

Introduced 2/6/17  
 Public Hearing 2/21/17  
 Council Action 3/16/17  
 Executive Action 3/8/17  
 Effective Date 3/8/17

**County Council of Howard County, Maryland**

2017 Legislative Session

Legislative Day No. 2

**Bill No. 11-2017**

Introduced by: The Chairperson at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a Multi-Year Tax-Exempt Lease/Purchase Agreement between Howard County and SunTrust Equipment Finance & Leasing Corp. for financing the acquisition of seven new buses to be used as part of the Regional Transit Agency's fixed-route fleet; authorizing the Executive to make changes to the Agreement, under certain conditions; authorizing the County Executive to execute the Agreement; and generally relating to the Agreement.

Introduced and read first time February 6, 2017. Ordered posted and hearing scheduled.  
 By order Jessica Feldmark  
 Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on February 21, 2017.  
 By order Jessica Feldmark  
 Jessica Feldmark, Administrator

This Bill was read the third time on March 16, 2017 and Passed     , Passed with amendments ✓, Failed     .  
 By order Jessica Feldmark  
 Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 7<sup>th</sup> day of March, 2017 at 3 a.m. PM.  
 By order Jessica Feldmark  
 Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive March 8, 2017  
Allan H. Kittleman  
 Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1           **WHEREAS**, the Regional Transportation Agency of Central Maryland (RTA) fixed-route  
2 fleet includes 42 buses and 20 of the buses are at or above their useful life under Federal Transit  
3 Administration standards; and  
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5           **WHEREAS**, Howard County (the “County”) manages the contract under which the RTA  
6 delivers transit services and wishes to begin replacing the outdated buses; and  
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8           **WHEREAS**, the Operating Budget for Fiscal Year 2017 includes \$300,000 ~~for the first~~  
9 ~~year’s payment of a 10-year lease-to-purchase program~~ for the acquisition of seven new buses;  
10 and  
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12           **WHEREAS**, the County would like to purchase seven E-Z Rider II buses from ElDorado  
13 National California, Inc (“ElDorado”), pursuant to an agreement substantially in the form attached  
14 as Exhibit A; and  
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16           **WHEREAS**, ElDorado holds a contract with the Houston-Galveston Area Council (“H-  
17 GAC”) to provide buses for purchase by governmental agencies, and  
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19           **WHEREAS**, the County is a member of the Baltimore Metropolitan Council which is a  
20 member of the H-GAC thereby allowing the County to purchase buses through the H-GAC; and  
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22           **WHEREAS**, the County seeks to finance the lease-to-purchase of the buses for a term of  
23 10 years beginning upon the execution of a Tax-Exempt Lease/Purchase Agreement (the  
24 “Agreement”), substantially in the form of Exhibit B attached to this Act; and  
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26           **WHEREAS**, the total cost of the buses is \$2,540,059 plus financing costs, to be paid over  
27 the term of the Agreement; and  
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29           **WHEREAS**, SunTrust Equipment Finance & Leasing Corp., a Virginia Corporation, will  
30 finance the buses pursuant to the Agreement; and



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**WHEREAS**, the Agreement requires the payment by the County of funds from an appropriation in a later fiscal year and therefore requires County Council approval as a multi-year agreement pursuant to Section 612 of the Howard County Charter.

**NOW, THEREFORE,**

*Section 1. Be It Enacted by the County Council of Howard County, Maryland that in accordance with Section 612 of the Howard County Charter, it approves the Tax-Exempt Lease/Purchase Agreement, substantially in the form of Exhibit B attached to this Act, between Howard County and SunTrust Equipment Finance & Leasing Corp., for the lease-to-purchase of seven buses for use by the Regional Transit Agency.*

*Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland that the County Executive is hereby authorized to execute the Agreement in the name of and on behalf of the County.*

*Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland that the County Executive, prior to execution and delivery of the Agreement, may make such changes or modifications to the Agreement as he deems appropriate in order to accomplish the purpose of the transactions authorized by this Act, provided that such changes or modifications shall be within the scope of the transactions authorized by this Act; and the execution of the Agreement by the County Executive shall be conclusive evidence of the approval by the County Executive of all changes or modifications to the Agreement, and the Agreement shall thereupon become binding upon the County in accordance with its terms.*

*Section 4. And Be It Further Enacted by the County Council of Howard County, Maryland that this Act shall be effective immediately upon its enactment.*



ELDORADO NATIONAL CALIFORNIA, INC  
9670 GALENA STREET, RIVERSIDE, CA 92509

**E-Z RIDER II**

PROPOSAL - HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS  
HGACBuy - Invitation/Contract BT01-17 for Buses-Shuttle, Transit, Trams & Other Specialty Buses

