

## **Annual Organizational Meeting (Wednesday, July 12, 2023)**

*Generated by Meaghan A Rabideau on Monday, July 17, 2023*

### **Members present**

Stephen Southwick, Robert McDonough, Melissa Bresnahan, Kimberly Bulson, Alan Cardin, Allen Racine  
Members Absent: Mandie Bechard

Others Present: Robb Garrand (Superintendent of Schools), Jennifer Brown (Business Manager), Meaghan Rabideau (District Clerk), Jamie Maggy, Laura Birtz-Sisson, Lynn McCarthy

### **Meeting called to order at 6:04 PM**

## **1. OPENING OF MEETING**

### **Procedural: 1.1 Roll Call**

### **Procedural: 1.2 Pledge of Allegiance**

**Procedural: 1.3 ADMINISTRATION OF OATH to members of the Board of Education:** [NYS Constitution, Article XIII-I; Public Officers Law 10, 30]: All Board members present took and filed the Oath of Office with the District Clerk. Board members not present will file their Oath with the District Clerk within 30 days of taking office.

### **Action: 1.4 Approval of Agenda**

Recommend approval of agenda as presented  
Motion by Kimberly Bulson, second by Robert McDonough, **Motion Carries.**

## **2. ELECTION OF OFFICERS**

### **Action: 2.1 Election of President of the Board of Education**

Resolved, that the Board of Education recommends that Stephen Southwick be elected President of the Board of Education of this District for the 2023-24 school year.

Administered Oath of Faithful Performance in Office to President. Motion by Alan Cardin, second by Kimberly Bulson, **Motion Carries.**

### **Action: 2.2 Election of Vice President of the Board of Education**

Resolved, that the Board of Education recommends that Robert McDonough be elected Vice President of the Board of Education of this District for the 2023-24 school year.

Administered Oath of Faithful Performance in Office to Vice President. Motion by Alan Cardin, second by Kimberly Bulson, **Motion Carries.**

## **3. APPOINTMENT OF OFFICERS**

### **Action: 3.1 Appointment of Officers for 2023-2024 School Year**

a. Clerk of the Board (Ed. Law 2114, 2130, 2503, Comm.'s Reg. 170.2) **Meaghan Rabideau**

b. Deputy Clerk of the Board (Ed. Law 2114, 2130, 2503, Comm.'s Reg. 170.2) **Leanne Supernaw**

c. District Treasurer (Ed. Law 2114, 1230,2503; Comm.'s Reg. 170.2) **Shelly Brooks**

d. Deputy Treasurer (Ed. Law 172) **Meaghan Rabideau**

e. Tax Collector (Ed. Law 2101, 2114, 2130, 2506; Comm.'s Reg. 170.2; Town Law 37) **Julie Castine** at a rate of \$4,500/Year (2022-2023 \$4,500/Yr.)

f. (Internal) Claims Auditor (Ed. Law 1709-20a, 2526; Comm.'s Reg. 1702) **Leigh Cerone** at a rate of \$24.00/Hr. (2022-2023 \$22.00/Hr.)

g. Attendance Officer(s) (Ed. Law 3213) **Wade Bush, Thomas Brandell, Joshua Harrica, Heidi Sample & Jamie Maggy**

Motion by Robert McDonough, second by Alan Cardin, **Motion Carries.**

#### **4. OTHER APPOINTMENTS**

##### **Action: 4.1 Other Appointments for the 2023-2024 School Year**

- School Physician (Ed. Law 902, 1709-21; Comm.'s Reg., 136.2)  
**Hudson Headwaters Health Network - \$21,534** (2022-2023 - \$20,806)
- Alternate, School Physician  
**Industrial Med Testing** (fee based upon service rendered). (ex. office call fee schedule)
- School Attorney  
**Honeywell Law Firm PLLC** - \$2,500 per month flat fee, \$210/hour (2022-2023 \$210/hour) for attorneys and ancillary professional services.  
**Harris Beach PLLC** - \$215/hour (2022-2023 \$215/hour) for attorneys and ancillary professional services and \$110/hour (2022-2023 \$110/hour) for librarian, clerks and paralegals.

##### **Stafford, Owens, Piller, Murnane, Kelleher, Trombley – "On Call As Needed"**

- Extra Classroom Activities Fund Central Treasurer (Law 2503; Comm.'s Reg. 172.4) **Leanne Supernaw**
- Independent Auditor (Ed. Law 2116-a: Comm.'s Reg. 170)  
**Boulerice & Wood CPAS, P.C. \$16,200** (2022-2023 \$15,700)
- Records Access Officer (Public Officers Law 87 (b) (ii)) **Meaghan Rabideau**
- Records Management Officer (Comm.'s Reg. 185.2 (a) (1)) **Leanne Supernaw**
- District Appeals & Hearing Officer, Freedom of Information **Robb Garrand**
- Asbestos (LEA) Designee (AHERA, Public Law 99-519) **Matthew Arno**
- Purchasing Agent (Comm.'s Reg. 170.2) **Jennifer Brown**
- Deputy Purchasing Agent **Robb Garrand**
- Chief Financial Officer **Robb Garrand**

- Designated Educational Official to receive court records and coordinate student's participation in programs (SAVE Legislation, Uniform Violence Reporting and NCLB)  
**Robb Garrand**
- Authorized signature for Impact Aid, Title I, II, III, IV, V, IX, Section 611, Section 619, A.I.S. and all other grants  
**Robb Garrand**
- School Psychologist  
**Katelyn Stetz**  
**Michael Boyea**
- Committee on Special Education Chairperson who is qualified to provide, administer or supervise Special Education.  
**Daniel Marangiello**
- Subcommittee Chairperson of Committee on Special Education meetings and Section 504 Meetings.  
**Katelyn Stetz**  
**Michael Boyea**
- The Committee on Special Education/Committee on Pre-School Special Chairperson may identify a designee to act as Chairperson at selected meetings.  
**Daniel Marangiello**
- Impartial Hearing Officers  
According to approved list on file in District Office (Note: may conduct impartial hearings for CPSE or CSE)

Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 and NCCS Policy 5020.3 Compliance Officer  
**Daniel Marangiello**

The CSE will consist of the following people:

<i>Member Title</i>	<i>CSE</i>	<i>Subcommittee</i>	<i>CPSE</i>
<b>Parents</b>	√	√	√
<b>General Ed. Teacher</b> (All NCCS General Education Teachers)	<b>If child is <u>or may be in</u> general ed.</b>	<b>If child is <u>or may be in</u> general ed.</b>	<b>If child is <u>or may be in</u> general ed.</b>
<b>Special Ed. Teacher</b> (All NCCS Special Education Teachers )	√	√	√
<b>District Representative</b> (Chairperson for all committees, Special Education Director)	√	√	√
<b>Individual to Interpret Evaluations</b> (Chairperson, School Psychologist, Special Education Teachers & Related Service Providers)	√	√	√
<b>Student, if appropriate</b>			

<b>Others with Knowledge</b> (All school Administrators, Counselors. & Related Service Providers)	√	√	√
<b>School Psychologist</b> (Michael Boyea, Katelyn Stetz)	√	<b>For new Evaluation or change to more restrictive staff ratio</b>	<b>For transition to CSE</b>
<b>School Physician,</b> (if requested)	√		
<b>Rep. from Municipality</b>			<b>Invited</b>
<b>Rep. from Early Intervention</b>			<b>At request of parent for transition meeting</b>

- Extra-Classroom Activities Fund Auditor  
**Shelly Brooks**
- Advisor – Extra-classroom Activates Account  
**Robb Garrand** and the **District Clerk** is authorized to sign in his absence.
- Administrator of Federal Programs: **Heidi Sample**
- Homeless Liaison Coordinator: **Thomas Brandell**
- Trustee for Clinton, Essex, Warren & Washington Counties Board of Cooperative Education Services Consortium for Health Insurance: **Robb Garrand**
- Adult Education Coordinator: **Amber Beggs**
- Computer Programs: **Todd Stone, Network & Systems Technician**
- Data Warehouse Coordinator and District Privacy Officer: **Joshua Harrica**
- DASA Coordinator(s):  
**Thomas Brandell**  
**Joshua Harrica**  
**Wade Bush**  
**Heidi Sample**  
**Jamie Maggy**
- BEDS (Basic Educational Data System)  
**Thomas Brandell**  
**Joshua Harrica**  
**Wade Bush**  
**Heidi Sample**
- Insurance Consultant: **Tammy Bell-Martin - Northern Insuring Agency, Inc. - \$117,276** (2022-23 rate \$112,755)
- Dignity Act Coordinator:  
**HS – Heidi Pellerin**

**MS - Amber Beggs**  
**Mooers - Erin Fleury**  
**Rouses Point – Wanda O’Connell**

- Alcohol & Drug Testing Compliance Officer for Testing program for CDL Drivers (In compliance with Omnibus Transpiration Employee Testing Act of 1991): **Kim Letourneau, School Nurse/Connie Poupore, Alt.**
- Transportation Committee  
**Lorna Tetreault**  
**School Board Members** - K. Bulson, M. Bechard, A. Racine
- Athletic Hiring Committee  
**Athletic Director**  
**School Board Members** - A. Cardin, R. McDonough
- Designee – approving tax corrections up to \$2,500  
**School Board Members** - S. Southwick, A. Racine
- School Pride Committee  
**Robb Garrard**  
**School Board Members** - R. McDonough, M. Bresnahan
- New York State School Board Liaison Member  
**School Board Member** - S. Southwick
- Shared Decision Making Committee  
**Robb Garrard**  
**Board Members** - A. Cardin, R. McDonough, S. Southwick
- Health and Safety Committee  
**Wade Bush, Jamie Maggy**  
**Board Members** - M. Bresnahan, A. Cardin, K. Bulson
- Audit Committee  
**S. Southwick, A. Racine, R. McDonough**
- Special Education recommendation review committee  
**Board Members** - M. Bechard, K. Bulson
- Title IX Compliance Officers  
**Wade Bush**  
**Thomas Brandell**  
**Joshua Harrica**  
**Heidi Sample**  
**Wanda O’Connell**  
**Matt Wagar**  
**Erin Fluery**  
**Amber Beggs**  
**Jennifer Brown**
- Lead Evaluators  
**Jamie Maggy**  
**Heidi Sample**

