



Meeting Date: 03 /18/ 2008

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other Study Session _____

Prepared By: Grant Dunne, Management Analyst III *GD* Agenda Item No. I-7
 Reviewed By: City Manager *[Signature]* City Attorney *[Signature]* Finance SW Other Public Works *[Signature]*

DATE: March 10, 2008

TO: City Council

FROM: Dennis Scala, Acting Environmental Resources Superintendent
Public Works Department – Environmental Resources Division

SUBJECT: Lease Purchase and Vendor Agreement for the Acquisition of Solid Waste Containers

RECOMMENDATION

That City Council:

1. Adopt a resolution authorizing the Mayor to execute an equipment lease purchase agreement with Upton & Oliver Funding Corporation for the lease purchase of containers and services for the Environmental Resources Division.
- 2) Authorize and direct the City Manager to perform such acts necessary and proper to carry out the terms of the resolution.
- 3) Approve a special budget appropriation in the amount of \$3,441,062 for the purchase of containers and services for the Environmental Resources Division.
- 4) Approve and authorize the Mayor to execute an Agreement No. A7025 for Purchase of Containers and Services between the City of Oxnard and Toter, Incorporated.

DISCUSSION

On February 5, 2008, staff presented a study session report to City Council introducing the three-cart residential collection system. The study session addressed the benefits of the three-cart system including customer benefits of additional storage capacity for refuse and cart durability; operational benefits such as compatibility with the current fleet of trucks; and, financial benefits from the market sale of greater and cleaner volumes of recyclable materials and cost avoidance of hauling and disposing of less material to the landfill.

On February 21, 2008 bid proposals were received from several potential cart providers in response to bid specifications issued in January 2008. Staff has evaluated the proposals and concludes that Toter, Incorporated has submitted the most responsive low-bid proposal for providing solid waste and recycling containers. Toter’s bid is \$3,441,062 which includes the cost to purchase 35,000 refuse and 35,000 recycle carts, removal and buyback of old split-carts, assembly and set-out of new carts.

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shipping, delivery and tax. Upon the notice to proceed, Toter's proposal includes a citywide conversion period of 150 days to set out all carts.

Staff recommends lease purchase as a financing method to acquire the containers. A lease purchase provides financing at low tax-exempt interest rates allowing the Solid Waste Enterprise Fund to efficiently utilize working capital; thereby, adding to customer value and maintaining competitive refuse rates. Among the financing companies responding to staff's RFP, Upton & Oliver Funding Corporation proposed the best cost-effective lease purchase financing arrangement at a 4.13% interest rate. The principal amount of the lease purchase loan is \$3,441,062 with annual lease payments of \$423,533 over a ten-year term.

Adoption of this resolution by the City Council approves the form of the lease purchase documents and authorizes the execution and delivery of originals at a later date.

FINANCIAL IMPACT

A special budget appropriation will appropriate \$3,441,062 of the Lease Purchase Revenues to the Solid Waste Equipment Account No. 631-6871-829-8134 (Project #086302). There is no additional financial impact in the current fiscal year; annual debt service payments will be budgeted in the Solid Waste Fund beginning in FY 08-09. The Solid Waste Budget will need to include approximately \$423,533 for ten years to pay the debt service on the lease purchase obligations. Annual lease payments will be offset by additional revenues from increase volumes of recyclable materials, cost savings from truck maintenance, hauling and disposal of residual materials that will be diverted from the landfill as a result of the three-cart collection system. The debt is not an obligation of the City's General Fund.

GD:gd

Attachment No.1 Resolution
No.2 Lease Purchase Agreement
No.3 Special Budget Appropriation
No.4 Agreement for Purchase of Containers and Services

000036

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD
AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER
EQUIPMENT LEASE-PURCHASE AGREEMENT, AND RELATED
INSTRUMENTS, AND DETERMINING OTHER MATTERS IN
CONNECTION THEREWITH

WHEREAS, the City Council of the City of Oxnard ("Lessee") has determined that there exists a need for the Lessee to acquire the Equipment described in the draft Master Equipment Lease-Purchase Agreement (the "Agreement") attached hereto by and between Upton & Oliver Funding Corporation, as Lessor, and Lessee presented at this meeting; and

WHEREAS, Lessee has complied with the necessary procedures and processes, including those relating to any applicable legal bidding requirements, to arrange for the acquisition of the Equipment; and

WHEREAS, Lessee proposes to enter into the Agreement with Lessor substantially in the proposed form attached to this resolution.

NOW, THEREFORE, The City Council of the City of Oxnard hereby resolves as follows:

Section 1. The City Council finds and determines that the terms of the Agreement are in the best interests of Lessee for the acquisition of the Equipment.

Section 2. The City Council approves the Agreement.

Section 3. The City Council authorizes the Mayor, City Manager, Finance Director and City Attorney to execute, acknowledge and deliver the Agreement with any changes, insertions and omissions therein as may be approved by the City Attorney, such approval to be conclusively evidenced by such execution and delivery thereof.

Section 4. The City Manager is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper to carry out the terms of this resolution and the Agreement.

APPROVED AND ADOPTED this 18th day of March, 2008, by the following vote:

AYES:

NOES:

ABSENT:

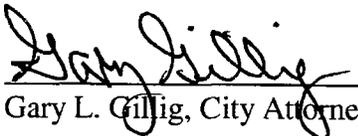
ABSTAIN:

Dr. Thomas E. Holden, Mayor

ATTEST:

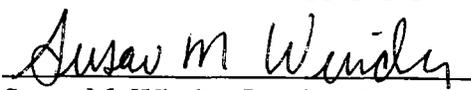
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

 03-12-08

Gary L. Gillig, City Attorney

APPROVED AS TO CONTENT:



Susan M. Winder, Interim Finance Director

STATE OF CALIFORNIA)
)
COUNTY OF VENTURA)

ss.