CONFIDENTIAL

OPTION DESCRIPTION	COMMENTS
MODEL	
EZ - RIDER II MAX 32 FRT & MID DOOR BODY BRT FRONT END - 3 PIECE WINDSHIELD EXTENDED REAR PLATFORM	168" WHEELBASE
EXTENDED WARRANTY	
CUMMINS ISB 2017 5 YR/300,000 MILES ALLISON B300R 5 YR/UNLIMITED MILES THERMO-KING HVAC SYSTEM 3/YEARS UNLIMITED MILAGE WARRANTY	
MECHANICAL	
AIR COMPRESSOR - ENGINE MOUNTED ELECTRONIC THROTTLE ENGINE BLOCK HEATER ENGINE DIESEL CUMMINS ISB-17 280HP-660 TORQUE REAR ENGINE "RUN" BOX ENGINE BELT GUARD ABS BRAKE SYSTEM AIR BRAKES AIR DRYER SHOP AIR CONNECTION FRONT & REAR YELLOW PAINTED LIFT PADS FRONT AND REAR TRANSMISSION ALLISON B300R 5-SP W/RTDR TRANSYND TRANSMISSION FLUID EXHAUST & MUFFLER WRAP SILICONE COOLING HOSES - ALL EMP ELECTRIC FAN DRIVE GEN VI - 4 FAN DESIGN STAINLESS STEEL FUEL TANK AUTOMATIC TRACTION CONTROL DIAGNOSTIC DATA PORT IN REAR ENGINE COMPARTMENT BRUSHLESS BOOSTER PUMP KNEELING FRONT SUSPENSION SYSTEM SUSPENSION AIR 2 BAGS PER AXLE OIL LUBRICANT FRONT HUBS STEERING COLUMN TILT & TELESCOPIC WHEEL ALUMINUM CONVERSION RADIAL TIRES RADIAL TIRES - 275/70R 22.5 BUMPER TRANSPEC ENERGY ABSORBING FRONT BUMPER TRANSPEC ENERGY ABSORBING REAR FRONT LICENSE PLATE MOUNTING PROVISIONS MUD FLAP FRONT (1) PAIR MUD FLAP REAR (1) PAIR CENTER MUD FLAP SECTION TOW EYES ASSEMBLY FRONT TOW HOOKS ASSEMBLY REAR	SIX WHEELS 275/70R 22.5



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OPTION DESCRIPTION	COMMENTS
ELECTRICAL	
24-VOLT ELECTRICAL SYSTEM ALTERNATOR NIEHOFF C803D 550 AMP 24-VOLT DUAL 8D BATTERIES ON STAINLESS STEEL SLIDE TRAY CIRCUIT BREAKER MANUAL RESET LED INTERIOR LIGHTING (PRETORIA) HIGH IDLE ASSEMBLY WIRE COLOR CODED & NUMBERED I/O CONTROLS MULTIPLEX SYSTEM G2A ANDERSON JUMP START CONNECTORS IN REAR ENGINE COMP. ALARM BACK UP WARNING CUMMINS ENG. PROTECTION W/Low COOLANT PROBE 12 VOLT POWERPLUG IN DRIVERS AREA (USB) AUDIBLE INDICATORS FOR TURN SIGNALS AND HAZARDS DEST. SIGN SYS. TWIN VISION LED FRT & SIDE DEST. SIGN SYS. TWIN VISION LED REAR SIGN DRIVER DRINK HOLDER DAY/NIGHT RUN SWITCH W/PUSH BUTTON START METER HOUR LED FAREBOX LIGHT FLOOR MOUNTED DIRECTIONAL SIGNALS L.E.D. - EXTERIOR LIGHTS - 7 INCH L.E.D. - EXTERIOR STEPWELL LIGHT L.E.D. LICENSE PLATE LIGHT 12VOLT LIGHT ARMORED CLEARANCE REAR HIGH MOUNT COLLISION AVOIDANCE LIGHT - 7 INCH LED TURN SIGNALS SIDE X2 DAYTIME RUNNING LIGHTS LED LOW BEAM HEADLIGHTS LED DRIVERS LAMP LED DOOR HEADER LIGHTS - AT FRONT AND REAR DOORS PA SYSTEM INTERNAL GOOSENECK MIC W/4 SPEAKERS RADIO 2 - WAY ANTENNA CONDUIT PREWIRE RADIO 2 - WAY PREWIRE ALL MODELS - PLASTIC CEILING SCREW PLATES SPEAKER (1) EXTERNAL SPEAKERS ADDITIONAL (2) ALL MODELS 8 CAMERA PRE-WIRE - PULL CORD AND CONDUIT LOW HEIGHT ELECTRONICS STORAGE CABINET ON ROADSIDE W/W	X4

BODY

REAR CAP W/UPPER COMPARTMENT DOOR W/GRILL BIKE RACK - SPORTWORKS STAINLESS STEEL COMPOSITE LOWER SIDEWALL PANELS (REMOVABLE) FLOOR COVERING ALTRO FLOOR PLYWOOD ACQ GRADE UNDERCOATED AND SEALED BODY ZIEBART UNDERCOATING - INSIDE ALL ROLL CAGE TUBES DRIVER BARRIER TOP & BOTTOM SECTIONS STANCHION DRIVER CEILING GRABRAILS ASSY STANCHIONS VERTICAL 1-1/4 SS (4) STANCHIONS & HANDRAILS POWDER COATED YELLOW VENT ROOF EMERGENCY EXIT 4/WAY ADJ (TRANSPEC) PASSENGER WINDOWS 7/32" LAMINATED UPPER TIP-IN (TRANSOM)	TWO BIKE
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CONFIDENTIAL

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OPTION DESCRIPTION

COMMENTS

AUTOMOTION ROLLER BLIND - DRIVER FRT & SIDE  
WINDSHIELD WIPER KIT (INTERMITTENT)  
MIRROR 12" CONVEX REAR STEPWELL  
MIRROR MOTORIZED AND HEATED  
MIRROR REAR VIEW INTERIOR  
TURN SIGNAL INDICATORS IN MIRROR  
DOOR OPERATOR AIR  
DOOR VAPOR SLIDE-GLIDE:  
REMOTE TOGGLE SWITCH - DOOR ENTRY  
SENSITIVE DOOR EDGES REAR DOOR  
VAPOR 5 POSITION DOOR CONTROL  
FRONT DOOR AIR DUMP VALVE FOR DRIVER  
DECALS - CUSTOM  
PAINT/DECALS - CUSTOM BASED ON CUSTOMER DESIGN - CONTRA VISION  
DECALS OVER THE WINDOWS  
DELUXE PLATINUM INTERIOR  
DRIVER COAT HOOK & STRAP  
DRIVER LOCKABLE STORAGE COMPARTMENT