**Wade Bush  
Thomas Brandell  
Joshua Harrica  
Daniel Marangiello  
Robb Garrard**

- Wellness Committee  
**Joshua Harrica**  
**Board Members - M. Bresnahan, M. Bechard**
- Medicaid Compliance Officer  
**Jennifer Brown**
- Chemical Hygiene Officer  
**Matthew Arno**
- Water Operator, Certified Class "C"  
**Matthew Arno**
- Capital Assets Preservation Program (CAPP)  
**Matthew Arno**
- Pool Operator(s), Certified  
**Matthew Arno**  
**Dale Menard**
- Chief Information Officer  
**Joshua Harrica**  
**Thomas Brandell, Alternate**
- Acting Superintendent  
**Thomas Brandell**

Motion by Alan Cardin, second by Robert McDonough, **Motion Carries.**

**Action: 4.2 Designation(s)**

Recommend approval of the following Designation(s):

a. Official Bank Depository – All Funds: **Champlain National Bank, NYCLASS and Green County Commercial Bank** are designated Official Depositories for funds of the Northeastern Clinton Central District for the 2023-2024 school year effective July 1, 2023.

b. Set Regular Meetings (Ed. Law 1708 (at least once in each quarter), 2504): First or second Wednesday of each month

July 12, 2023  
August 2, 2023  
September 13, 2023  
October 11, 2023  
November 1, 2023  
December 6, 2023  
January 10, 2024  
February 6, 2024  
March 6, 2024

April 10, 2024  
May 8, 2024  
June 3, 2024

c. Name Official Newspaper (Ed. Law 2004; General Municipal Law 103): Plattsburgh Press Republican

Motion by Kimberly Bulson, second by Allen Racine, **Motion Carries.**

**Action: 4.3 Authorization(s)**

Recommend approval of the following Authorization(s):

- a. Person to Certify Payrolls (Ed. Law 1720, 2523; Comm's Reg. 1702): **Robb Garrard** and the **Business Manager** in his absence
- b. Person to approve Conferences, Conventions, Workshops Attendance (General Municipal Law 77b) (usually the Superintendent of Schools): **Robb Garrard**
- c. To establish Petty Cash Fund (Ed. Law 1709-29; Comm.'s Reg. 1704): **\$100 and Leanne Supernaw will be responsible for the fund**
- d. Designation of Signatures on Check (Ed. Law 1720, 2523): **Shelly Brooks**; and that the Deputy District Treasurer is authorized to sign checks for payroll and accounts payable in her absence.
- e. Budget Transfers on Chief School Officer's approval (Comm's Reg. 170.2): **Up to \$50,000 without board approval**
- f. Superintendent to apply for Grants in Aid - State and Federal (Ed. Law 1711, 2508)
- g. BOE authorization for Superintendent to employ part-time and temporary help within budget allocations
- h. BOE authorization of all new Extra-classroom Activity Clubs
- i. BOE authorization of district memberships in NYSSBA and Rural Schools Association of New York State
- j. BOE authorization of **District Treasurer, Business Manager, and Superintendent** to use the District-owned credit cards

Motion by Alan Cardin, second by Allen Racine, **Motion Carries.**

**Action: 4.4 Official Undertakings (Bonds)**

Recommend approval of the following Official Undertakings (Bonds): \$1,000,000 coverage for the following people:

- a. District Treasurer (Ed. Law 2122, 2130, 2527; Comm.'s Reg. 170.02)
- b. Deputy Treasurer (Ed. Law 1720)
- c. District Tax Collector (Ed. Law 2124,2527; Comm.'s Reg. 170.02)
- d. Central Treasurer Extra-Classroom Activity Funds (Comm.'s Reg. 172.5)
- e. (Internal) Claims Auditor (Ed. Law, 2527; Comm.'s Reg. 170.2)
- f. Superintendent

Motion by Robert McDonough, second by Kimberly Bulson, **Motion Carries.**

**Action: 4.5 Other Item(s)**

Recommend approval of the following:

- a. Adoption of all Policies and Code of Ethics in effect during previous year (implied in Ed. Law 1709, 2503)

- b. Establish Mileage Reimbursement Rate: 65.5 cents per mile, Ed. Law 2118 (to be the IRS rate) (2022 - \$.585 per mile).
- c. Allow partial payments of real property taxes (Local Law 17 of 1993)
- d. Set Substitute and Temporary On-Call salary 2023-2024 rates

<b><i>CLASSIFICATION</i></b>	<b><i>AMOUNT</i></b>
Custodial Worker	\$15.20/hourly
Teacher Aide	\$15.20/hourly
Typist	\$15.20/hourly
School Bus Monitor	\$15.20/hourly
School Bus Driver	\$17.50/hourly
Sub Mechanic	\$18.00/hourly
School Nurse (RN)	\$25.00/hourly
School Nurse (LPN)	\$20.00/hourly
BOCES Bus Driver (Step 1)	\$90.54 ½ day
Substitute Teacher/Cert.	\$125/daily
Substitute Teacher/Non-Cert.	\$105/daily
Retired Substitute Teacher	\$135/daily
Long-Term Substitute Teacher	\$140/daily (20 consecutive days of service in same position)

- e. Continue contract with Chartwells for the 2023-2024 school year
  - f. Allow participation in BOCES and other governmental agencies cooperative bidding
  - g. Tax Collection by Champlain National Bank, Champlain branch (as outlined in description of tax collection duties provided by Champlain National Bank)
  - h. Continued participation in the National School Lunch Program for 2023-2024 school year
  - i. School Day for 2023-2024 for Students: 7:30 a.m. to 5:30 p.m.
  - j. Authorization to accept Federal monies and abide by regulations governing same
- Motion by Alan Cardin, second by Allen Racine, **Motion Carries.**

**5. PRESENTATIONS/REPORTS**

**Reports: 5.1 College For Every Student (CFES) - High School Administration**

**6. ACTION ITEMS**

**Procedural: 6.1 Public Participation at Meeting**

-Retired teacher and community member Lynn McCarthy shared concerns with the Board.

**Action, Minutes: 6.2 Approval of Minutes**

Recommend approval of minutes from the June 23, 2023 meeting.  
 Motion by Allen Racine, second by Kimberly Bulson, **Motion Carries.**

**Action: 6.3 Tenure Appointments**

Recommend approval of the following Tenure appointment(s) on the date indicated:

Name	Tenure Area	Certification	Years	Probationary Period	Board Meeting Date	Tenure Date
Michael Boyea	School Psychologist	School Psychologist	4	7/29/2019 - 7/29/2023	8/28/2019	7/29/2023
Curtis Buker	Science Teacher	Science	4	9/01/2019 - 09/01/2023	8/28/2019	9/1/2023

Motion by Kimberly Bulson, second by Alan Cardin, **Motion Carries.**



**Action: 6.4 Appointment(s) - Probationary**

Recommend approval of the following Probationary Appointment(s):

Name	Position	Effective Date	Salary	Tenure Area	Location
James Phillips	Health Teacher	9/1/2023 – 9/1/2026 (3-year probationary)	Step 4, Column 8 of the 2022-23 Teacher Salary Schedule \$59,939 (subject to change once negotiations finalized)	Health Teacher	MS/HS
Laura Birtz-Sisson	Special Education Teacher	9/1/2023 – 9/1/2027 (4-year probationary)	Step 4, Column 6 of the 2022-23 Teacher Salary Schedule \$58,639 (subject to change once negotiations finalized)	Special Education	MS/HS
Kelsey Reif	Teaching Assistant	9/1/2023 – 9/1/2027 (4-year probationary)	\$32,945 (subject to change once negotiations finalized)	Teaching Assistant	Moers & Rouses Point Elementary

Motion by Kimberly Bulson, second by Allen Racine, **Motion Carries.**

**Action: 6.5 Appointment(s) - Civil Service Probationary Appointment(s)**

Recommend approval of the following Civil Service Probationary appointment(s), in compliance with Article XIV, Subdivision 1 of the Civil Service Regulations, as follows:

Name	Civil Service Title	Probationary Period	2023-2024 Salary	Contract	Location
Melissa Deso (pending fingerprint clearance)	Teacher Aide/Student Aide	9/1/2023 – 9/1/2024 (52-weeks)	\$21,242/year Step 1	10-Month CSEA	HS

Motion by Robert McDonough, second by Alan Cardin, **Motion Carries.**

**Action: 6.6 Non-Instructional Substitute Appointment(s)**

Recommend approval of the following non-instructional substitute(s) on the date indicated:

Name	Type	Effective Date
Lauria Cayea	Non-Instructional	7/13/2023

Motion by Kimberly Bulson, second by Allen Racine, **Motion Carries.**

**Action: 6.7 Occasional Driver(s)**

Recommend approval of the following Occasional Driver(s) for the 2023-2024 school year: Michael Boyea

Motion by Alan Cardin, second by Robert McDonough, **Motion Carries.**

**Action: 6.8 Approval to Post**

Recommend approval to post for the following Vacancies:

Bus Driver(s)

Motion by Robert McDonough, second by Kimberly Bulson, **Motion Carries.**

**Action: 6.9 Appointment(s) - Stipend(s) - School Champion**

Recommend approval of the stipends paid by the Clinton County Health Department for the School Champion Stipend, as a result of duties above and beyond their regular contractual obligations for the 2023-2024 school year for the following:

Name	Type	Stipend Amount
Kristen Patnode	Physical Education Teacher	\$1,000
Connie Poupore	Registered Professional Nurse	\$1,000