I, DANIEL MARTINEZ, City Clerk of the City of Oxnard, do hereby certify that the above and foregoing is a full, true and correct copy of Resolution No. _____ of the City Council of the City of Oxnard, that the same was duly and validly adopted on _____, 2008, and that the same has not been amended or repealed.

DATED: March 18, 2008

Daniel Martinez,
City Clerk of the City of Oxnard

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ATTACHMENT NO. 1
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EQUIPMENT LEASE PURCHASE AGREEMENT

DATED: _____

NAME AND ADDRESS OF LESSOR
Upton & Oliver Funding Corporation
3505 Sonoma Boulevard, #287, PBM 287
Vallejo, CA 94590

NAME AND ADDRESS OF LESSEE

DESCRIPTION OF EQUIPMENT

Quantity	Description	Model #	Serial #
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Location of Equipment:

Name and Address of Vendor:

RENTAL PAYMENTS

Rental Payment Periods shall be [monthly][quarterly][semiannual][annual]. Rental Payments shall be made in accordance with Section 4.01 and the Schedule of Rental Payments attached hereto as Exhibit A.

TERMS AND CONDITIONS

THE TERMS AND CONDITIONS OF THIS AGREEMENT SET FORTH ON PAGES TWO THROUGH FIVE, INCLUDING ANY EXHIBITS ATTACHED HERETO, SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH HERE. IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date written above.

Upton & Oliver Funding Corporation
(LESSOR)

City of Oxnard
(LESSEE)

By _____
Title: _____

By _____
Title: _____
(SEAL)

Lease Number: _____

ATTEST:

Title: _____

CERTIFICATE OF CLERK OR SECRETARY OF LESSEE

I, the undersigned, do hereby certify that the officer of Lessee who executed the foregoing Agreement on behalf of Lessee and whose genuine signature appears thereon, is the duly qualified and acting officer of Lessee as stated beneath his or her signature and has been authorized to execute the foregoing Agreement on behalf of Lessee.

Dated: _____

By _____
Title: _____

OPINION OF COUNSEL

As legal counsel of Lessee, I have examined (a) the Agreement, which, among other things provides for the sale to and purchase by the Lessee of the Equipment, (b) an executed counterpart of the ordinance or resolution of Lessee which, among other things, authorizes Lessee to execute the Agreement and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. Based on the foregoing, I am of the following opinions: (1) Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power; (2) Lessee has the requisite power and authority to purchase the Equipment and to execute and deliver the Agreement and to perform its obligations under the Agreement; (3) the Agreement and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of Lessee, and the Agreement is a valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditor's rights generally; (4) the authorization, approval and execution of the Agreement 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; 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 Agreement or the security interest of Lessor or its assigns, as the case may be, in the Equipment. All capitalized terms herein shall have the same meanings as in the Agreement. Lessor, its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of Rental Payments are entitled to rely on this opinion.

Printed Name: _____
Address: _____

Dated: _____

Telephone No. _____

Signature: _____

ARTICLE I

Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

- "**Agreement**" means this Equipment Lease Purchase Agreement and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, together with any amendments to the Agreement.
- "**Code**" means the Internal Revenue Code of 1986, as amended.
- "**Commencement Date**" is the date when the term of this Agreement and Lessee's obligation to pay rent commence, which date shall be the earlier of (i) the date on which the Equipment is accepted by Lessee in the manner described in Section 5.01, or (ii) the date on which sufficient moneys to purchase the Equipment are deposited by Lessor for that purpose with an escrow agent.
- "**Equipment**" means the property described on the front of this Agreement, and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.
- "**Event of Default**" means an Event of Default described in Section 12.01.
- "**Issuance Year**" is the calendar year in which the Commencement Date occurs.
- "**Lease Term**" means the Original Term and all Renewal Terms, but ending on the occurrence of the earliest event specified in Section 3.02.
- "**Lessee**" means the entity described as such on the front of this Agreement, its successors and its assigns.
- "**Lessor**" means the entity described as such on the front of this Agreement, its successors and its assigns.
- "**Maximum Lease Term**" means the Original Term and all Renewal Terms through the Renewal Term including the last Rental Payment date set forth on the Payment Schedule.
- "**Net Proceeds**" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.
- "**Original Term**" means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.
- "**Payment Schedule**" means the schedule of Rental Payments and Purchase Price set forth on Exhibit A.
- "**Purchase Price**" means the amount set forth on the Payment Schedule as the Purchase Price for the Equipment.
- "**Renewal Terms**" means the optional renewal terms of this Agreement, each having a duration of one year and a term co-extensive with Lessee's fiscal year.
- "**Rental Payment Period**" means the period beginning on the day a Rental Payment is due and ending the day before the next Rental Payment is due. The first Rental Payment Period shall begin on the Commencement Date in all cases. If Rental Payment Periods are monthly, subsequent Rental Payment Periods shall begin on the same day of each month after the Commencement Date. If Rental Payment Periods are quarterly, subsequent Rental Payment Periods shall begin on the same day of each third month after the Commencement Date. If Rental Payment Periods are semiannual, subsequent Rental Payment Periods shall begin on the same day of each sixth month after the Commencement Date. If Rental Payment Periods are annual, subsequent Rental Payment Periods shall begin on the anniversary of the Commencement Date in each year. If the Commencement Date is the 29th, 30th, or 31st day of a month, any subsequent Rental Payment Period that would otherwise begin on the 29th, 30th or 31st of a month that does not include such a date shall begin on the last day of the month.
- "**Rental Payments**" means the basic rental payments payable by Lessee pursuant to Section 4.01.
- "**State**" means the state in which Lessee is located.
- "**Vendor**" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessor purchased or is purchasing the Equipment, as listed on the front of this Agreement.