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HEATING, VENTILATION, AIR CONDITIONING

A/C SYSTEM THERMO KING ROOF MOUNT ATHENIA (R134A)  
A/C SYSTEM - R134A STANDARD  
AIR COND/HEATER/DEF FRONT ASSEMBLY  
BOOSTER BLOWER MOTOR IN STREETSIDE A/C DUCT (BRUSHLESS)  
BRASS GATE SHUTOFF VALVES FOR FLOOR HEATERS  
HEATER HOSE INSULATION ARMAFLEX  
THERMO KING CONNVECTIVE BASE BOARD HEAT

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SAFETY & ANCILLARY EQUIPMENT

FAN DRIVER (2 SPEED)  
FIRST AID KIT (16)/FIRE EXT/TRI - REFLECTORS  
FARADAY CHIME FOR STOP REQUEST SYSTEM  
FAREBOX GUARD & GRAB RAIL 1 - 1/4 OD TBG SS  
FAREBOX WIRING ONLY  
PASSENGER SIGNAL SYSTEM PULL CORD W/DASH LIGHT  
SIGN ASSEMBLY "STOP REQUESTED"  
ADA PACKAGE - LIFT-U RAMP LU18  
BELT STORAGE BOX  
STANDEE LINE YELLOW 3" X 38"  
TIE-DOWN SYSTEM Q-STRAINT QRT 8100-A1 DELUXE - 4-ONE BARRIERS X2  
W/REMOTE RELEASE REAR J-HOOKS AND FRONT FLOOR POCKETS

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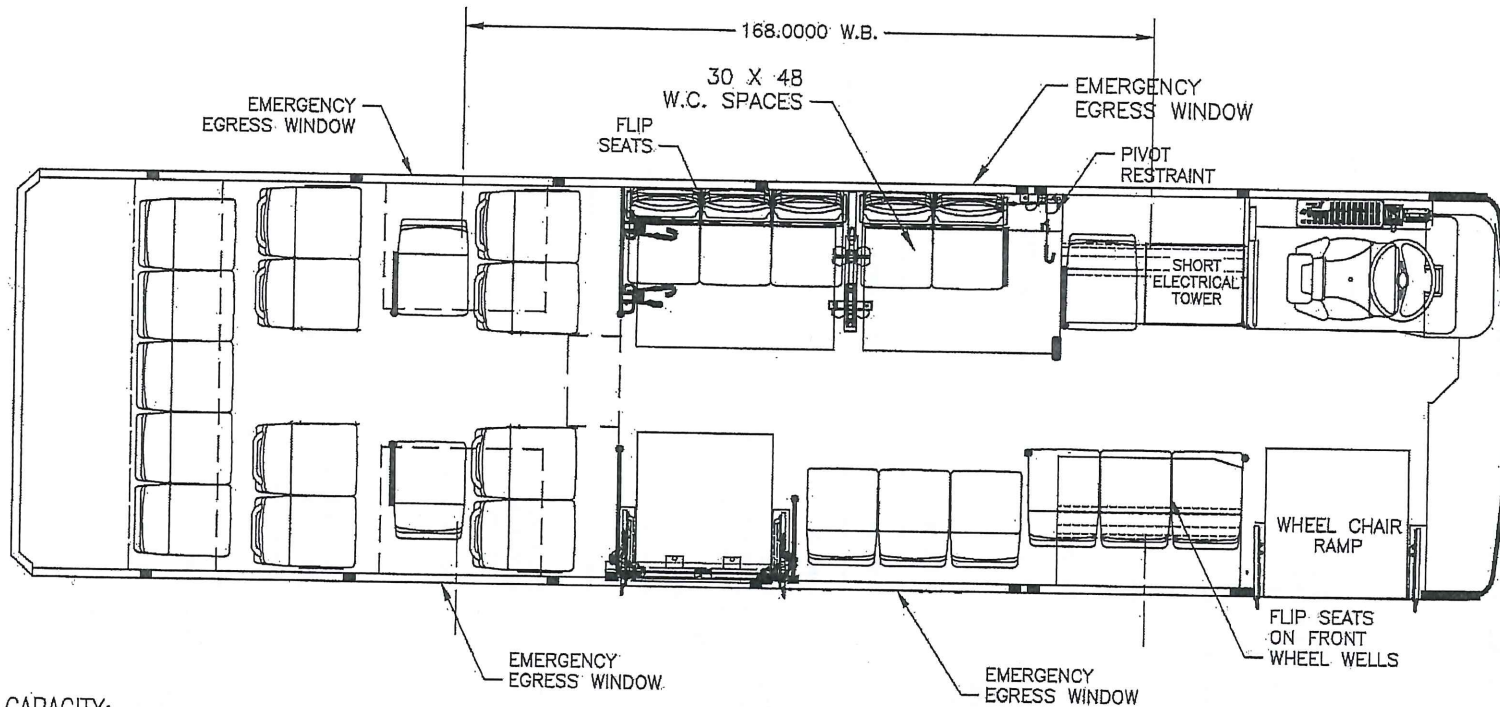


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SEATING

FSC SERAPH SEAT ON FRONT WHEELWELL  
SEATING ADJUSTABLE TRACK  
FREEDMAN CITISEAT-SERAPH SEATS FRONT W/W - LEVEL 4 INSERT -  
E32F1GC0001  
DRIVER SEAT - RECARO ERGO M WITH NO ARMS LVL 1

REVISIONS					
ECN No.	REV	LVL.	DESCRIPTION	DATE	ZONE INITIAL
ECN	REL		NEW RELEASE.	DATE	INIT



**CAPACITY:**

22 PASSENGERS WITH 2 WHEELCHAIR POSITIONS  
 OR  
 27 PASSENGERS PLUS DRIVER  
 USING FREEDMAN CITISEATS

FOR USE WITH  
 ISB DIESEL ENGINE  
 OR  
 ISL GAS ENGINE  
 ONLY

**CONCEPTUAL PROPOSAL ONLY**

NOTES: UNLESS OTHERWISE SPECIFIED.