Motion by Kimberly Bulson, second by Robert McDonough, **Motion Carries.**

**Action: 6.10 School Bus Driver Training**

Recommend approval of the following person(s) to be trained as a School Bus Driver: Mary Kopas

After obtaining her CDL license and completing all NYS DOT requirements, she will be placed on the substitute bus driver list. Motion by Alan Cardin, second by Allen Racine, **Motion Carries.**

**Action: 6.11 Creation of NCCS Newsletter Club**

Recommend approval of establishing a Newsletter Club under the direction of Matthew Wager, following established club-related protocol. Motion by Kimberly Bulson, second by Robert McDonough, **Motion Carries.**

**Action: 6.12 Extra Classroom Curricular Clubs**

Recommend approval of the following Extra Classroom Curricular Clubs for the 2023-2024 school year:

Band Club  
 Chorus Club  
 Community Club  
 Drama Club  
 Foosball Club  
 French Club (HS)  
 Harvard UN  
 Marketing Club  
 Middle School News  
 National Honor Society  
 NCCS Newsletter Club  
 North Country Model UN  
 Outdoor Club  
 Outdoor Education  
 Student Council  
 Yearbook

Motion by Alan Cardin, second by Allen Racine, **Motion Carries.**

**Action: 6.13 Appointment(s) - Stipend(s)**

Recommend approval of the following stipends for the 2023-2024 school year:

JR. PROM/11th GRADE CO-ADVISOR(s)	Kelly Misner	\$1,259.50	
JR. PROM/11th GRADE CO-ADVISOR(s)	Dana Berry	\$1,259.50	
MS NEWS	James Bracy	\$3,050	
6th GRADE OUTDOOR ED CO-ADV.	Sherry Michaud	\$1,525	
6th GRADE OUTDOOR ED CO-ADV.	Jeffrey Norton	\$1,525	
DRAMA CLUB ADVISOR	Jason Borrie	\$3,873	
DRAMA CLUB ASSISTANT	Jennifer McIntyre	\$2,259	
MODEL UN	Jason Borrie	\$3,873	
HARVARD UN	Jason Borrie	\$1,936	
9th GRADE ADVISOR	Nicole Snide	\$1,056	
10th GRADE ADVISOR	Nicole Snide	\$1,056	
12th GRADE ADVISOR	Nicholas Trombley	\$1,056	
COMMUNITY CLUB ADVISOR	Deborah Frederick	\$1,021	
6th GRADE CO-ADVISOR	Rebecca Whitney	\$227	
6th GRADE CO-ADVISOR	Laurette Garrand	\$227	
7th GRADE ADVISOR	Deborah Frederick	\$454	
8th GRADE CO-ADVISOR	Rebecca Whitney	\$227	
8th GRADE CO-ADVISOR	Laurette Garrand	\$227	
SPELLING BEE ADVISOR - MS	Amber Beggs	\$42.89/hour	(6 hrs. total)
SPELLING BEE ADVISOR - RP	Cortney Martin	\$42.89/hour	(6 hrs. total)
SPELLING BEE ADVISOR - MOOERS	Nicole Molinski	\$42.89/hour	(6 hrs. total)
K-KIDS ADVISOR - RP	Amber Goodhue	\$284	
K-KIDS ADVISOR - MOOERS	Jennifer McIntyre	\$284	

STUDENT COUNCIL	Nicholas Trombley	\$1,597
OUTDOOR CLUB ADVISOR	Robb Garrand	\$1,056
LUNCH DUTY SUPERVISOR	Steven Sullivan	\$3,323
LUNCH DUTY SUPERVISOR	Nicholas Trombley	\$3,323
LUNCH DUTY SUPERVISOR	David Collins	\$3,323
LUNCH DUTY SUPERVISOR	Spencer Graves	\$3,323
LUNCH DUTY SUPERVISOR	Deborah Frederick	\$3,323
LUNCH DUTY SUPERVISOR	Nicole Snide	\$3,323
LUNCH DUTY SUPERVISOR	Vacant	\$3,323
LUNCH DUTY SUPERVISOR	Vacant	\$3,323
NATIONAL HONOR SOCIETY	Kelly Misner	\$1,056
YEARBOOK CO-ADVISOR	Kelsey Lapoint	\$2,070
YEARBOOK CO-ADVISOR	Cournty Lapham	\$2,070
CHORUS DIRECTOR (SCHOOL PLAY)	Vacant	\$3,915
INFORMATION OFFICER/DISTRICT PRIVACY OI	Joshua Harrica	\$5000
SCHOOL TOOL ADMINISTRATOR	Thomas Brandell	\$3000

Stipend amounts subject to change once the NCCS Teachers' Association Agreement negotiated.  
 Motion by Kimberly Bulson, second by Alan Cardin, **Motion Carries.**

**Action: 6.14 Appointment(s) - Coaches**

Recommend approval of the following coaches for the 2023-2024 school year:

Sport	Name	Years coaching as of 2023-2024	2023-24 stipend
Boy's Varsity Soccer	Nick Trombley	9	\$5,741
Boy's JV Soccer	Justin Samlpe	9	\$4,019
Boy's Modified Soccer	Vacant		
Girl's Varsity Soccer	Tim Surprenant	12+	\$5,930
Girl's Varsity Soccer Assistant Non-Paid	Timothy Matott	N/A	N/A
Girl's JV Soccer	Kristen Patnode	2	\$3,657
Girl's JV Soccer Assistant Non-Paid	Michael Boyea	N/A	N/A

Girl's Modified Soccer	Rick Hunter	9	\$3,732
Boy's and Girl's XC	Robb Garrand	12	\$5,083
Modified XC	Adam Khater	5	\$3,094
Varsity Volleyball	Dana Berry	6	\$5,158
JV Volleyball	Katie Stetz	2	\$3,395
Modified Volleyball	Kaylyn Tierney	2	\$3,154
Boy's Varsity Basketball	Luke Connell	7	\$5,951
Boy's JV Basketball	Craig Botten	5	\$4,164
Boy's Modified Basketball	Mason Supernaw	3	\$3,638
Girl's Varsity Basketball	Robb Garrand	12+	\$6,354
Girl's JV Basketball	Adam Khater	9	\$4,305
Girl's Modified Basketball	Michael Boyea	4	\$3,867
Hockey	Scott Lafountain	10	\$6,358
Assistant Hockey	Justin Sample	10	\$4,768
Hockey Assistant Non- paid	Ricky Garrand	N/A	N/A
Hockey Assistant Non- paid	Todd Lafountain	N/A	N/A
Cheerleading	Marcey Ryan	9	\$5,741
Rifle	Peter Visconti	2	\$2,000

Flag Football	Kristen Patnode	2	\$1,400
Flag Football Assistant Non-Paid	Adam Khater	N/A	N/A
Boy's Track and Field Head	Luke Connell	9	\$5,333
Girl's Track and Field Head	Robb Garrand	12	\$5,508
Modified Track and Field	Evan Mousseau	6	\$3,353
Varsity Baseball	Jeff Norton	10	\$5,333
Varsity Baseball Assistant Non-paid	Vacant		
JV Baseball	Vacant		
Modified Baseball	Thomas Kimbler	3	\$3,154
Varsity Softball	Carrie McComb	12	\$5,508
JV Softball	Tyson Dumas	2	\$3,395
Modified Softball	Kaylyn Tierney	2	\$3,154
Golf Head	Matt Fredette	12+	\$3813
Golf Assistant	Mary Guay	8	\$2,768
Tennis Head	Harry McManus	12+	\$4,447
Tennis Assistant	Adam Khater	6	\$3,129

Stipend amounts subject to change once the NCCS Teachers' Association Agreement negotiated.  
Motion by Kimberly Bulson, second by Allen Racine, **Motion Carries.**

**Action: 6.15 St. Lawrence/Lewis BOCES Cooperative Purchasing Program**

Recommend approval of the following resolution:

Be It Resolved, that the Northeastern Clinton Central School District Board of Education agrees to participate in the St. Lawrence/Lewis BOCES Cooperative Purchasing Programs in accordance with the guidelines set forth in the "Cooperative Purchasing Agreement" for the 2023-2024 school year. Motion by Allen Racine, second by Kimberly Bulson, **Motion Carries.**

**Action: 6.16 Champlain Valley Family Center for Drug Treatment & Youth Services, Inc.**

Recommend authorizing Robb Garrand, Superintendent of Schools, to execute the Champlain Valley Family Center for Drug Treatment & Youth Services, Inc. contract for prevention services for the 2023-2024 school year. The cost for three (3) days of prevention services to the district is \$5,400.00 (\$3,000.00 2022-2023). Motion by Kimberly Bulson, second by Allen Racine, **Motion Carries.**

**Action: 6.17 Approval to Execute Agreement**

Recommend authorizing Robb Garrand, Superintendent of Schools, to execute the Adult Education Sponsorship Agreement with the CV-TEC Division of CVES for the 2023-2024 school year. Motion by Robert McDonough, second by Kimberly Bulson, **Motion Carries.**

**Action: 6.18 Approval to sign Memorandum of Agreement**

Recommend approval for the Superintendent, Robb Garrand, to sign the Memorandum of Agreement (MOA) between the Northeastern Clinton Central School District and the Northeastern Clinton Central School Teachers' Association regarding the Athletic Director position being split between two (2) bargaining unit members for the 2023-24 school year. The Athletic Director position shall be split between bargaining member(s) Timothy Surprenant for 65 percent FTE and Kristen Patnode for 35 percent FTE. Motion by Allen Racine, second by Kimberly Bulson, **Motion Carries.**

**Action: 6.19 Bond Resolution and Authorization of Issuance of Serial Bonds**

Recommend approval of the following Bond Resolution and authorizing the issuance of up to \$ Serial Bonds for the District to Finance the Purchase of three (3) 66-passenger buses at an estimated cost of \$156,168.98 each and one (1) 66-passenger wheelchair bus at an estimated cost of \$171,083.98:

**WHEREAS**, the qualified voters of the Northeastern Clinton Central School District, Clinton County, New York (the "District") on May 16, 2023 approved a proposition authorizing the Board of Education (the "Board") of the District to purchase three (3) 66-passenger buses at an estimated cost of \$156,168.98 each and one (1) 66-passenger wheelchair bus at an estimated cost of \$171,083.98,

**WHEREAS**, the purchase of such school buses and the financing thereof through the issuance of the District's obligations constitutes a "Type II" action within the meaning of the State Environmental Quality Review Act and the regulations thereunder (collectively, "SEQRA"), and no further actions or proceedings must be taken by the Board under SEQRA prior to authorizing the issuance of obligations or expenditure of funds for such purchase; and

**WHEREAS**, the District now wishes to proceed with the purchase of three (3) 66-passenger buses at an estimated cost of \$156,168.98 each and one (1) 66-passenger wheelchair bus at an estimated cost of \$171,083.98, to issue its serial bonds and/or bond anticipation notes to finance such expenditures.

