered the Equipment or a portion of the Equipment or performed the services to the satisfaction of the Lessee and that the amounts requested below by the Payee or Payees are proportionate with the value of the Equipment delivered or services rendered by the Payee or Payees. The Lessee hereby represents and warrants for all purposes that:

1. Pursuant to the invoice attached hereto, the amount to be disbursed is \$ \_\_\_\_\_ and this amount is consistent with the Lease between Lessee and Vendor.
2. Payment is to be made to: Payee: \_\_\_\_\_  
\_\_\_\_\_
3. The undersigned certifies that the following documents are attached to this Payment Request and Equipment Acceptance Form when there is a request for a release of funds from the Equipment Acquisition Fund to pay for a portion, or all, of the Equipment: (1) Invoice from the Vendor, (2) copy of the contract between Lessee and Vendor (if requested by the Lessor), (3) Insurance Certificate (if applicable), (4) front and back copy of the original MSO/Title listing and/or its assigns as the first lien holder (if applicable). By executing this Payment Request and Equipment Acceptance Form and attaching the documents as required above, the Lessee shall be deemed to have accepted this portion of the Equipment for all purposes under the Lease, including, without limitation, the obligation of Lessee to make the Rent Payments with respect thereto in a proportionate amount of the total Rent Payment.
4. No amount listed in this Exhibit was included in any such Exhibit previously submitted.
5. Each disbursement hereby requested has been incurred and is a proper charge against the Equipment Acquisition Fund. No amount hereby requested to be disbursed will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the date of execution and delivery of the Lease.
6. The Equipment referenced in the attached has been delivered, installed, inspected and tested as necessary and in accordance with Lessee's specifications and accepted for all purposes.
7. That Lessee is or will be the title owner to the Equipment referenced in the attached, and that in the event that any third party makes a claim to such title that Lessee will take all measures necessary to secure title including, without limitation, the appropriation of additional funds to secure title to such Equipment, or a portion thereof, and keep the Lease in full force and effect. Furthermore, Lessee has obtained insurance coverage as required under the Lease from an insurer qualified to do business in the State.
8. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rent Payments required to be paid under the Lease during the current budget year of Lessee, and such moneys will be applied in payment of all Rent Payments due and payable during such current budget year.
9. No event or condition that constitutes or would constitute an Event of Default exists as of the date hereof.

I, the undersigned, hereby certify that I am a duly qualified representative of Lessee and that I have been given the authority by the governing body of Lessee to sign this Payment Request and Equipment Acceptance Form.

Please forward this document and any correspondence relating to vendor payment to:

**Kansas State Bank of Manhattan**

Attention: Angela Turner  
1010 Westloop, PO Box 69  
Manhattan, KS 66505-0069

or Fax: 785-587-4068

Please call 877-587-4054 if you have any questions.

**City of Fresno**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

EXHIBIT C

LESSEE ACKNOWLEDGEMENT

RE: Escrow Agreement dated as of October 10, 2013, between Kansas State Bank of Manhattan (Escrow Agent), Kansas State Bank of Manhattan (Lessor) and City of Fresno (Lessee)

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Lessee hereby acknowledges that it has ordered or caused to be ordered the equipment that is the subject of the above-mentioned Agreement.

Please complete the below information, attach another page if necessary

Vendor Name: McPeeks Dodge of Anaheim  
Phone: 714-254-2613  
Contact Person: Kevin Buzzard  
Equipment: 2013 Dodge Charger Police Car  
Amount of Equipment: \$1,314,895.00

Vendor Name: City of Fresno Fleet Management Division  
Phone: 559-621-1397  
Contact Person: Tim Olday  
Equipment: Labor - Estimated \$150,000.00  
Amount of Equipment: \_\_\_\_\_

Vendor Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Equipment: \_\_\_\_\_  
Amount of Equipment: \_\_\_\_\_

Vendor Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Equipment: \_\_\_\_\_  
Amount of Equipment: \_\_\_\_\_

Vendor Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Equipment: \_\_\_\_\_  
Amount of Equipment: \_\_\_\_\_

**Lessee will immediately notify Lessor if any of the information listed above is changed.**

EXHIBIT D

**RE: Escrow Agreement dated as of October 10, 2013, between Kansas State Bank of Manhattan (Escrow Agent), Kansas State Bank of Manhattan (Lessor) and City of Fresno (Lessee)**

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Escrow Agent    Kansas State Bank of Manhattan  
1010 Westloop, PO Box 69  
Manhattan, KS 66505-0069

Lessor            Kansas State Bank of Manhattan  
1010 Westloop, PO Box 69  
Manhattan, KS 66505-0069

Lessee            City of Fresno  
2600 Fresno Street  
Fresno, CA 93721

## 8038 REVIEW FORM

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The 8038 form attached hereto is an important part of the documentation package and must be properly filled out and submitted to the Department of the Treasury in order for you to receive the lower tax-exempt rate. Unless you instruct us otherwise, we have engaged a Paid Preparer to assist in the filling out of this form. The Paid Preparer has filled out the relevant portions of this form based on the current understanding of what is required by the Department of the Treasury. The responses on this 8038 form are based on the dates and amounts which you have requested (structure of the transaction) and which are on the Payment Schedule.

1. Please review our responses for accuracy. If anything is inaccurate, please contact our office so that we can make proper revisions.
2. If the information provided to you on this form is accurate, please sign where indicated and return with the document package.
3. If there are any changes to the structure of the transaction that occur prior to funding which require a change to the 8038 form, we will make such changes and provide notification to you.
4. We will return to you a copy of the 8038 form that was mailed to the Department of the Treasury.

**Important Note:**

The IRS is now requesting information regarding tax-exempt issuers' and borrowers' written policies and procedures designed to monitor post-issuance compliance with the federal tax rules applicable to tax-exempt obligations (boxes 43 and 44). Do not check items 43 and 44 on the 8038 form unless you have established written procedures in accordance with the instructions referenced directly below. If you choose to "check" items 43 and/or 44, please be prepared to provide copies of such written procedures to the Paid Preparer or any representatives of the IRS upon request. Written procedures should contain certain key characteristics, including making provisions for:

- Due diligence review at regular intervals;
- Identifying the official or employee responsible for review;
- Training of the responsible official/employee;
- Retention of adequate records to substantiate compliance (e.g., records relating to expenditure of proceeds);
- Procedures reasonably expected to timely identify noncompliance; and
- Procedures ensuring that the issuer will take steps to timely correct noncompliance.

For additional guidance on this 8038 form, you can refer to the Documentation Instructions located on the following government website: <http://www.irs.gov/app/picklist/list/formsInstructions.html>, or contact your local IRS office.