THIS DRAWING IN DESIGN & DETAIL IS THE PROPERTY OF ELDERADO NATIONAL & MUST NOT BE USED EXCEPT IN CONNECTION WITH OUR WORK. ALL RIGHTS OF DESIGN OR INVENTION ARE RESERVED.

<b>ENC</b> REV GROUP NEXT ASSEMBLY	ITEM	PART OR DWG. NO.	QTY.	GAGE	DESCRIPTION	SPEC
	DRAWN BY LOREN L		DATE 8/22/16	SIZE	DESCRIPTION	SPEC
APPROVED			TITLE FLOOR PLAN			
SCALE 1=40			SIZE A			
TOLERANCES UNLESS OTHERWISE SPECIFIED			9870 Galena Street Riverside, CA 92509 Phone (909) 591-9557			
AMOD FILE	FRAC/DEC	DECIMAL	DECIMAL	DECIMAL	MODEL EZR II	DWG NO. E32F1GC0001
E32F1GC0001	± 1/32	± 1/32	± 1/32	± 1/32	SHEET 1 OF 1	REV REL



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OPTION DESCRIPTION

COMMENTS

MISCELLANEOUS

ENC TRAINING AT THE AGENCY LOCATION FOR 2 DAYS  
HGAC FEE  
DRIVAWAY DELIVERY CHARGE TO ANNAPOLIS MD  
MANUALS - OPERATORS/PARTS/SERVICE/ELECTRICAL

BUS PRICE	\$362,865.50
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TOTAL CONTRACT PRICE	\$2,540,058.50
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FOR DETAILED CONTRACT TERMS AND CONDITIONS, PLEASE REFER TO HGAC CONTRACT BT01-17 for Buses-Shuttle, Transit, Trams & Other Specialty Buses



IN WITNESS WHEREOF, the parties accept this Proposal

**EIDorado National California, Inc.**

\_\_\_\_\_  
Mike Amman, Vice President of Sales

\_\_\_\_\_  
Date

**WITNESS/ATTEST:**

**COUNTY:**  
**HOWARD COUNTY, MARYLAND**  
a body corporate and politic

\_\_\_\_\_  
Lonnie Robbins  
Chief Administrative Officer

By: \_\_\_\_\_ (SEAL)  
Allan H. Kittleman  
County Executive  
Date: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
Clive Graham, Administrator  
Office of Transportation

**APPROVED FOR SUFFICIENCY OF FUNDS:**

\_\_\_\_\_  
Stanley J. Milesky, Director  
Department of Finance

**APPROVED FOR FORM AND LEGAL SUFFICIENCY**  
on this \_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Gary W. Kuc  
County Solicitor

Reviewing Attorney:

\_\_\_\_\_  
Norman E. Parker  
Sr. Assistant County Solicitor

**SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**  
**TAX EXEMPT LEASE/PURCHASE AGREEMENT (LEASE NO. {LeaseNumber})**

This **TAX EXEMPT LEASE/PURCHASE AGREEMENT** (the "Agreement"), dated as of {MasterLeaseDate}, is made and entered into by and between **SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**, a Virginia corporation, as lessor ("Lessor"), and **Howard County, Maryland**, a political subdivision of the State of **Maryland**, as lessee ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Lease; Possession and Use.** Lessor leases the property (the "Equipment") described in the Equipment Schedule attached hereto as Exhibit A (the "Equipment Schedule") to Lessee, and Lessee leases the Equipment from Lessor, upon the terms and conditions set forth herein and in the Equipment Schedule. The Equipment Schedule (including all exhibits and attachments thereto) is incorporated herein by reference. Lessee shall have quiet use and enjoyment of the Equipment during the Lease Term, except as expressly set forth in this Agreement.

**Term.** The "Lease Term" shall consist of an "Original Term" commencing on the date (such date, the "Commencement Date") the proceeds of this Agreement are deposited in escrow with SunTrust Bank (the "Escrow Agent") pursuant to an Escrow Agreement attached to the Equipment Schedule as Exhibit 4 (the "Escrow Agreement") and ending at the end of the budget year of Lessee in effect on such date, and one or more "Renewal Terms," each having a duration of one year, coextensive with Lessee's budget year. The Lease Term shall commence on the Commencement Date and shall terminate upon payment of the final Rental Payment and the exercise of the purchase option described herein, unless sooner terminated pursuant to this Agreement. Lessee hereby authorizes and instructs Lessor to insert the Commencement Date as appropriate in any blanks in this Agreement and the schedules and exhibits hereto.

**Rental Payments.** Lessee agrees to pay the rental payments due as specified in the Payment Schedule in Exhibit 1 to the Equipment Schedule (collectively, the "Rental Payments"). A portion of each Rental Payment is paid as interest as specified in the Payment Schedule, and the first Rental Payment shall include interest accruing from the date set forth in the Equipment Schedule. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor. To the extent permitted by applicable law, Lessor shall have the right to require a late payment charge for each Rental Payment or any other amount due hereunder which is not paid within 10 days of the date when due equal to the lesser of 5% of such late payment or the legal maximum.