**NOW, THEREFORE, THE BOARD OF EDUCATION OF THE DISTRICT HEREBY RESOLVES** (by the favorable vote of not less than three-fifths of all its members), AS FOLLOWS:

SECTION 1. The District is hereby authorized to purchase three (3) 66-passenger buses at an estimated cost of \$156,168.98 each and one (1) 66-passenger wheelchair bus at an estimated cost of \$171,083.98, including cameras, a maximum sum not to exceed **\$645,610.00**, and principal amount of serial bonds pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (the "Law") to finance the cost of said object or purpose, or bond anticipation notes in anticipation of such bonds.

SECTION 2. It is hereby determined that the maximum estimated cost of the aforesaid specific object or purpose is **\$645,610.00**, said amount is hereby appropriated therefor and the plan for the financing thereof shall consist of the issuance of up to **\$645,610.00** in serial bonds of the District authorized to be issued pursuant to this resolution, or bond anticipation notes issued in anticipation of such serial bonds.

SECTION 3. It is hereby determined that the period of probable usefulness of the aforesaid specific object or purpose is five (5) years, pursuant to subdivision a.29. of Section 11.00 the Law.

SECTION 4. The temporary use of available funds of the District, not immediately required for the purpose or purposes for which the same were borrowed, raised or otherwise created, is hereby authorized pursuant to Section 165.10 of the Law, for the capital purposes described in Section 1 of this Resolution. This resolution shall constitute a declaration of official intent to reimburse the expenditures authorized by Section 1 hereof with the proceeds of the bonds and bond anticipation notes authorized herein, as required by United States Treasury Regulation Section 1.150-2.

SECTION 5. Each of the serial bonds authorized by this resolution and any bond anticipation notes issued in anticipation of said bonds shall contain the recital of validity prescribed by Section 52.00 of the Law and said serial bonds and any bond anticipation notes issued in anticipation of said bonds shall be general obligations of the District, payable as to both principal and interest by a general tax upon all the real property within the District without legal or constitutional limitation as to rate or amount. The faith and credit of the District are hereby irrevocably pledged to the punctual payment of the principal and interest on said serial bonds and bond anticipation notes and provisions shall be made annually in the budget of the District by appropriation for (a) the amortization and redemption of the bonds and bond anticipation notes to mature in such year and (b) the payment of interest to be due and payable in such year.

SECTION 6. Subject to the provisions of this resolution and of the Law, pursuant to the provisions of Section 30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals of said obligations and of Section 21.00, Section 50.00, Section 54.90, Sections 56.00 through 60.00 and Sections 62.00 and 63.00 of the Law, the powers and duties of Board relative to authorizing serial bonds and bond anticipation notes and prescribing terms, form and contents as to the sale and issuance of bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, are hereby delegated to the President of the Board, as the chief fiscal officer of the District.

SECTION 7. The President of the Board is hereby further authorized to take such actions and execute such documents as may be necessary to ensure the continued status of the interest on the bonds authorized by this resolution and any bond anticipation notes issued in anticipation thereof, as excludable from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code") and to designate the bonds authorized by this resolution and any bond anticipation notes issued in anticipation thereof, if applicable, as "qualified tax-exempt bonds" in accordance with Section 265(b)(3)(B)(i) of the Code.

SECTION 8. The District is hereby authorized and directed to cause a copy of this resolution to be published in full in the Plattsburgh Press Republican, which is designated as the official newspaper of the District for such purpose, together with a notice of the District in substantially the form provided in Section 81.00 of the Law.

SECTION 9. The validity of the bonds authorized by this resolution and of any bond anticipation notes issued in anticipation of said bonds may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the District is not authorized to expend money; or
- (b) the provisions of law which should be complied with at the date of the publication of such resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of such publication; or
- (c) such obligations are authorized in violation of the provisions of the constitution.

SECTION 10. This resolution shall take effect immediately.

Motion by Robert McDonough, second by Kimberly Bulson.

Aye: Stephen Southwick, Robert McDonough, Kimberly Bulson, Alan Cardin, Allen Racine, Melissa Bresnahan, **Motion**

**Carries.** Not Present at Vote: Mandie Bechard

#### **Action: 6.20 Energy Performance Contract (EPC) SEQRA Resolution**

Recommend that the Board adopt the following resolution:

WHEREAS, the Board of Education of the Northeastern Clinton Central School District, Clinton County, State of New York (the "School District"), desires to embark upon a capital improvement project consisting of the upgrade, replacement, purchase and installation of energy management equipment and management and control systems and other energy efficiency improvements as further described in the scope of work provisions of said EPC therein, including original equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith, for a total maximum estimated cost of not to exceed \$2,187,251 (the "Project"); and

WHEREAS, said Project is subject to classification under the State Environmental Quality Review Act ("SEQRA"); and

WHEREAS, improvements such as "replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site" and "routine activities of educational institutions" are classified as Type II Actions under the current Department of Environmental Conservation SEQRA Regulations (Sections 6 NYCRR 6.17.5(c)(2) and 6 NYCRR 617.5(c)(8), respectively); and

WHEREAS, the SEQRA Regulations declare Type II Actions to be actions that have no significant impact on the environment and require no further review under SEQRA; and

WHEREAS, the Board of Education, as the only involved agency, has examined all information related to the Project and has determined that the Project is classified as a Type II Action pursuant to Sections 6.17.5(c)(2) and 617.5(c)(8) of the SEQRA Regulations;

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE NORTHEASTERN CLINTON CENTRAL SCHOOL DISTRICT, CLINTON COUNTY, NEW YORK, HEREBY RESOLVES AS FOLLOWS:

Section 1. The Board of Education hereby declares itself lead agency in connection with the requirements of the SEQRA.

Section 2. The Board of Education hereby declares that the Project is a Type II Action, which requires no further review under SEQRA; and

Section 3. The Board of Education hereby shall forward an official copy of this resolution to the New York State Education Department together with a copy of the correspondence from the New York State Office of Parks, Recreation and Historic Preservation in connection with its request for approval of the Project from the New York State Education Department.

Motion by Allen Racine, second by Alan Cardin. Aye: Stephen Southwick, Robert McDonough, Kimberly Bulson, Alan Cardin, Allen Racine, Melissa Bresnahan, **Motion Carries.**

Not Present at Vote: Mandie Bechard

**Action: 6.21 Energy Performance Contract (EPC) Authorizing Execution & Delivery of Lease Purchase Agreement Resolution**

Recommend the Board adopt the following resolution authorizing the execution and delivery of a lease purchase agreement in the principal amount of \$2,187,251 for the purpose of financing capital improvements in connection with an Energy Performance Contract:

WHEREAS, all conditions precedent to the financing of the capital project hereinafter described, including compliance with the provisions of the State Environmental Quality Review Act, have been performed; and

WHEREAS, the Northeastern Clinton Central School District, Clinton County, New York (the "School District") has heretofore entered into an energy performance contract (the "EPC") with John W. Danforth Company, for the upgrade, replacement, purchase and installation of energy management equipment and management and control systems and other energy efficiency improvements as further described in the scope of work provisions of said EPC therein, including original equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith for a total maximum estimated cost of not to exceed \$2,187,251 (the "Project"); and

WHEREAS, to finance the cost of the Project, the School District, through its municipal advisor, Fiscal Advisors & Marketing, Inc. (the "Municipal Advisor"), issued a Request for Proposals (the "RFP") to qualified parties interested in acting as lessor in a 15-year energy performance contract lease purchase agreement as authorized and defined under Article 9 of the Energy Law and Section 109-b of the General Municipal Law with lease payments to be made on an annual basis; and

WHEREAS, in response to the RFP, the District received two (2) proposals from qualified lenders and it was determined, based on the recommendation of the of the Municipal Advisor, that the proposal received from Bank of America National Association or its affiliate or designee (the "Lessor") (i) was most advantageous to the District, (ii) meets the overall needs for the financing of the Project, and (iii) was the lowest interest costs of all the proposals; and

WHEREAS, the School District has received the requisite approvals of the State Department of Education for the Project; and

WHEREAS, the Board now intends to (i) approve the financing of the Project at a maximum estimated cost of \$2,187,251, (ii) approve the bid of the Lessor, (iii) authorize the execution of a lease purchase agreement with the Lessor, and (iv) authorize the taking of any such actions necessary in connection with the foregoing;



NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The School District is hereby authorized to finance the cost of the Project through a lease-purchase agreement (the "LPA") in the principal amount not to exceed \$2,187,251.

Section 2. The Board of Education hereby approves the bid of Bank of America National Association or its affiliate or designee, as Lessor, to serve as the provider of financing in the amount of \$2,187,251 (the "Principal Amount") at an interest rate of 4.7250 per centum per annum payable annually for the aforescribed Project.