ARTICLE II

Section 2.01. Representations and Covenants of Lessee. Lessee represents, warrants and covenants for the benefit of Lessor as follows:

- (a) Lessee is a municipal corporation and political subdivision duly organized and existing under the constitution and laws of the State. Lessee will do or cause to be done all things to preserve and keep in full force and effect its existence as a body corporate and politic. Lessee is a political subdivision of the State within the meaning of Section 103(a) of the Code or a constituted authority authorized to issue obligations on behalf of a state or local governmental unit within the meaning of the regulations promulgated pursuant to said Section of the Code.
- (b) Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.
- (c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.
- (d) This Agreement constitutes the legal, valid and binding obligation of the Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.
- (e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the Commencement Date.
- (f) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes.
- (g) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.
- (h) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder.
- (i) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting the Lessee, nor to the best knowledge of the Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Lessee.
- (j) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by the Lessee of this Agreement or in connection with the carrying out by the Lessee of its obligations hereunder have been obtained.
- (k) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which the Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of the Lessee or the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it or its assets may be bound, except as herein provided.
- (l) The Equipment described in this Agreement is essential to the function of the Lessee or to the service Lessee provides to its citizens. The Lessee has an immediate need for, and expects to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority and will not be used in the trade or business of any other entity or person.
- (m) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.
- (n) Lessee has never failed to appropriate or otherwise make available funds sufficient to pay rental or other payments coming due under any lease purchase, installment sale or other similar agreement.

Section 2.02. Certification as to Arbitrage. Lessee hereby represents as follows:

- (a) The estimated total costs of the Equipment will not be less than the total principal portion of the Rental Payments.
- (b) The Equipment has been ordered or is expected to be ordered within six months of the Commencement Date, and the Equipment is expected to be delivered and installed, and the Vendor fully paid, within one year of the Commencement Date.
- (c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments.
- (d) The Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments.
- (e) To the best of our knowledge, information and belief, the above expectations are reasonable.

ARTICLE III

Section 3.01. Lease of Equipment. Lessor hereby demises, leases and lets the Equipment to Lessee, and Lessee rents, leases and hires the Equipment from Lessor, in accordance with the provisions of this Agreement, for the Lease Term. The Original Term of this Agreement shall commence on the Commencement Date and shall terminate on the last day of Lessee's current fiscal year. The Lease Term may be continued at the end of the Original Term or any Renewal Term for an additional Renewal Term up to the Maximum Lease Term; provided, however, that at the end of the Original Term and at the end of each Renewal Term until the Maximum Lease Term has been completed, Lessee shall be deemed to have continued this Agreement for the next Renewal Term unless Lessee shall have terminated this Agreement pursuant to Section 3.04 or Section 10.01. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Payment Schedule.

Section 3.02. Termination of Lease Term. The Lease Term shall terminate upon the earliest of any of the following events:

- (a) the expiration of the Original Term or any Renewal Term and the nonrenewal of this Agreement in the event of nonappropriation of funds pursuant to Section 3.04;
- (b) the exercise by Lessee of the option to purchase the Equipment under Article X and payment of the Purchase Price and all amounts payable in connection therewith;
- (c) a default by Lessee and Lessor's election to terminate this Agreement under Article XII; or
- (d) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Maximum Lease Term.

Section 3.03. Continuation of Lease Term. Lessee currently intends, subject to Section 3.04, to continue the Lease Term through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. The responsible financial officer of Lessee shall do all things lawfully within his or her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such Rental Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Agreement for any Renewal Term is solely within the discretion of the then current governing body of Lessee.

Section 3.04. Nonappropriation. Lessee is obligated only to pay such Rental Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. In the event sufficient funds shall not be appropriated or are not otherwise legally available to pay the Rental Payments required to be paid in the next occurring Renewal Term, as set forth in the Payment Schedule, this Agreement shall be deemed to be terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver written notice to Lessor of such termination at least 90 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice shall not extend the Lease Term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees, at Lessee's cost and expense, to peaceably deliver the Equipment to Lessor at the location or locations specified by Lessor.

ARTICLE IV

Section 4.01. Rental Payments. Lessee shall pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor on the dates and in the amounts set forth on the Payment Schedule. Any Rental Payment not received on or before its due date shall bear interest at the rate of 18% per annum or the maximum amount permitted by law, whichever is less, from its due date. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest.

Section 4.02. Rental Payments to Constitute a Current Expense of Lessee. The obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee, and do not constitute a mandatory payment obligation of Lessee in any fiscal year beyond the then current fiscal year of Lessee. Lessee's obligation hereunder shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

Section 4.03. Rental Payments To Be Unconditional. EXCEPT AS PROVIDED IN SECTION 3.04, THE OBLIGATIONS OF LESSEE TO MAKE RENTAL PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION ANY FAILURE OF THE EQUIPMENT TO BE DELIVERED OR INSTALLED, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE EQUIPMENT OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES.

ARTICLE V

Section 5.01. Delivery, Installation and Acceptance of the Equipment. Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified on the front of this Agreement and pay any and all delivery and installation costs in connection therewith. When the Equipment has been delivered and installed, Lessee shall immediately accept the Equipment and evidence said acceptance by executing and delivering to Lessor an acceptance certificate acceptable to Lessor. After it has been installed, the Equipment will not be moved from the location specified on the front of this Agreement without Lessor's consent, which consent shall not be unreasonably withheld.

Section 5.02. Enjoyment of Equipment. Lessee shall peaceably and quietly have and hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.