**Inclusion in Budget.** The person or entity in charge of preparing Lessee's budget will include in the budget request for each budget year the Rental Payments to become due during such budget year, and will use reasonable and lawful means available to secure the appropriation of money for such budget year sufficient to pay all Rental Payments coming due therein. Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will be lawfully appropriated. Lessor acknowledges that appropriation for Rental Payments is a governmental function which Lessee cannot contractually commit itself in advance to perform, and that this Agreement does not constitute such a commitment. No remedy is provided, and Lessee shall not be liable for any damages, for failure to comply with this paragraph.

**Nonappropriation.** If sufficient funds are not appropriated to make Rental Payments required under this Agreement for the Original Term or any Renewal Term, this Agreement shall terminate at the end of the then current Original Term or Renewal Term, and Lessee shall not be obligated to make Rental Payments under this Agreement beyond the then current Original Term or Renewal Term, and all of Lessee's right, title and interest in and to the Equipment shall terminate as of the end of the then current Original Term or Renewal Term. If such a nonappropriation (an "Event of Nonappropriation") occurs, Lessee shall (subject to the appropriation of money for such purpose), no later than the end of the then current Original Term or Renewal Term, return the Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the termination of Lessee's interest in the Equipment and passage of title to the Equipment to Lessor. Lessee shall notify Lessor in writing within seven (7) days after the occurrence of an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee. If Lessee has failed to return the Equipment as required by this paragraph, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments that would

thereafter have come due if this Agreement had not been terminated and which are attributable to the number of days after which Lessee fails to return the Equipment and for any other loss suffered by Lessor as a result of Lessee's failure to deliver the Equipment. In addition, Lessor may, by written instructions to the Escrow Agent, instruct the Escrow Agent to release all such proceeds and any earnings thereon to Lessor. For the avoidance of doubt, all payment obligations of Lessee hereunder are subject to the appropriation of funds.

**Current Expense.** The obligations of Lessee, including its obligation to pay Rental Payments due in any budget year, shall constitute a current expense of Lessee for such budget year, and shall not constitute indebtedness of Lessee within the meaning of the Constitution and laws of the State of **Maryland** (the "State"). This Agreement does not constitute a pledge of the full faith or taxing power of Lessee. Upon appropriation of Rental Payments for a budget year, the Rental Payments for such budget year shall be a binding obligation of Lessee, provided that such obligation shall not include a pledge of the taxing power of Lessee.

**Unconditional Rental Payments.** Subject in all cases to Lessee's right to non-appropriate Rental Payments, Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional in all events, without set-off, counterclaim, deduction, defense or abatement for any reason, including through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment, obsolescence of the Equipment or condemnation of the Equipment. This paragraph shall not limit Lessee's rights against any manufacturer or vendor of the Equipment.

**Option to Purchase.** Lessee shall have the option to purchase Lessor's entire interest in the Equipment on the last day of the Lease Term, if this Agreement is still in effect on such day, upon payment in full of the Rental Payments and any other amounts due hereunder plus payment of one dollar (\$1) to Lessor. Lessee shall also have the option to prepay its obligations under this Agreement, in whole but not in part, to the extent and on the terms set forth in the Equipment Schedule. Lessee shall give written notice to Lessor of its intention to exercise its option to prepay not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under this Agreement (including the Rental Payment due on the Payment Date on which the option shall be effective) plus the applicable Prepayment Price set forth in the Payment Schedule. Lessee's obligations under this Agreement shall be prepaid in part from the excess proceeds of this Agreement on the terms set forth in the Escrow Agreement.

**Representations and Warranties of Lessee.** Lessee represents and warrants to Lessor as follows: (a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"), duly organized and existing under the Constitution and laws of the State, and has requisite power and authority under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations under this Agreement; (b) the execution and delivery of this Agreement have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee; (c) this Agreement has been duly executed and delivered by and constitutes the valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms; (d) Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the Original Term; (e) Lessee's exact legal name is as set forth on the first page of this Agreement; (f) the execution, delivery and performance of this Agreement by Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which



Lessee is bound; (f) there is no action, suit, proceeding, claim, inquiry, or investigations, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other action which an unfavorable ruling or finding would adversely affect the enforceability of this Agreement; (g) except as otherwise disclosed in writing by Lessee to Lessor, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been the obligated party required to make the payments, at any time during the past ten (10) years has been terminated by Lessee solely as a result of insufficient funds being appropriated in any budget year, and no event has occurred which would constitute an event of default by the Lessee under any debt revenue bond or obligation which Lessee has issued during the past ten (10) years; and (h) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the Lease Term.

**Tax Covenants.**—The parties contemplate that interest payable under this Agreement will be excluded from gross income for federal income tax purposes under Section 103 of the Code. Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments under this Agreement and will not use or permit the use of the Equipment in such a manner as to cause this Agreement to be a "private activity bond" under Section 141(a) of the Code. Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purposes for which this Agreement has been entered into, and no part of the proceeds of this Agreement shall be invested in any securities, obligations or other investments except for the temporary period pending such use. The Lessee will not use the proceeds of this Agreement or cause the proceeds of this Agreement to be used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the Commencement Date, would have caused this Agreement to become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the Commencement Date.

**Tax Representations.**—Lessee represents and warrants to Lessor that: (a) the estimated total costs, including taxes, freight, installation, cost of issuance, of the Equipment will not be less than the total principal amount of the Rental Payments; (b) the Equipment has been ordered or is expected to be ordered within six months after the Commencement Date and the Equipment is expected to be delivered and installed, and the vendor fully paid, within eighteen months from the Commencement Date; (c) Lessee will pursue the acquisition of the Equipment and the expenditure of the net proceeds of this Agreement with due diligence; (d) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (1) that is reasonably expected to be used to pay the Rental Payments, or (2) that may be used solely to prevent a default in the payment of the Rental Payments; (e) the Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments; (f) there are no other obligations of Lessee which (1) are being sold within 15 days of the Commencement Date, or (2) are being sold pursuant to the same plan of financing as this Agreement; and (3) are expected to be paid from substantially the same source of funds; and (g) the officer or official who has executed this Agreement on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of this Agreement. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in this paragraph are accurate and the expectations of Lessee set forth in this paragraph are reasonable. The representations, warranties and covenants set forth in this paragraph are superseded by the representations, warranties and covenants set forth in any arbitrage or tax certificate executed and delivered by Lessee in connection with this Agreement.