Section 3. The Board of Education hereby determines that it has critically evaluated the financing alternatives available to it pursuant to the requirements of Title 2 Part 39 of the New York Codes, Rules and Regulations ("NYCRR") Section 39.2 and that entering into the LPA and financing the Project thereby is in the best interests of the School District as the LPA results in a lower overall cost thereof to the School District.

Section 4. In accordance with paragraph (f) of subdivision 2 of Section 109-b of the General Municipal Law, the School District's obligation under the LPA shall be subject to annual appropriation by the Board of Education of the School District as set forth in the LPA and the School District's obligation under the LPA shall not constitute a general obligation of the School District nor constitute indebtedness under the Constitution or laws of the State of New York.

Section 5. The President of the Board of Education, as chief fiscal officer of the School District, is hereby authorized, on behalf of the School District, to execute an LPA with the Lessor in order to finance the Project described in the preambles hereof, a copy of which is attached hereto as Exhibit A and hereby made a part hereof. The President of the Board is hereby further authorized to execute and deliver such additional documents, certificates, undertakings, agreements or other instruments as the President, with advice of counsel, may deem necessary or appropriate in connection therewith and do and cause to be done any and all acts and things necessary or appropriate for carrying out the transaction contemplated hereby.

Section 6. The President is hereby further authorized, with the advice of counsel, to execute and deliver such agreements with a bank or trust company located and authorized to do business in New York State to serve as escrow agent for the proceeds of the LPA, including amendments thereto, as may be necessary, in order to effectuate the financing of the Project.

Section 7. This resolution shall take effect immediately.

EXHIBIT A  
FORM OF LEASE PURCHASE AGREEMENT  
(attached)

Motion by Kimberly Bulson, second by Alan Cardin.

Aye: Stephen Southwick, Robert McDonough, Kimberly Bulson, Alan Cardin, Allen Racine, Melissa Bresnahan, **Motion Carries**. Not Present at Vote: Mandie Bechard

**Action: 6.22 Disposal of Buses**

Bus bids were accepted through Auctions, International from June 22, 2023 until July 10, 2023. Recommend awarding buses to the highest bidders as follows:

BUS #	YEAR	VIN #	AWARDED TO:	DOLLAR AMOUNT
TRUCK 58	2008	3D6WH46A58G167160	CompleteMech	\$13,100
71	2014	4DRBUAAN2EB018214	Mighty	\$ 5,700
76	2016	4DRBUC8N5GB272228	67buyerguy	\$18,200
79	2016	4DRBUC8N5GB272231	67buyerguy	\$18,200
				<b>\$55,200</b>
			<b>Service Fee</b>	<b>(\$ 400)</b>
			<b>Total:</b>	<b>\$54,800</b>

ALL BUSES WERE SOLD "AS IS"

Motion by Alan Cardin, second by Allen Racine, **Motion Carries**.

**7. DISCUSSION**

**Discussion: 7.1 Next Board of Education Meeting(s): August 2, 2023 Regular Meeting & August 30, 2023 Special Meeting**

**Discussion: 7.2 Cell Phone Policy**

**Discussion: 7.3 Master Schedule**

**Discussion: 7.4 CV-TEC Enrollment**

**Discussion: 7.5 CV-TEC/Private School**

**Discussion: 7.6 Capital Project - Phase 3**

## **8. INFORMATION**

### **Information: 8.1 Graduating Class of 2023**

Andrew Leonard Hennebury - attending SUNY New Paltz; majoring in International Relations

Brianna Faith Aubrey - attending SUNY Potsdam; majoring in Biology

Sean Anthony Baker - entering the workforce

Kazziath Barber -attending the RAMP Program through Coryer Staffing

Olivia Grace Barcomb - attending Clinton Community College; majoring in Pre-Nursing

Marcus Roger Bedard - attending Plattsburgh State; majoring in Business Admin. and Mgmt

Duccio Franklin Binazzi - serving in the National Guard and attending SUNY Potsdam; major undeclared

Isabella Rose Theresa Bogdasarov - entering the workforce

Jordeyn Hailey Bourgeois - attending University of New England; majoring in Medical Biology

Paige LeeAnn Bourgeois - attending SUNY Potsdam, Crane School of Music; majoring in Music Education

Michaela Noelle Bresnahan - attending Fairfield University; majoring in Nursing

Alexandra Louise Cadieux Mailhot - entering the workforce

Zaedyn Avery Carpenter - attending Clarkson University; majoring in Digital Arts and Science

Brandon Zachary Bertrand - attending SUNY Brockport; majoring in Kinesiology

Clair Allie Cayea - entering the workforce

Phoebe Aurora Chester - attending Hunter College; majoring in Linguistics

Cayden Joseph Cross - attending SUNY Potsdam; major undeclared

Andrea Rose Dapo - entering the workforce

Xander Allan Darrah - attending SUNY Potsdam; majoring in Criminal Justice

Aubrey Marquita Deyo - attending the CV-Tec Adult Program; majoring in Nursing

Austen Jeffrey Dubuque - attending the University of Albany in the fall of 2024

Mickayla Isabelle Duell - attending SUNY Plattsburgh; EOP program

Brynn Marie Dupee - attending Clinton Community College; majoring Business Management

Caely Rae Dupras - entering the workforce

Ryan Joseph Duquette - attending SUNY Canton; majoring in Graphic Design

Luke Arlie Dutton - attending Plattsburgh State; majoring in Finance

Calvin Lon Ebersol - attending SUNY Canton; majoring in Automotive Technology

Maxwell Benjamin Favro - attending North Country Community College; majoring in Business

Elliot Ferdinandi - attending the RAMP Program through Coryer Staffing

Kasia Lynn Fletcher - attending Plattsburgh State; majoring in Communication sciences and disorders

Spencer Fountain - attending the RAMP Program through Coryer Staffing

Benjamin Lawrence Fredette - attending SUNY Potsdam; majoring in Art

Thor David Frostick - attending Rochester Institute of Technology; majoring in Game Design and Development

Logan Michael Garrand - entering the workforce

Stephen Delbert Garrow - entering the workforce

Minerva Miyo Gelineault - attending SUNY Fredonia; majoring in Illustration and Animation

Cheyenne Marie Giddings- attending SUNY Plattsburgh; majoring in Criminal Justice

Emma Nicole Goodrow - attending CV-Tec Adult Program; majoring in Nursing

Haylee Faye Gooley - attending Plattsburgh State; majoring in Ecology  
Elizabeth Michele Guay - entering the workforce  
Lucas Scott Andrew Hemingway - attending Southeast Lineman Training Center  
Curtis Mathew Damon Herne - attending Rochester Institute of Technology; majoring in Web and Mobile Computing Design  
Cierra Marie Ellean Hilliker - entering the workforce  
Chelsea Ryanna Hoy-Bechard - attending the College of Saint Rose; majoring in Criminal Justice  
Nathan Robert Jacobson - entering the workforce  
Carys Elizabeth James - attending St. Bonaventure University; majoring in Occupational Therapy  
Peter Lee Judkins - attending SUNY Brockport; majoring in Exercise Science  
Shyann Ernestine Marie Labarge - attending Plattsburgh State University; majoring in Elementary Education  
Kayla Therese Laque - entering the workforce  
Peyton Isaac Laque - attending Pre Voc Program through SUNY Plattsburgh  
Taylor Ann LaValley - entering the workforce  
Rachel Grace Letourneau -attending St. Lawrence University; majoring in Biochemistry  
Evan Colby Manor - entering the workforce  
Biniza Ishtar Manzano Ortiz - taking a gap year  
Shey Lee Destiny McDonald - entering the workforce  
Shane William Merchant - entering the workforce  
April May Meseck - attending Champlain College; majoring in Software Engineering  
Peyton Scott Palmer - attending SUNY Potsdam; majoring in Psychology  
Gavin Antonio Parker - entering the workforce  
Cameron James-Paul Patrie - entering the workforce  
Isabelle Elise Prenoveau - attending SUNY Potsdam; majoring in Adolescent Education; Physics and Chemistry  
Owen James Roberts - attending the SUNY Plattsburgh; majoring in Communications  
Brianna Theresa Spoor - attending CV-Tec adult program; majoring in Nursing  
Rylea Elizabeth Staley - attending Clinton Community College; majoring in Liberal Arts  
Gabrielle Rose Stephens - entering the workforce  
Gabriel Gordon Surprenant - attending Clarkson University; majoring in Civil Engineering  
Ana Danea Tipaldos - attending CVPH School of Radiology; majoring in Radiology  
Alexis Mae Tomah - attending SUNY New Paltz; major undeclared  
Paige Elizabeth Trudo - attending SUNY Delhi; majoring in Veterinary Science  
Alexa Marie Turner - attending Florida Southern College; majoring in Marine Biology  
Kayleigh Marie Tuttle - attending Rochester Institute of Technology; majoring in Graphic Design  
Brianna Maria VanCour - entering the workforce  
Logan Zachary Wood - entering the workforce  
Oksana Helena Wynn - attending SUNY Cobleskill; majoring in Therapeutic Horsemanship and Animal Science  
Steven Zeng - attending University of Buffalo; majoring in Aerospace Engineering

## **9. EXECUTIVE SESSION**

### **Action: 9.1 Executive Session**

Motion to go into Executive Session at 7:35 p.m. by Kimberly Bulson, second by Allen Racine, **Motion Carries.**

Motion to come out of Executive Session at 9:12 p.m. by Robert McDonough, second by Kimberly Bulson, **Motion Carries.**

**10. SALARY & BENEFIT AGREEMENT(S) RESOLUTION**

**Action: 10.1 Salary & Benefit Agreements Resolution**

Motion to approve the Salary and Benefit Agreement(s) between the Northeastern Clinton Central School District and the following: Northeastern Clinton Central School Confidential Unit, Business Manager, Director of Facilities I, Transportation Supervisor, and Network & Systems Technician, effective July 1, 2023 through June 30, 2028. Motion by Kimberly Bulson, second by Robert McDonough, (All Board members present voted yes with the exception of Alan Cardin who abstained from voting), **Motion Carries.**

**11. ADJOURNMENT**

**Action: 11.1 Adjourn**

Motion to adjourn at 9:14 p.m. by Kimberly Bulson, second by Allen Racine, **Motion Carries.**

**Respectfully Submitted,**



**Meaghan Rabideau  
District Clerk**

**EQUIPMENT LEASE/PURCHASE AGREEMENT  
(ESCROW ACCOUNT)**

This Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of \_\_\_\_\_, and entered into between Bank of America, National Association, a national banking association (“*Lessor*”), and \_\_\_\_\_, a body corporate and politic existing under the laws of the State of New York (“*Lessee*”).