Section 5.03. Right of Inspection. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

Section 5.04. Use and Maintenance of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall obtain all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee shall comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under this Agreement. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition. If requested to do so by Lessor, Lessee will enter into a maintenance contract for the Equipment with Vendor. LESSOR SHALL HAVE NO RESPONSIBILITY TO SERVICE, MAINTAIN, REPAIR OR MAKE IMPROVEMENTS OR ADDITIONS TO THE EQUIPMENT. LESSEE SHALL MAKE ALL CLAIMS FOR SERVICE OR MAINTENANCE SOLELY TO THE VENDOR AND SUCH CLAIMS WILL NOT AFFECT LESSEE'S OBLIGATION TO MAKE ALL REQUIRED RENTAL PAYMENTS.

ARTICLE VI

Section 6.01. Title to the Equipment. During the Lease Term, title to the Equipment shall vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title shall thereafter immediately and without any action by Lessee vest in Lessor, and Lessee shall immediately surrender possession of the Equipment to Lessor upon (a) any termination of this Agreement other than termination pursuant to Section 10.01, or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee shall, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee's true and lawful attorney (and agent in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's or such assignee's name, to endorse the name of Lessee upon any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Equipment in order to vest title in Lessor and transfer possession to Lessor.

Section 6.02. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement, Lessor retains a security interest constituting a first lien on the Equipment and proceeds therefrom. Lessee agrees to execute such additional documents, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest. Lessee agrees that financing statements may be filed with respect to the security interest in the Equipment.

Section 6.03. Personal Property. Lessor and Lessee agree that the Equipment is and will remain personal property. The Equipment will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to such real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all taxes and other similar charges. If the use, possession or acquisition of the Equipment is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments that accrue during the Lease Term.

Section 7.02. Insurance. At its own expense, Lessee shall maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Equipment, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). All insurance proceeds from casualty losses shall be payable as hereinafter provided. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. All such casualty and liability insurance shall be with insurers that are acceptable to Lessor, shall name Lessor as a loss payee and an additional insured, respectively, and shall contain a provision to the effect that such insurance shall not be cancelled or modified materially without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance shall contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

Section 7.03. Advances. In the event Lessee shall fail to either maintain the insurance required by this Agreement, pay the taxes or charges required to be paid by it under this Agreement or keep the Equipment in good repair and working order, Lessor may, but shall be under no obligation to, purchase the required policies of insurance and pay the cost of the premiums thereof, pay such taxes and charges and maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lessor shall become additional rent for the then current Original Term or Renewal Term. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 12% per annum or the maximum permitted by law, whichever is less.

Section 7.04. Financial Information. Lessee will annually provide Lessor with current financial statements, budgets, proofs of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be requested by Lessor.

Section 7.05. Release and Indemnification. To the extent permitted by law, Lessee shall indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement, (b) the ownership of any item of the Equipment, (c) the manufacturing, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) any accident in connection with the

operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

ARTICLE VIII

Section 8.01. Risk of Loss. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Equipment from any cause whatsoever. No such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

Section 8.02. Damage, Destruction and Condemnation. If (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof or the interest of Lessee or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment, unless Lessee shall have exercised its option to purchase the Equipment pursuant to Section 10.01. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

Section 8.03. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Lessor's interest in the Equipment pursuant to Section 10.01. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

ARTICLE IX

Section 9.01. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE EQUIPMENT OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OR MAINTENANCE OF ANY EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

Section 9.02. Vendor's Warranties. Lessee may have rights under the contract evidencing the purchase of the Equipment; Lessee is advised to contact the Vendor for a description of any such rights. Lessor hereby assigns to Lessee during the Lease Term all warranties running from Vendor to Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Equipment that Lessor may have against the Vendor. Lessee's sole remedy for the breach of any such warranty, indemnification or representation shall be against the Vendor, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of such warranties by any Vendor.

ARTICLE X

Section 10.01. Purchase Option. Lessee shall have the option to purchase Lessor's interest in all (but not less than all) of the Equipment, upon giving written notice to Lessor at least 60 (but not more than 180) days before the date of purchase, at the following times and upon the following terms:

(a) On any Rental Payment Date, upon payment in full of the Rental Payments and all other amounts then due hereunder plus the then applicable Purchase Price to Lessor; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payments and all other amounts then due hereunder plus (i) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (ii) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360-day year of twelve 30-day months.

Upon the exercise of the option to purchase set forth above, title to the Equipment shall be vested in Lessee, free and clear of any claim by or through Lessor.

Section 10.02. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder during the Original Term and each Renewal Term represent the fair value of the use of the Equipment and that the amount required to exercise Lessee's option to purchase the Equipment pursuant to Section 10.01 represents, as of the end of the Original Term or any Renewal Term, the fair purchase price of the Equipment. Lessee hereby determines that the Rental Payments do not exceed a reasonable amount so as to place Lessee under a practical economic compulsion to renew this Agreement or to exercise its option to purchase the Equipment hereunder. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Equipment, (b) the uses and purposes for which the Equipment will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Equipment and the use of the Equipment pursuant to the terms and provisions of this Agreement, and (d) Lessee's option to purchase the Equipment.

ARTICLE XI

Section 11.01. Assignment by Lessor. Lessor's interest in, to and under this Agreement and the Equipment may, without notice to or the consent of Lessee, be assigned and reassigned in whole or in part to one or more assignees by Lessor. Lessee hereby appoints Municipal Registrar Services (the "Registrar") as its agent for the purpose of maintaining a written record of each such assignment in form necessary to comply with Section 149(a) of the Code. No such assignment shall be binding on Lessee until the Registrar has received written notice from Lessor of the name and address of the assignee. Lessee agrees to execute all documents, including chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interest in the Equipment and in this Agreement. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may from time to time have against Lessor.

Section 11.02. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and in the Equipment may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Equipment if Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Equipment shall be subject to this Agreement and the rights of the Lessor in, to and under this Agreement and the Equipment.