**Interest Rate Adjustment.**—If Lessor either (i) receives notice, in any form, from the Internal Revenue Service, or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor, that Lessor may not exclude the interest component of Rental Payments paid under this Agreement from its federal gross income, Lessee shall pay to Lessor upon demand (A) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the highest marginal corporate tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by this

Agreement through the date of such event, and (B) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor. If, during the Lease Term, the federal corporate income tax rate decreases (whether or not Lessor is actually taxed at the maximum marginal statutory rate) or the federal tax laws are changed to reduce or cap the benefit of the tax exemption for the interest component of Rental Payments under this Agreement (whether or not Lessor is actually subject to such reduction or cap), the annual interest rate on this Agreement shall be adjusted as follows: (x) the interest rate shall be divided by 0.65; (y) the resulting quotient shall be multiplied by the difference between 1.0 and the actual new maximum federal corporate income tax rate or the effective maximum federal corporate income tax rate after giving effect to any reduction or cap on the benefit of the tax exemption, as applicable; and (z) the resulting amount shall be the new interest rate for this Agreement. Such increase in the interest rate shall take effect on the effective date of the change in federal tax laws. For the fiscal year of Lessee in which the effective date of the change in federal tax law falls, the increased interest accruing shall be due and payable on the first due date for Rental Payments in the fiscal year of Lessee following the fiscal year in which the effective date of the change in federal tax law falls. Appropriation of said increased interest shall be subject to the appropriation of funds, and failure to appropriate such increased interest shall be an Event of Nonappropriation hereunder. Upon an increase in the interest rate under this paragraph, Lessor shall provide to Lessee a revised Payment Schedule for this Agreement reflecting the increased interest rate.

**Liability and Property Insurance.**—All risk of loss to the Equipment shall be borne by Lessee. Lessee shall, at its own expense, or through its Transit contractor procure and maintain continuously in effect during each Lease Term: (a) public liability, insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor from liability in all events, with coverage similar to the coverage Lessee or its Transit contractor maintains for other comparable Equipment; and (b) insurance against such hazards as Lessor may require, including, but not limited to, all risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price. Lessee will also carry or require its transit contractor to carry workers' compensation insurance covering all employees on, in, near or about the Equipment, if required by applicable law. All insurance policies shall be taken out and maintained with insurance companies acceptable to Lessor and Lessee shall request a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. In addition to any notice provided by the insurer, Lessee shall provide written notice to Lessor prior to any such change in coverage. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor as an additional insured party, and each casualty and property insurance policy shall be endorsed to name Lessor as loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. At Lessor's request, Lessee shall deliver to Lessor the evidence of insurance which complies with this paragraph. Lessee may self insure against the risks described in this paragraph. If Lessee self insures, Lessee shall deliver to Lessor at Lessor's request, a letter from its risk manager or insurance consultant in substantially the form attached to the Equipment Schedule. If Lessee fails to maintain the insurance required by this paragraph, Lessor may (but shall not be obligated to) take such action to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 12% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

**Application.**—If the Equipment is stolen, lost or destroyed, in whole or in part or is damaged by fire or other casualty, or title to, or the temporary use of, the Equipment has been 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, Lessor and Lessee will cause the net proceeds of any insurance claim, condemnation award or sale under threat of condemnation (the "Net Proceeds") to be applied, at the option of Lessee, to (a) the prompt replacement, repair, restoration, modification or improvement of the Equipment in substantial conformance with the original specifications, or (b) the prepayment of this Agreement in whole. Lessee will give Lessor written notice of its election within ninety (90) days after its receipt of the Net Proceeds. The insufficiency of the Net Proceeds to pay in full the cost of any repair, restoration, modification or improvement shall not affect Lessee's obligations under this paragraph, and Lessee shall not be entitled to any reimbursement therefor from Lessor or any diminution of the Rental Payments. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement may be retained by Lessee.



**Use and Maintenance of Equipment; Liens.** Lessee shall, at its own expense, maintain the Equipment in good condition and working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. The initial principal garage of the Equipment shall be located at the address specified in the Equipment Schedule. If Lessee changes the principal garage of the Equipment, it shall use good faith efforts to provide thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor with the address of the principal garage of the Equipment upon Lessor's reasonable request. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment. Without limiting the foregoing, Lessee, Lessor acknowledges that Lessee may affix or install decals, paint and other accessories to identify the Equipment as the equipment of Lessee. Lessee will not affix the Equipment to real property such that the Equipment becomes fixtures.

**Taxes.** Lessor and Lessee contemplated that the Equipment will be used for a governmental or proprietary purpose of Lessee, and therefore that the Equipment will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement have been established to reflect the savings resulting from this exemption. Lessee will take all necessary actions under applicable law to obtain or maintain such exemption. Nevertheless, if the use, possession or acquisition of the Equipment is determined to be subject to taxation or later becomes subject to taxation, Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any 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 then current budget year of the Lease Term.

**Financial Information.** To the extent not publicly available, Lessee shall deliver to Lessor upon request such financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement as Lessor may request from time to time.