**WITNESSETH:**

WHEREAS, Lessee desires to lease and acquire from Lessor certain Equipment (as such term is defined herein), subject to the terms and conditions hereof;

WHEREAS, Lessee is authorized under the constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

**ARTICLE I**

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

“*Acquisition Amount*” means \$ \_\_\_\_\_. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with proceeds from Lessee if any, to acquire the Equipment.

“*Acquisition Period*” means the period ending five (5) business days prior to \_\_\_\_\_.

“*Agreement*” means this Equipment Lease/Purchase Agreement, including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

“*Commencement Date*” means the date when Lessee’s obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Escrow Agent.

“*Contract Rate*” means the rate identified as such in the Payment Schedule.

“*Equipment*” means the property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V. Whenever reference is made in this Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“*Equipment Costs*” means the total cost of the Equipment, including related costs such as freight, installation and taxes, capitalizable costs, and costs of issuance incurred in connection with the acquisition and/or financing of the Equipment.

“*Equipment Schedule*” means the equipment schedule attached hereto as Exhibit A and made a part hereof.

“*Escrow Account*” means the account established and held by the Escrow Agent pursuant to the Escrow Agreement, if any.

“*Escrow Agreement*” means the Escrow Fund and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which an Escrow Account is established and administered.

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

“*Event of Default*” means an Event of Default described in Section 12.01.

“*Lease Term*” means the Original Term and all Renewal Terms, with a final Renewal Term ending on \_\_\_\_\_.

“*Lessee*” means the entity referred to as Lessee in the first paragraph of this Agreement.

“*Lessor*” means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to this Agreement, including the Equipment, the Rental Payments and other amounts due hereunder, pursuant to Section 11.01, or the Escrow Account, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

“*Material Adverse Change*” means any change in Lessee’s creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Lessee, or (ii) Lessee’s ability to perform its obligations under this Agreement.

“*Original Term*” means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at such Commencement Date.

“*Payment Schedule*” means the payment schedule attached hereto as Exhibit B and made a part hereof.

“*Renewal Terms*” means the renewal terms of this Agreement, each having a duration of one year and a term coextensive with Lessee’s fiscal year.

“*Rental Payments*” means the basic rental payments payable by Lessee hereunder pursuant to Section 4.01, consisting of a principal component and an interest component.

“*State*” means the State of \_\_\_\_\_.

“*Taxable Rate*” means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“*Termination Value*” means the amount provided in the Payment Schedule.

“*Vendor*” means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessor arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Equipment.

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment.

## ARTICLE II

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

(a) Lessee is [the State] [a political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the constitution and laws of the State], with full power and authority to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement and the Escrow Agreement by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Escrow Agreement.

(c) 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 date hereof.

(d) 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.

(e) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment.

(f) During the Lease Term, the Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 210 days of its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or the following fiscal year. The financial statements described in subsection (g) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has an immediate need for the Equipment and expects to make immediate use of the Equipment. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. Lessee shall not permit the Federal government to guarantee any Rental Payments. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations under this Agreement or the Escrow Agreement. Lessee will, at its expense, maintain its legal existence in good standing and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Equipment and the Escrow Account and Lessor's rights and benefits under this Agreement and the Escrow Agreement.

(k) Lessee is the fee owner of the real estate where the Equipment is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate.



(l) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(m) The stated full Lease Term of this Agreement does not exceed the “period of probable usefulness” prescribed by Section 11.00 of the Local Finance Law of the State of New York for the Equipment financed under this Agreement.

(n) The authorization for the issuance of obligations to finance the Equipment to be leased, acquired and financed under this Agreement is not required by law to be subject to (i) a permissive or mandatory referendum, (ii) a supermajority vote of Lessee’s governing board or (iii) a referendum only if the obligations have a maturity not less than a specified minimum period.

(o) The amount of unpaid periodic payments (excluding interest) proposed to be made under this Agreement and all other installment purchase contracts entered into by Lessee pursuant to Section 109-b of the General Municipal Law of the State of New York together with the amount of outstanding indebtedness do not exceed 115% of the limit prescribed by Section 104.00 of the Local Finance Law of the State of New York and the total amount of such payments (excluding interest) under this Agreement and such other installment purchase contracts do not exceed 40% of such limit.

(p) In connection with the Lessee’s compliance with any continuing disclosure undertakings (each, a “*Continuing Disclosure Agreement*”) entered into by the Lessee pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the “*Rule*”), the Lessee may be required to file with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system, or its successor (“*EMMA*”), notice of its incurrence of its obligations under this Agreement, the Escrow Agreement and any related documents and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with this Agreement, the Escrow Agreement and related documents, in each case including posting a full copy thereof or a description of the material terms thereof (each such posting, an “*EMMA Posting*”). Except to the extent required by applicable law, including the Rule, the Lessee shall not file or submit or permit the filing or submission of any EMMA Posting that includes the following unredacted confidential information about the Lessor or its affiliates and the Escrow Agent in any portion of such EMMA Posting: address and account information of the Lessor or its affiliates and the Escrow Agent; e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lessor or its affiliates and the Escrow Agent; and the form of Disbursement Request that is attached to the Escrow Agreement.

The Lessee acknowledges and agrees that the Lessor and its affiliates are not responsible for the Lessee’s or any other entity’s (including, but not limited to, any broker-dealer’s) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule.

### ARTICLE III

*Section 3.01. Lease of Equipment.* Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire the Equipment. Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term as set forth in the Payment Schedule. 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 exercised its option to continue this Agreement for the next Renewal Term unless Lessee shall have terminated this Agreement pursuant to Section 3.03 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. Continuation of Lease Term.* Lessee intends, subject to Section 3.03, to continue the Lease Term through the Original Term and all Renewal Terms. Lessee affirms that sufficient funds are available for the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law, to have such portion of the budget or appropriation request approved and to exhaust all available reviews and appeals in the event such portion of the budget or appropriation request is not approved.

*Section 3.03. Nonappropriation.* Lessee is obligated only to pay such Rental Payments as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees to cease use of the Equipment and peaceably remove and deliver at Lessee's expense the Equipment to Lessor at the location(s) to be specified by Lessor. For purposes of Section 109-b(2)(f) of the General Municipal Law of the State of New York, Lessor and Lessee hereby agree that this Agreement shall be deemed executory only to the extent of monies appropriated and available for the purpose of this Agreement, and no liability on account thereof shall be incurred by Lessee beyond the amount of such monies. This Agreement is not a general obligation of Lessee. Neither the full faith and credit nor the taxing power of Lessee are pledged to the payment of any amount due or to become due under this Agreement. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of this Agreement.

*Section 3.04. Conditions to Lessor's Performance.*

(a) As a prerequisite to the performance by Lessor of any of its obligations under this Agreement, Lessee shall deliver to Lessor the following:

(i) An Escrow Agreement in the form set forth in Exhibit I hereto, satisfactory to Lessor and executed by Lessee and the Escrow Agent;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as Exhibit C-1, authorizing the execution and delivery of this Agreement and the Escrow Agreement and performance by Lessee of its obligations under this Agreement and the Escrow Agreement;

(iii) A Certificate executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C-2, completed to the satisfaction of Lessor;

(iv) An opinion of counsel to Lessee in substantially the form attached hereto as Exhibit D and otherwise satisfactory to Lessor;

(v) Evidence of insurance as required by Section 7.02 hereof;

(vi) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02;

(vii) A waiver or waivers of interest in the Equipment, satisfactory to Lessor, from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located;

(viii) If Lessee has designated this Agreement as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, a certificate substantially in the form attached hereto as Exhibit G executed by an authorized official of Lessee;

(ix) A copy of a fully completed and executed Form 8038-G;

(x) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, provided however, that no "Disbursement Request" pursuant to the Escrow Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 have been delivered to Lessor; and

(xi) Such other items reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Escrow Agreement shall be subject to: (i) no Material Adverse Change since the date of this Agreement, and (ii) no Event of Default having occurred and continuing.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Escrow Agent.

*Section 3.05 Evidence of Filing Form 8038-G.* As soon as it is available, Lessee shall provide to Lessor evidence that it, or its paid preparer, has filed the Form 8038-G for this Agreement with the Internal Revenue Service by delivering to Lessor proof of mailing such Form 8038-G. Notwithstanding anything to the contrary in this Agreement, it shall not be an Event of Default hereunder if Lessee does not provide to Lessor evidence that it (or its paid preparer) filed the Form 8038-G for this Agreement with the Internal Revenue Service.

#### ARTICLE IV

*Section 4.01. Rental Payments.* Subject to Section 3.03, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the dates and in such amounts as provided in the Payment Schedule. Interest on the Acquisition Amount shall begin to accrue as of the Commencement Date. If any Rental Payment or other amount payable hereunder is not paid within 10 days of its due date, Lessee shall pay an administrative late charge of 5% of the amount not timely paid or the maximum amount permitted by law, whichever is less.

*Section 4.02. Interest and Principal Components.* A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal as more fully detailed on the Payment Schedule.