ARTICLE XII

Section 12.01. Events of Default Defined. Subject to the provisions of Section 3.04, any of the following shall be "Events of Default" under this Agreement:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 12.01(a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Any provision of this Agreement shall at any time for any reason cease to be valid and binding on Lessee, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee shall deny that it has any further liability or obligation under this Agreement;

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

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

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

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

(b) With or without terminating this Agreement, Lessor may enter the premises where the Equipment is located and retake possession of the Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at a place specified by Lessor, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder plus the then applicable Purchase Price, and (ii) the net proceeds of any

such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all brokerage, auctioneers' and attorneys' fees); provided that the amount of Lessee's liability under this subparagraph (b) shall not exceed the Rental Payments and other amounts otherwise due hereunder plus the remaining Rental Payments and other amounts payable by Lessee hereunder to the end of the then current fiscal year of Lessee; and

(c) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment.

In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor. Lessor may charge interest on all amounts due to it at the rate of 18% per annum or the maximum amount permitted by law, whichever is less.

Section 12.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article.

ARTICLE XIII

Section 13.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses on the front of this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee at its address as it appears on the registration books maintained by Lessee.

Section 13.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.04. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 13.05. Amendments. This Agreement may be amended in writing by Lessor and Lessee.

Section 13.06. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.07. Usury. The parties hereto agree that the charges in this Agreement shall not be a violation of usury or other law. Any such excess charge shall be applied in such order as to conform this Agreement to such applicable law.

Section 13.08. Jury Trial Waiver. TO THE EXTENT PERMITTED BY LAW, LESSEE AGREES TO WAIVE ITS RIGHT TO A TRIAL BY JURY.

Section 13.09. Facsimile Documentation. Lessee agrees that a facsimile copy of this Agreement with facsimile signatures may be treated as an original and will be admissible as evidence of this Agreement.

Section 13.10. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 13.11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

EXHIBIT A TO EQUIPMENT LEASE PURCHASE AGREEMENT

PAYMENT SCHEDULE

Lessee will make the following Lease Payments each consisting of Principal and Interest as set forth in the following schedule:

Interest Rate: 4.13%; Accruing from April 1, 2008

<u>Date</u>	<u>Total Payment</u>	<u>Principal</u>	<u>Interest</u>	<u>Purchase Price Option*</u>
October 1, 2008	\$211,766.42	\$140,708.48	\$71,057.93	\$3,377,525.76
April 1, 2009	211,766.42	143,614.12	68,152.30	3,227,061.43
October 1, 2009	211,766.42	146,579.75	65,186.67	3,073,866.17
April 1, 2010	211,766.42	149,606.62	62,159.80	2,917,890.43
October 1, 2010	211,766.42	152,696.00	59,070.42	2,759,083.72
April 1, 2011	211,766.42	155,849.17	55,917.25	2,597,394.67
October 1, 2011	211,766.42	159,067.45	52,698.96	2,432,770.96
April 1, 2012	211,766.42	162,342.20	49,414.22	2,265,159.33
October 1, 2012	211,766.42	165,704.77	46,061.65	2,094,505.55
April 1, 2013	211,766.42	169,126.57	42,639.84	1,920,754.41
October 1, 2013	211,766.42	172,619.04	39,147.38	1,743,849.68
April 1, 2014	211,766.42	176,183.62	35,582.80	1,563,734.13
October 1, 2014	211,766.42	179,821.81	31,944.60	1,380,349.49
April 1, 2015	211,766.42	183,535.13	28,231.28	1,193,636.41
October 1, 2015	211,766.42	187,325.13	24,441.28	1,003,534.49
April 1, 2016	211,766.42	191,193.40	20,573.02	809,982.22
October 1, 2016	211,766.42	195,141.54	16,624.88	612,916.98
April 1, 2017	211,766.42	199,171.21	12,595.20	412,275.01
October 1, 2017	211,766.42	203,284.10	8,483.32	207,991.38
April 1, 2018	211,766.42	207,481.91	4,284.50	1.00

EXHIBIT B TO EQUIPMENT LEASE PURCHASE AGREEMENT

EQUIPMENT DESCRIPTION

ACCEPTANCE CERTIFICATE

Ladies and Gentlemen:

Re: Equipment Lease Purchase Agreement dated as of _____, between _____
_____, as Lessor, and _____, as Lessee.

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

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

(2) Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.

(3) Lessee is currently maintaining the insurance coverage required by **Section 7.02** of the Agreement.

(4) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Date: _____.

LESSEE

By _____
Title: _____

[SEAL]

MUNICIPAL CERTIFICATE

Re: Equipment Lease Purchase Agreement (the "Agreement"), dated, _____ 2007, between _____ as Lessor, and _____, as Lessee.

I, the undersigned, the duly appointed, qualified and acting _____ (Clerk or Secretary) of the above-captioned Lessee do hereby certify this ___ day of _____, 2007, as follows:

(1) Lessee did, at a _____ (regular or special) meeting of the governing body of the Lessee held on _____, 2007, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced (the "Agreement") on its behalf by the following named representative of the Lessee, to wit:

**

Printed Name of (Person Executing the Lease) the Lease)	Title	Signature of (Person Executing
---------------------------------------------------------------	-------	-----------------------------------

**This signature line is to be signed by person authorized by the governing body to execute the documents on behalf of the Municipality.

(2) The above-named representative of the Lessee held at the time of such authorization and holds at the present time the office set forth above.

(3) The meeting of the governing body of the Lessee at which the (the "Agreement") was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval and that the action approving the (the "Agreement") and authorizing the execution thereof has not been altered or rescinded.

(4) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default (as such term is defined in the above-referenced Equipment Lease Purchase Agreement) exists at the date hereof.

(5) All insurance required in accordance with the above-referenced Equipment Lease Purchase Agreement is currently maintained by the Lessee.

(6) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term (as such terms are defined in the above-referenced Equipment Lease Purchase Agreement) and such funds have not been expended for other purposes.