**Title; Security Interest.** During the Lease Term, title to the Equipment shall be in Lessee, subject to Lessor's interests under this Agreement. In order to secure Lessee's payment of all Rental Payments and the performance of all other obligations hereunder, Lessee hereby grants to Lessor a continuing security interest in and to (a) the Equipment, all repairs, replacements, substitutions, restorations, accessories, improvements and modifications thereto; (b) all books and records solely to the extent related to the Equipment; (c) all moneys and investments in any escrow account into which proceeds of this Agreement have been deposited; and (d) all proceeds of the foregoings, including insurance proceeds. Lessee hereby authorizes Lessor to prepare and file such financing statements and other such documents to establish and maintain Lessor's valid first lien and perfected security interest. Lessee will execute and deliver such documents and will perform such acts as Lessor may request to establish and maintain Lessor's security interest. Lessee will not change its legal name in any respect without giving Lessor 30 days prior written notice.

**Acceptance; Disclaimer of Warranties.** Lessee covenants with Lessor that it will cause the Equipment to be delivered and installed in its entirety in accordance with the bid or purchase order specifications pursuant to which Lessee ordered the Equipment from the vendor or manufacturer, and will pay all taxes, delivery costs and installation costs, if any, in connection therewith. All of the Equipment and the vendor of the Equipment have been selected by Lessee. Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by Lessee, the acceptance by any vendor or its sales representative of any order submitted, or any delay or failure by such vendor or its sales representative to manufacture, deliver or install any Equipment for use by Lessee. Proceeds of this Agreement will be disbursed in accordance with the Escrow Agreement. Lessor assigns to Lessee for the Lease Term all of vendors' warranties in connection with the Equipment. The insufficiency of proceeds under this Agreement to pay costs of the Equipment shall not affect Lessee's obligations under this paragraph. When the Equipment has been delivered, installed and accepted, Lessee shall promptly execute and deliver to Lessor (with a copy to the Escrow Agent) an acceptance certificate in the form attached to the Escrow Agreement. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY,

DURABILITY, SUITABILITY, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. In no event shall Lessor be liable for any incidental or consequential damages in connection with or arising out of this Agreement or the Equipment or Lessee's use of the Equipment.

**Risk of Loss.** Lessee shall not be required to indemnify Lessor from liabilities associated with this Agreement, however, to the extent permitted by applicable laws of the State, as between Lessor and Lessee, Lessee assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, and Lessee agrees to defend Lessor against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses that relate to or arise out of this Agreement, including but not limited to, (a) the selection, manufacture, purchase, acceptance or rejection of Equipment or the ownership of the Equipment, (b) the delivery, lease, possession, maintenance, use, condition, return or operation of the Equipment, (c) the condition of the Equipment sold or otherwise disposed of after possession by Lessee, (d) the conduct of Lessee, its officers, employees and agents, (e) any claim, loss, cost or expense involving alleged damage to the environment relating to the Equipment, including but not limited to investigation, removal, cleanup and remedial costs, and (f) any strict liability under the laws or judicial decisions of any state or the United States. The indemnification obligations of the Lessee in this Agreement, if any, are provided to the extent of the provisions of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Maryland Annotated Code and subject to the appropriation of funds. As a condition of indemnification, Lessor agree(s) to notify Lessee of any suits, claims or potential claims within 10 days of its own notice of such suits, claims or potential claims. The foregoing indemnification, if any, is not to be deemed as a waiver of any immunity that may exist in any action against Lessee or its officers, agents, volunteers and employees. This provision shall survive the termination of this Agreement.

**Assignment by Lessor.** Lessor may assign, sell or encumber all or any part of this Agreement, the Rental Payments and any other rights hereunder, including with respect to the Equipment, without Lessee's consent. Such assignees may include trust agents for the benefit of holders of certificates of participation. No such assignment shall be effective as against Lessee unless and until written notice of the assignment is provided to Lessee. When presented with a notice of assignment, Lessee will acknowledge in writing receipt of such notice for the benefit of Lessor and any assignee. Lessee shall keep a complete and accurate record of all such assignments. Lessee makes no representation as to the effect that such assignment or participation may have on the tax exemption for the interest component of Rental Payments under this Agreement.

**Assignment and Subleasing by Lessee.** Neither this Agreement nor any interest herein or in the Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

**Events of Default Defined.** The occurrence of any of the following events shall constitute an Event of Default: (a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under this Agreement within ten (10) days following the due date thereof; (b) Lessee's failure to maintain insurance required by this Agreement; (c) Lessee's failure to perform or abide by any other condition, agreement or covenant set forth in this Agreement for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied; (d) Lessor's determination that any representation, warranty or statement made by Lessee in or pursuant to this Agreement was untrue in any material respect on the date made; (e) the filing of a petition in bankruptcy or receivership or similar proceeding by or against Lessee, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental functions or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of any adjustment of indebtedness of Lessee, or the dissolution or liquidation of Lessee. An Event of Nonappropriation shall not constitute an Event of Default.

**Remedies on Default.** Upon the occurrence of any Event of Default, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies: (a) Lessor may terminate this Agreement and all of Lessee's rights hereunder as to any or all items of Equipment; (b) Lessor may declare all Rental Payments payable under this Agreement to the end of the then current budget year of Lessee to be immediately due and payable by Lessee; (c) Lessor may repossess any or all of the Equipment by giving Lessee written notice to deliver such Equipment, or in