*Section 4.03. Rental Payments to Constitute a Current Expense of Lessee.* This contract shall be deemed executory only to the extent of monies appropriated and available for the purpose of the contract, and no liability on account thereof shall be incurred by the political subdivision beyond the amount of such monies. The installment purchase contract is not a general obligation of Lessee. Neither the full faith and credit nor the taxing power of Lessee are pledged to the payment of any amount due or to become due under such installment purchase contract. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the contract.

*Section 4.04. Rental Payments to be Unconditional.* Except as provided in Section 3.03, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement 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, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, or failure of any Vendor to deliver any Equipment or otherwise perform any of its obligations.

*Section 4.05. Tax Covenants.*

(a) Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes.

(b) In the event that Lessee does not spend sufficient moneys in the Escrow Account within six (6) months after the date the deposit is made pursuant to Section 3.04(c), Lessee will, if required by Section 148(f) of the Code to pay rebate: (i) establish a Rebate Account and deposit the Rebate Amount (as defined in Section 1.148-3(b) of the Federal Income Tax Regulations) not less frequently than once per year after the Commencement Date; and (ii) rebate to the United States, not less frequently than once every five (5) years after the Commencement Date, an amount equal to at least 90% of the Rebate Amount and within 60 days after payment of all Rental Payments or the Termination Value as provided in Section 10.01(a) hereof, 100% of the Rebate Amount, as required by the Code and any regulations promulgated thereunder. Lessee shall determine the Rebate Amount, if any, at least every year and upon payment of all Rental Payments or the Termination Value and shall maintain such determination, together with any supporting documentation required to calculate the Rebate Amount, until six (6) years after the date of the final payment of the Rental Payments or the Termination Value.

*Section 4.06. Event of Taxability.* Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

For purposes of this Section, “*Event of Taxability*” means a determination that the interest component is includible for federal income tax purposes in the gross income of the owner thereof due to Lessee’s action or failure to take any action.

*Section 4.07. Mandatory Prepayment.* Any funds not applied to Equipment Costs and remaining in the Escrow Account on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate (in the form attached hereto as Exhibit E), shall be applied by Lessor on any Rental Payment date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in the inverse order of Rental Payment dates.

## ARTICLE V

### *Section 5.01. Delivery, Installation and Acceptance of Equipment.*

(a) Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. Lessee shall conduct such inspection and testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor an "Acceptance Certificate" in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor copies of original invoices (and proof of payment of such invoices) and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee.

*Section 5.02. Quiet Enjoyment of Equipment.* So long as Lessee is not in default hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

*Section 5.03. Location; Inspection.* Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

*Section 5.04. Use and Maintenance of the Equipment.* Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body, including, without limitation, all anti-money laundering laws and regulations; *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 (including the reversionary interest) of Lessor in and to the Equipment or its interest or rights hereunder.

Lessee agrees that it (a) will maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer; and (b) replace or rebuild any component of the Equipment that becomes permanently unfit for normal use or inoperable during the Lease Term (herein, the "*Inoperable Component*") in order to keep the Equipment as a whole in good repair and working order during the Lease Term. Lessee shall promptly notify Lessor in writing when any component of the Equipment is reasonably expected within forty-five (45) days to become an Inoperable Component. Lessee shall promptly replace or rebuild the Inoperable Component with a similar component of comparable or improved make

and model that has at least the equivalent value and utility of the Inoperable Component, a remaining useful life of no less than the remaining Lease Term and such replacement or rebuilt component shall be in good operating condition. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for herein.

Lessee shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

## ARTICLE VI

*Section 6.01. Title to the Equipment.* During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment from and against all claims, liens and legal processes of its creditors, and keep all Equipment free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 12.02. Upon purchase of the Equipment by Lessee pursuant to Section 10.01, Lessor's security interest or other interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security interest in the Equipment.

*Section 6.02. Security Interest.* As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Equipment, (b) moneys and investments held from time to time in the Escrow Account and (c) any and all proceeds of any of the foregoing. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Equipment, the Escrow Account and the proceeds thereof, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the Uniform Commercial Code of the State.

*Section 6.03. Personal Property, No Encumbrances.* Lessee agrees that the Equipment is deemed to be and will remain personal property, and 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 real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; provided, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

## ARTICLE VII

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

*Section 7.02. Insurance.* Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and 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 greater of (i) the then applicable Termination Value of the Equipment or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$5,000,000 per occurrence for bodily injury and property damage coverage (such liability insurance coverage may be in a combination of primary general liability and/or excess liability umbrella coverage), and in all events under clauses (a) and (b) issued in form and amount satisfactory to Lessor and by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of "A-" or better; and (c) worker's compensation coverage as required by the laws of the State. Notwithstanding the foregoing, Lessee may self-insure against the risks described in clauses (a) and/or (b) through a government pooling arrangement, self-funded loss reserves, risk retention program or other self-insurance program, in each case with Lessor's prior consent (which Lessor may grant, withhold or deny in its sole discretion) and *provided* that Lessee has delivered to Lessor such information as Lessor may request with respect to the adequacy of such self-insurance to cover the risks proposed to be self-insured and otherwise in form and substance acceptable to Lessor. In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section 7.02, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as *Exhibit F*. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in



any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least thirty (30) days in advance of such cancellation or modification.

*Section 7.03. Risk of Loss.* Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) 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 to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of 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.

*Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a payment and performance bond (“Surety Bond”) executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of “A-” or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee’s obligations hereunder.

*Section 7.05. Advances.* In the event Lessee shall fail to keep the Equipment in good repair and working order, Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the due date until paid at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less.

## ARTICLE VIII

*Section 8.01. Damage, Destruction and Condemnation.* If, prior to the termination of the Lease Term, (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 shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to purchase the Equipment in accordance with Section 10.01(b).

If Lessee elects to replace any item of the Equipment (the “*Replaced Equipment*”) pursuant to this Section, the replacement equipment (the “*Replacement Equipment*”) shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor’s security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute “Equipment” for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event, or be required to exercise its option to purchase the damaged equipment in accordance with Section 10.01(b).

For purposes of this Article, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys’ fees, incurred in the collection thereof.

*Section 8.02. 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) pay or cause to be paid to Lessor the amount of the then applicable Termination Value for the Equipment, and, upon such payment, the Lease Term shall terminate and Lessor's security interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing such 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, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Equipment, or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee's acquisition of the Equipment shall be on an "as is" basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

*Section 9.02 Vendor's Agreements; Warranties.* Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of 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 under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendor of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Equipment.

## ARTICLE X

*Section 10.01. Purchase Option.* Lessee shall have the option to purchase all, but not less than all, of the Equipment, at the following times and upon the following terms:

(a) From and after the date specified (if any) in the Payment Schedule (the "*Purchase Option Commencement Date*"), on the Rental Payment dates specified in the Payment Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the Rental Payments then due and all other amounts then owing hereunder plus the then applicable Termination Value, which may include a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day specified in Lessee's notice to Lessor of its exercise of the purchase option (which shall be the earlier of the next Rental Payment date or 60 days after the casualty event) upon payment in full to Lessor of the Rental Payment then due plus the then applicable Termination Value (or, in the event such purchase occurs on a date other than a Rental Payment date, the sum of (i) the Termination Value relating to the Rental Payment immediately prior to the date of such purchase plus (ii) accrued interest on the Outstanding Balance relating to the Rental Payment immediately prior to the date of such purchase, plus all other amounts then owing hereunder); or

(c) Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder, and the payment of \$1.00 to Lessor.

After payment of the applicable Termination Value and all other amounts owing hereunder, Lessor's security interests in and to such Equipment will be terminated and Lessee will own the Equipment free and clear of Lessor's security interest in the Equipment.

## ARTICLE XI

### *Section 11.01. Assignment by Lessor.*

(a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Escrow Agreement, its security interest in the Equipment and Escrow Account, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 11.01 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust; *provided* such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933; *provided further*, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective

until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of Lessor's security interest in and to the Escrow Account, or all rights in, to and under the Escrow Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of Exhibit H attached hereto within five (5) business days after its receipt of such request.

***Section 11.02. Assignment and Subleasing by Lessee. None of Lessee's right, title, and interest in, to and under this Agreement or any portion of the Equipment or the Escrow Agreement or the Escrow Account may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.***

## ARTICLE XII

*Section 12.01. Events of Default Defined.* Any of the following events shall constitute an "Event of Default" under this Agreement:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within 10 days of the date when due as specified herein or (ii) maintain insurance as required herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, 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* that, 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 default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$100,000.00;

(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, moratorium 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 for 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 payable by Lessee 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 the Lease Term, Lessor may enter the premises where the Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder or the Equipment that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or the Equipment;

(c) Lessor may terminate the Escrow Agreement and apply any proceeds in the Escrow Account to the Rental Payments due hereunder; and

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or the Escrow Agreement or as a secured party in any or all of the Equipment or the Escrow Account.

*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 hereunder 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 or 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 under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and 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. Amendments, Changes and Modifications.* This Agreement may only be amended by Lessor and Lessee in writing.

*Section 13.05. 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 13.06. Applicable Law Venue; Waiver of Jury Trial.* This Agreement shall be governed by and construed in accordance with the laws of the State. The parties hereto consent and submit to the jurisdiction of the State and venue in any state or Federal court of such State for the purposes of any suit, action or other proceeding arising in connection with this Agreement, and each party expressly waives any objections that it may have to the venue of such courts. The parties hereto expressly waive any right to trial by jury in any action brought on or with respect to this Agreement.

*Section 13.07. 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 13.08 Electronic Signatures.* This Agreement, the Escrow Agreement and any other documents or instruments executed by either party in connection herewith and therewith (collectively the “Related Documents”), may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe’s Portable Document Format (“PDF”). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of the Related Documents and the related signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

*[Remainder of Page Intentionally Left Blank]*

*[Signature Page Follows]*



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 first above written.