(7) The fiscal year of Lessee is from _____ to _____.

IN WITNESS WHEREOF, I hereunto set my hand and the seal of the governing body of the Lessee the day and year first above written.

Clerk or Secretary
Name: _____
Title: _____

(SEAL)

Subscribed to and sworn before me this _____ day of _____, 200_.

Notary Public

My commission expires _____.

CITY OF OXNARD

REQUEST FOR SPECIAL BUDGET APPROPRIATION

To the City Manager:

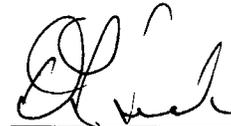
March 18, 2008

Request is hereby made for an appropriation of total

\$ 3,441,062

Reason for appropriation: Lease Purchase of Solid Waste Containers

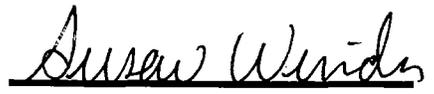
<u>FUND</u>	<u>DESCRIPTION/ACCOUNT</u>	<u>AMOUNT</u>
Environmental Resources (631)	Solid Waste Planning 631-6301 712-7952 - Proceeds from Line of Credit Trash Cont. Acq. Lease Purchase (086302) 631-6871 829-8134 - Minor Equip - Shop/Field	(3,441,062) <u>3,441,062</u>
Net Estimated Change to Environmental Resources Fund Balance		<u><u>-0-</u></u>



Manager

REQUIRES CITY COUNCIL APPROVAL

DIRECTOR OF FINANCE



Disposition	Approved _____
Transfer by Journal Voucher _____	Rejected _____
	_____ City Manager

AGREEMENT FOR PURCHASE OF CONTAINERS AND FOR SERVICES
Contract No. A7025

This Agreement for Purchase of Containers for Services ("this Agreement") is entered into in Ventura County, California, this 18th day of March, 2008 by and between the City of Oxnard ("City") and Toter, Incorporated ("Vendor"), subject to the following terms and conditions:

1. Vendor shall provide and deliver containers as more particularly set forth in Exhibit A attached herein and incorporated by this reference in full herein ("the services").

2. Vendor shall complete the services within the term of this Agreement as more particularly set forth in Exhibit B attached herein and incorporated by this reference in full herein. Vendor shall be excused for delays resulting from causes beyond the control of Vendor.

3. This Agreement shall begin on March 18, 2008, and all services shall be completed by June 30, 2008. City may terminate this Agreement at any time, with or without cause, by giving written notice to Vendor, specifying the effective date of termination. Unless City asserts that Vendor has breached the Agreement, City agrees to pay Vendor in full for all services satisfactorily performed as of the effective date of termination, including any expenditures incurred on City's behalf, whether for the employment of third parties or otherwise. If City pays for any materials, City shall be entitled to the title and possession of such materials.

4. City shall pay Vendor for the services, as set forth in Exhibit C attached herein and incorporated by this reference in full herein.

5. Vendor agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agency of City, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Vendor or Vendor's agents, employees, subconsultants, subcontractors, or other persons acting on Vendor's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, or acts for which Vendor or Vendor's agents, employees, subconsultants, subcontractors, or other persons acting on Vendor's behalf would be held strictly liable.

6. Insurance

a. Vendor shall obtain and maintain during the performance of any services under this Agreement the insurance coverages specified in Exhibit INS-C, attached hereto and incorporated herein by reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Vendor obtain and maintain such insurance coverages.

b. Vendor shall, prior to performance of any services, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-C.

c. Maintenance of insurance coverages by Vendor is a material element of this Agreement. Vendor's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered a material breach of this agreement.

7. In performing services under this Agreement, Vendor is an independent contractor. Vendor and Vendor's agents, employees, subcontractors and other persons acting on Vendor's behalf are not officers or employees of City.

8. Vendor shall not, without the written consent of City's Purchasing Officer, assign this Agreement, or any interest therein, or any money due thereunder.

9. In providing services under this Agreement, Vendor shall comply with all applicable laws, ordinances and regulations. Before providing services under this Agreement, Vendor shall obtain all required licenses and permits, including a City business license.

10. This Agreement may be amended only by a written document signed by both City and Vendor.

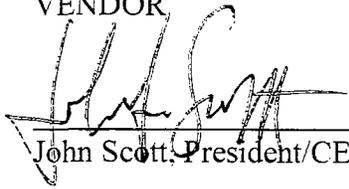
11. Any notices to Vendor may be delivered personally or by mail addressed to: Laura P. Gates, Vice President-Contract Management, 841 Meacham Road, Statesville, NC 28677, 800-424-0433, 704-682-3398. Any notices to City may be delivered personally or by mail addressed to: City of Oxnard – Environmental Resources Division at Del Norte Regional Recycling and Transfer Station, 111 South Del Norte Boulevard, Oxnard, CA 93030. Attention Dennis Scala, Acting Environmental Resources Manager

12. This Agreement constitutes the entire agreement of City and Vendor regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

CITY OF OXNARD

VENDOR

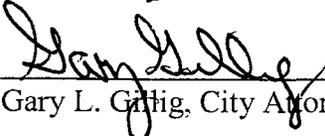
Thomas E. Holden, Mayor



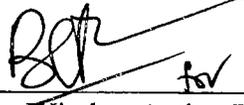
John Scott, President/CEO

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:

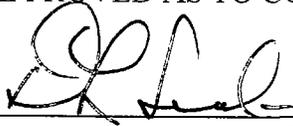
 03-12-08

Gary L. Galig, City Attorney

 for

Susan Winder, Acting Risk Manager

APPROVED AS TO CONTENT:



Dennis Scala, Project Manager

Exhibit A

Scope of Work

Vendor shall provide all labor, equipment and materials for the following:

1. Supply of Automated Containers – The Vendor shall supply fully automated 96-gallon containers including approximately 35,000 containers with a grey body and black lid for solid waste containment and 35,000 containers with a grey body and blue lid for recycling containment.
2. Assembly, delivery and removal of containers – The Vendor shall deliver to residents new and unused assembled containers and remove old split-containers for recycling.
3. Vendor shall provide an electronic list, in Microsoft Excel format, referencing each container to include the following information, but not limited to:
 - a. Customer Service Address
 - b. Container Serial Number
 - c. Date of Container Manufactured
 - d. Date of Container Set-Out to Customer Service Address
 - e. Container Gallon Size
 - f. Type of Container (Refuse, Recycle, Yard Waste)
4. Vendor shall submit to City a staging plan for removal, disassembly, and recycling of old split containers. Vendor shall provide distribution plan of the delivery new and unused containers. Staging and distribution plans must meet approval of the City before activities shall begin.
5. Vendor shall provide informational pamphlets that will be provided to each customer as part of the setout of new containers. City shall approve informational pamphlets before set out process.
6. The containers shall have a warranted life expectancy of not less than ten (10) years during which time the containers and their component parts shall maintain sufficient strength, shape, and appearance, as to be sufficiently resistant to blows, kicks, and rodent penetration so as to be generally maintenance free.

Exhibit B Project Schedule

The City is projected scheduled for delivery, assembly and distribution of two (2) new containers to each residence and the removal of old split containers under this Agreement:

1. Vendor shall deliver approximately 35,000 recycle and 35,000 solid waste containers at a minimum rate of 1,600 homes per day on a four (4) day a week/ten (10) hour per day work schedule (6 a.m. to 4 p.m.).
2. Vendor shall set out containers that will work behind City collection vehicles (one route at a time) on scheduled collection days until each route within the City is completed.
3. Vendor shall simultaneously remove and recycle of split containers at each residence.
4. The completed schedule for removal of old split containers and delivery of new refuse and recycle containers shall not exceed six (6) months from the notice to proceed.

Exhibit C Cost of Services Provided

Vendors shall provide the following pricing that projects the total cost of the completed project as specified in the terms and conditions under this Agreement. The following quantities are estimates only. Unit price for container shall include lids, wheels, and all hardware. Unit prices for removal of old containers and assembly and set-out of new containers shall include all labor, equipment, materials and supplies provided by Vendor to complete project in accordance with this Agreement.

Item	Qty.	Description	Unit Price	Total Price
a.	68,000	96 gallon size container	\$43.00	\$2,924,000.00
b.	2,000	64 gallon size container	\$38.00	\$76,000.00
c.	35,000	Removal of old container	\$4.50	\$157,500.00
d.	70,000	Assembly and set-out of new container	\$3.50	\$245,000.00
e.	35,000	Buyback of old containers	(\$13.00)	(\$445,000.00)
f.	70,000	Delivery/Shipping	\$3.69	\$258,300.00
g.		Applicable taxes		\$235,262.50
GRAND TOTAL PRICE:				\$3,441,062.50

Certificate of Insurance

This certificate is issued as a matter of information only and confers no rights upon you the certificate holder. This certificate is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed below.

This is to certify that (Name and address of Insured)

TOTER INCORPORATED
 c/o WASTEQUIP, INC.
 25800 SCIENCE PARK DR SUITE 140
 BEACHWOOD, OH 44122



is, at the issue date of this certificate, insured by the Company under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and conditions and is not altered by any requirement, term or condition of any contract or other document with respect to which this certificate may be issued.

Expiration Type		Eff./Exp. Date(s)	Policy Number(s)	Limits of Liability	
<input type="checkbox"/>	Continuous*	04/01/2007 / 04/01/2008	WA6-18D-053630-047	Coverage afforded under WC law of the following states: AL, AZ, CO, CT, FL, GA, IL, IN, KY, LA, MA, MD, MI, MN, MS, NC, NH, NJ, NY, OK, OR, PA, SC, SD, TN, TX, VA, WI	Employers Liability
<input type="checkbox"/>	Extended	04/01/2007 / 04/01/2008	WC2-181-053630-417		Bodily Injury By Accident \$1,000,000 Each Accident
<input checked="" type="checkbox"/>	Policy Term	04/01/2007 / 04/01/2008	WC6-181-053630-057		Bodily Injury By Disease \$1,000,000 Policy Limit
Workers Compensation					Bodily Injury By Disease \$1,000,000 Each Person
General Liability				General Aggregate-Other than Prod/Completed Operations	
<input type="checkbox"/>	Claims Made			Products/Completed Operations Aggregate	
<input type="checkbox"/>	Occurrence			Bodily Injury and Property Damage Liability	Per Occurrence
Retro Date				Personal and Advertising Injury	Per Person / Organization
				Other Liability	Other Liability
Automobile Liability		04/01/2007 / 04/01/2008	AS6-181-053630-067	Each Accident - Single Limit - B. I. and P. D. Combined \$1,000,000	
<input checked="" type="checkbox"/>	Owned			Each Person	
<input checked="" type="checkbox"/>	Non-Owned			Each Accident or Occurrence	
<input checked="" type="checkbox"/>	Hired			Each Accident or Occurrence	
COMMENTS		WA6-18D-053630-047-Includes OH & WA Employer's Liability - City of Oxnard, its City Council, officers, employees and volunteers are listed as Additional Insured-Form 844A (See attached) on the Auto Liability policy listed above if required by a written contract with the Named Insured, but only for the coverages and limits provided by the policy and the Additional Insured endorsement. Primary & Non-Contributory as per any applicable contract and subject to the terms and conditions of the policy.			