LESSOR:  
Bank of America, National Association  
11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 541-3057

LESSEE:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

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

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

(Seal)

Attest:

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

Counterpart No. \_\_\_\_\_ of \_\_\_\_\_ manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

### List of Exhibits

- Exhibit A -- Equipment Schedule
- Exhibit B -- Payment Schedule
- Exhibit C-1 -- Form of Authorizing Resolution
- Exhibit C-2 -- Form of Incumbency and Authorization Certificate
- Exhibit D -- Form of Opinion of Counsel Form
- Exhibit E -- Form of Acceptance Certificate
- Exhibit F -- Form of Self-Insurance Certificate
- Exhibit G -- Form of Bank Qualification Certificate
- Exhibit H -- Form of Notice and Acknowledgement of Assignment
- Exhibit I -- Form of Escrow and Account Control Agreement

**EXHIBIT A**

**EQUIPMENT SCHEDULE**

Location of Equipment:

Equipment Description (Scope of Work):

**EXHIBIT B**

**PAYMENT SCHEDULE**

Rental Payment Date	Rental Payment Amount	Interest Portion	Principal Portion	Outstanding Balance	Termination Value  (including prepayment premium, if applicable)

*Contract Rate.* The Contract Rate is \_\_\_\_\_% per annum.

*Purchase Option Commencement Date.* For purposes of Section 10.01 of the Agreement, the Purchase Option Commencement Date is \_\_\_\_\_.

LESSOR:  
Bank of America, National Association

LESSEE:  
[\_\_\_\_\_]

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

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

**EXHIBIT C-1**

**FORM OF AUTHORIZING RESOLUTION**

A RESOLUTION OF THE GOVERNING BODY OF [\_\_\_\_], AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, [\_\_\_\_] (the “*Lessee*”), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of \_\_\_\_\_, is authorized by the laws of the State of \_\_\_\_\_ to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment with a cost not to exceed \$ \_\_\_\_\_ constituting personal property necessary for the Lessee to perform essential governmental functions (the “*Equipment*”); and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (the “*Agreement*”) with Bank of America, National Association (or one of its affiliates)(the “*Lessor*”), the form of which has been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the documentation relate to the financing of the Equipment for the purchase, acquisition and leasing of the equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the governing body of Lessee as follows:

*Section 1. Approval of Documents.* The form, terms and provisions of the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the \_\_\_\_\_ of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the \_\_\_\_\_ of the Lessee is hereby authorized and directed to execute, and the \_\_\_\_\_ of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and any related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the

respective parties thereto, and the \_\_\_\_\_ of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

*Section 2. Other Actions Authorized.* The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

*Section 3. No General Liability.* Nothing contained in this Resolution, the Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

*Section 4. Appointment of Authorized Lessee Representatives.* The \_\_\_\_\_ and \_\_\_\_\_ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement.

*Section 5. Severability.* If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

*Section 6. Repealer.* All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

*Section 7. Effective Date.* This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this \_\_\_\_\_ day of \_\_\_\_\_.

[\_\_\_\_\_],

as lessee

[SEAL]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Printed: Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C-2**

**FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE**

The undersigned, a duly elected or appointed and acting \_\_\_\_\_  
[Secretary] [City Clerk] [County Clerk] of \_\_\_\_\_ (“Lessee”)  
certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the “*Officials*”) in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease/Purchase Agreement dated as of \_\_\_\_\_ by and between Lessee and Bank of America, National Association (“*Lessor*”), the Escrow and Account Control Agreement dated as of \_\_\_\_\_ among Lessor, Lessee and \_\_\_\_\_, as Escrow Agent, and all documents related thereto and delivered in connection therewith (collectively, the “*Agreements*”), and the Agreements each are the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

Name of Official	Title	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)



**EXHIBIT D**

**FORM OF OPINION OF COUNSEL TO LESSEE**  
(to be typed on letterhead of counsel)

[Closing Date]

Bank of America, National Association  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_,  
between Bank of America, National Association, as Lessor, and  
\_\_\_\_\_, as Lessee

Ladies and Gentlemen:

As legal counsel to \_\_\_\_\_ ("*Lessee*"), I have examined (a) an executed counterpart of a certain Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, and Exhibits thereto by and between Bank of America, National Association ("*Lessor*") and Lessee (the "*Agreement*"), which, among other things, provides for the lease of certain property (the "*Equipment*") and a certain Escrow and Account Control Agreement among Lessor, Lessee, and \_\_\_\_\_ as Escrow Agent, dated \_\_\_\_\_ (the "*Escrow Agreement*"), (b) an executed counterpart of the ordinances or resolutions of Lessee which with respect to the transaction contemplated by the Agreement, the Escrow Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Escrow Agreement and the documents relating thereto are referred to collectively as the "Transaction Documents."

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 the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power][is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code") and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code].

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

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

4. The authorization, approval, execution and delivery of the Transaction Documents 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 or federal laws.

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

6. The portion of rental payments designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor's gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of \_\_\_\_\_ personal income taxes; and such interest is not a specific item of tax preference or other collateral for purposes of the federal individual or corporate alternative minimum taxes.

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

Sincerely,

## EXHIBIT E

### FORM OF FINAL ACCEPTANCE CERTIFICATE

Bank of America, National Association  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_,  
between Bank of America, National Association, as Lessor, and  
\_\_\_\_\_, as Lessee

Ladies and Gentlemen:

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 has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee and title thereto has transferred to Lessee and any security interest of Vendor therein has been released.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment 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. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.
5. 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.
6. No Material Adverse Change has occurred since the date of the execution and delivery of the Agreement.

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

LESSEE: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Seal)

**EXHIBIT F**

**FORM OF SELF INSURANCE CERTIFICATE**

Bank of America, National Association  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_,  
(the "Agreement") between Bank of America, National Association, as  
Lessor, and \_\_\_\_\_, as Lessee

In connection with the above-referenced Agreement, \_\_\_\_\_  
(the "Lessee"), the Lessee warrants and represents to Bank of America, National Association the  
following information. The terms capitalized herein but not defined herein shall have the  
meanings assigned to them in the Agreement.

1. The Lessee is self-insured for damage or destruction to the Equipment. The dollar  
amount limit for property damage to the Equipment under such self-insurance program is  
\$\_\_\_\_\_. [The Lessee maintains an umbrella insurance policy for claims in excess  
of Lessee's self-insurance limits for property damage to the Equipment which policy has a dollar  
limit for property damage to the Equipment under such policy of \$\_\_\_\_\_.]

2. The Lessee is self-insured for liability for injury or death of any person or damage  
or loss of property arising out of or relating to the condition or operation of the Equipment. The  
dollar limit for such liability claims under the Lessee's self-insurance program is  
\$\_\_\_\_\_. [The Lessee maintains an umbrella insurance policy for claims in excess  
of Lessee's self-insurance limits for liability which policy has a dollar limit for liabilities for  
injury and death to persons as well as damage or loss of property arising out of or relating to the  
condition or operation of the Equipment in the amount of \$\_\_\_\_\_.

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund  
[are/are not] subject to annual appropriation. The total amount maintained in the self-insurance  
fund to cover Lessee's self-insurance liabilities is \$\_\_\_\_\_. [Amounts paid from  
the Lessee's self-insurance fund are subject to a dollar per claim of \$\_\_\_\_\_.]

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to  
pay claims for which it has self-insured from the following sources:  
\_\_\_\_\_. Amounts payable for claims from the such sources are  
limited as follows: \_\_\_\_\_

4. Attached hereto are copies of certificates of insurance with respect to policies  
maintained by Lessee.

LESSEE:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT G**

**FORM OF BANK QUALIFICATION CERTIFICATE**

The undersigned, a duly authorized official of \_\_\_\_\_ (the “Lessee”) certifies in connection with the Equipment Lease/Purchase Agreement dated as of \_\_\_\_\_ (the “Agreement”) between Bank of America, National Association and Lessee as follows:

1. The obligations evidenced by the Agreement are not “private activity bonds” as defined in Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”);

2. The Lessee hereby designates the principal components of the Rental Payments payable under the Agreement as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code;

3. The reasonably anticipated amount of tax-exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the Lessee (and all entities treated as one issuer with the Lessee, and all subordinate entities whose obligations are treated as issued by the Lessee) during the current calendar year will not exceed \$10,000,000; and

4. Not more than \$10,000,000 of obligations issued by the Lessee during the current calendar year has been designated for purposes of Section 265(b)(3) of the Code.

DATE: \_\_\_\_\_

LESSEE:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT H**

**FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT**

**DATED** \_\_\_\_\_

BANK OF AMERICA, NATIONAL ASSOCIATION (“*Assignor*”) hereby gives notice that it has assigned and sold to \_\_\_\_\_ (“*Assignee*”) all of Assignor’s right, title and interest in, to and under the Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of \_\_\_\_\_, between Assignor and \_\_\_\_\_ (“*Lessee*”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor’s right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Escrow and Account Control Agreement dated \_\_\_\_\_ (the “*Escrow Agreement*”) by and among Lessee, Assignor and \_\_\_\_\_, as Escrow Agent, together with the Escrow Account related thereto (collectively, the Assigned Property”).

1. Pursuant to the authority of Resolution \_\_\_\_\_ adopted on \_\_\_\_\_, Lessee hereby [consents to and] acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all remedies thereunder; and (ii) except as provided in Section 3.03 of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this “*Acknowledgement*”), the following information about the Agreement is true, accurate and complete:

Number of Rental Payments Remaining	–	_____
Amount of Each Rental Payment	–	\$ _____
Total Amount of Rents Remaining	–	\$ _____
Frequency of Rental Payments	–	_____
Next Rental Payment Due	–	_____
Funds Remaining in Escrow Account	–	\$ _____



4. The Agreement remains in full force and effect, has not been amended and no nonappropriation or Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

5. Any inquiries of Lessee related to the Agreement and any requests for disbursements from the Escrow Account, if applicable, and all Rental Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

LESSEE: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNOR: BANK OF AMERICA, NATIONAL ASSOCIATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_