Notice of cancellation: (not applicable unless a number of days is entered below) Before the stated expiration date the company will not cancel or reduce the insurance afforded under the above policies until at least 30 days notice of such cancellation has been mailed to:

Office: CLEVELAND, OH Phone: 440-835-5300

Certificate Holder:

Attn: Risk Manager Contract No. A7025
 City of Oxnard
 300 West Third Street
 Suite 302
 Oxnard, CA 93030

Lisa Thompson
LISA THOMPSON
 Authorized Representative

Date Issued: 03/10/2008 Prepared By: DW

Exhibit INS-C

ADDITIONAL INSURED

It is agreed that such insurance as is afforded by the policy for Bodily Injury Liability and for Property Damage Liability also applies to the person or organization named below, as an insured, with respect to the use of the automobile by the named insured or with his permission, but such inclusion of an additional insured shall not operate to increase the limits of the company's liability.

<u>Eff</u> <u>Date</u>	<u>Exp</u> <u>Date</u>	<u>Additional Insured/Address</u>
04/01/2007	04/01/2008	WHERE REQUIRED BY CONTRACT

Policy No: AS6-181-053630-067
Effective Date: 04/01/2007
Expiration Date: 04/01/2008
Sales Office: 0970

Issued By: The First Liberty Insurance Corp.

Endt Serial No: 124

844A

Exhibit INS-C

GENERAL LIABILITY SPECIAL ENDORSEMENT FOR THE CITY OF OXNARD (the "City")		SUBMIT IN DUPLICATE																		
		ENDORSEMENT NO.	ISSUE DATE (MM/DD/YY) 03/10/2008																	
PRODUCER Lockton Companies, LLC 7 Times Square, Suite 3802 New York, NY 10036 Telephone: (646) 572-7300	POLICY INFORMATION: Insurance Company: <u>Quitch American Ins. Co.</u> Policy No.: <u>41019035800-08</u> Policy Period (from): <u>04/01/07</u> (to) <u>04/01/08</u> LOSS ADJUSTMENT EXPENSE <input checked="" type="checkbox"/> Included in Limits <input type="checkbox"/> In Addition to Limits																			
NAMED INSURED Wastequip, Inc/Toter, Inc. PO Box 5338 Statesville, NC 28687	<input type="checkbox"/> Deductible <input checked="" type="checkbox"/> Self-insured Retention (each which) of \$ <u>500,000</u> with an Aggregate of \$ <u>1,500,000</u> coverage. <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Per Aggregate																			
TYPE OF INSURANCE <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> COMPREHENSIVE GENERAL LIABILITY <input checked="" type="checkbox"/> OWNERS & CONTRACTORS PROTECTIVE		APPLICABILITY This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here <input type="checkbox"/> in which case only the following specific agreements and permits with the City are covered. CITY AGREEMENTS/PERMITS																		
<input type="checkbox"/> Claims Made <input type="checkbox"/> Retroactive Date <input checked="" type="checkbox"/> Occurrence		OTHER PROVISIONS																		
COVERAGES		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2"></th> <th colspan="2" style="text-align: center;">LIABILITY LIMITS IN THOUSANDS \$</th> </tr> <tr> <th style="text-align: center;">EACH OCCURRENCE</th> <th style="text-align: center;">AGGREGATE</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> GENERAL</td> <td style="text-align: center;">\$2,000,000</td> <td style="text-align: center;">\$4,000,000</td> </tr> <tr> <td><input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS</td> <td style="text-align: center;">\$2,000,000</td> <td style="text-align: center;">\$4,000,000</td> </tr> <tr> <td><input type="checkbox"/> PERSONAL & ADVERTISING INJURY</td> <td style="text-align: center;">\$2,000,000</td> <td style="text-align: center;">inc. in general aggregate</td> </tr> <tr> <td><input type="checkbox"/> FIRE DAMAGE</td> <td style="text-align: center;">\$150,000</td> <td style="text-align: center;">inc. in general aggregate</td> </tr> </tbody> </table>			LIABILITY LIMITS IN THOUSANDS \$		EACH OCCURRENCE	AGGREGATE	<input type="checkbox"/> GENERAL	\$2,000,000	\$4,000,000	<input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS	\$2,000,000	\$4,000,000	<input type="checkbox"/> PERSONAL & ADVERTISING INJURY	\$2,000,000	inc. in general aggregate	<input type="checkbox"/> FIRE DAMAGE	\$150,000	inc. in general aggregate
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<input type="checkbox"/> PERSONAL & ADVERTISING INJURY	\$2,000,000	inc. in general aggregate																		
<input type="checkbox"/> FIRE DAMAGE	\$150,000	inc. in general aggregate																		
<p>In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:</p> <p style="text-align: center;">As Additional Insureds</p> <p>1. INSURED. The City, its officers, agents, employees and volunteers are included: <input checked="" type="checkbox"/> with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.</p> <p>2. CONTRIBUTION NOT REQUIRED. As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers, or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it.</p> <p>3. SEVERABILITY OF INTEREST. This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.</p> <p>4. CANCELLATION NOTICE. With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.</p> <p>5. PROVISIONS REGARDING THE INSURED'S DUTIES. Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers.</p> <p>6. SCOPE OF COVERAGE. This policy, if primary, affords coverage at least as broad as: a. Insurance Services Office Commercial General Liability Coverage, "occurrence" form CG0001; or b. if excess, affords coverage which is at least as broad as the primary insurance form CG0001.</p> <p>Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached</p>																				
ENDORSEMENT HOLDER CITY OF OXNARD Attn: Risk Manager Reference No. <u>A7025</u> 300 W. Third Street, Suite 302 Oxnard, CA 93030		AUTHORIZED REPRESENTATIVE <input type="checkbox"/> Broker/Agent <input checked="" type="checkbox"/> Underwriter <input type="checkbox"/> _____ Justin Papineau (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement. Signature: <u><i>Justin Papineau</i></u> (original signature required) Telephone: () _____ Date Signed: <u>3/10/2008</u>																		