the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where such Equipment is kept and take possession of such Equipment and charge Lessee for costs incurred, including reasonable attorney's fees; (4) Lessor may proceed by appropriate court action or actions to enforce performance by Lessee of its obligations hereunder or to recover damages for the breach hereof; (5) by written notice to the Escrow Agent, Lessor may instruct the escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under this Agreement; and (6) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default. Any Equipment returned (subject to the appropriation of money for such purpose) under clause (6) above shall be to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement. If Lessor takes possession of the Equipment, Lessor may thereafter dispose of the Equipment in accordance with the requirements of Article 9 of the Uniform Commercial Code; provided that any proceeds of such disposition in excess of the sum of (i) the unpaid principal component of Rental Payments (including Rental Payments due in future budget years); (ii) Lessor's costs and expenses associated with the disposition of the Equipment and the Event of Default (including attorney's fees); and (iii) any other amounts then due under this Agreement, shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto. No deficiency shall be allowed against Lessee, except with respect to any unpaid Rental Payments to the end of the then current budget year of Lessee and unpaid costs and expenses incurred by Lessor in connection with the repossession and disposition of the Equipment. Each of the rights and remedies of Lessor under this Agreement is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify, or change any provisions of this Agreement. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of this Agreement, or to exercise any right, power or remedy consequent upon a breach hereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

**Notices.** All written notices to be given under this Agreement shall be given (a) personally; (b) by mail in registered or certified form, with postage prepaid; or (c) by overnight courier, charges prepaid, in each case to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, on the next business day after

deposit for overnight delivery with a courier, or, if given by other means, when delivered.

**Constructions.** This Agreement is binding upon and inures to the benefit of Lessor and Lessee and their respective successors and permitted assigns. In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Agreement may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of this Agreement. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. This Agreement shall be governed by and construed in accordance with the laws of the State.

**Usury.** It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein, in no event shall this Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the Lease Term so that the interest is uniform through such term.

**Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSOR AND LESSEE HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT.

**USA Patriot Act Compliance Notification.** Lessor hereby notifies Lessee that pursuant to the requirements of the USA PATRIOT Act (the "Act"), it is required to obtain, verify and record information that identifies Lessee, which information includes the name and address of Lessee and other information that will allow Lessor to identify Lessee in accordance with the Act. Lessee shall promptly upon Lessor's request provide all documentation and other information that Lessor requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer:

WITNESS/ATTEST: HOWARD COUNTY, MARYLAND

By: \_\_\_\_\_  
Lonnie R. Robbins \_\_\_\_\_ Allan H. Kittlemann  
Chief Administrator Officer \_\_\_\_\_ County Executive

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
Clive Graham  
Administrator, Office of Transportation

**APPROVED FOR SUFFICIENCY OF FUNDS:**

\_\_\_\_\_  
Stanley J. Milesky, Director  
Department of Finance

**APPROVED FOR FORM AND LEGAL SUFFICIENCY**  
this \_\_\_\_\_ day of \_\_\_\_\_, 2017:

\_\_\_\_\_  
Gary W. Ktue  
County Solicitor

**REVIEWING ATTORNEY:**

\_\_\_\_\_  
Norman E. Parker, Jr.  
Senior Assistant County Solicitor

**SUNTRUST EQUIPMENT FINANCE & LEASING  
CORP.,**  
Lessor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
P.O. Box 4418  
Atlanta, GA 30302



EXHIBIT A

EQUIPMENT SCHEDULE  
TO TAX-EXEMPT LEASE/PURCHASE AGREEMENT

The following described equipment (the "Equipment") is the subject of the Tax-Exempt Lease/Purchase Agreement dated as of {MasterLeaseDate} (the "Agreement") between the undersigned Lessor and Lessee.

1. Equipment. The cost of the Equipment to be funded by Lessor under this Agreement is \$ {EquipmentCost}. The Equipment consists of the following equipment which has been or shall be purchased from the manufacturer(s) and/or vendor(s) named below for the prices set forth below:

Manufacturer and/or Vendor Name & Invoice No.	Description	Invoice Cost
	Total Invoice Cost:	

2. Location of Equipment. The Equipment is essential to the governmental functions of Lessee. The initial principal garage of the Equipment will be located at the following address(es): {EquipmentLocationStreetAddress}, {EquipmentLocationCityStateZip}.

3. Commencement Date. The Commencement Date of this Agreement is \_\_\_\_\_.

4. Interest Accrual Date. The amounts of the interest component of Rental Payments payable under this Agreement have been calculated based on the assumption that the proceeds of this Agreement were disbursed on the Commencement Date, and such payments of interest component will be payable as set forth in the Payment Schedule regardless of when the proceeds of this Agreement were actually disbursed.

5. Payment Schedule. The Payment Schedule is attached to this Equipment Schedule as Exhibit 1.

6. Lessee's Certificate. The Lessee's General and Tax Certificate is attached to this Equipment Schedule as Exhibit 2.

7. Opinion. The opinion of Lessee's counsel is attached to this Equipment Schedule as Exhibit 3.

8. Proceeds. Lessor shall disburse the proceeds of this Equipment Schedule in accordance with the Escrow Agreement attached hereto as Exhibit 4.

9. Insurance. Check Item A and/or Item B.

A. Lessee's insurance letter is attached to this Equipment Schedule as Exhibit 5. \_\_\_\_\_

B. A letter from Lessee's risk manager or insurance consultant is attached as Exhibit 5.  X

10. Form 8038-G or GC. The Form 8038-G or Form 8038-GC with respect to the Agreement is attached to this Equipment Schedule as Exhibit 6.

IN WITNESS WHEREOF, Lessor has caused this Equipment Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Equipment Schedule to be executed in its name by its duly authorized officer:

**Howard County, Maryland**  
Lessee

**SUNTRUST EQUIPMENT FINANCE & LEASING**  
**CORP.,**  
Lessor

By: \_\_\_\_\_  
Name: {LesseeSignatoryName}  
Title: {LesseeSignatoryTitle}

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

Address:  
{LesseeStreetAddress}  
{LesseeCity/State/Zip}

Address:  
P.O. Box 4118  
Atlanta, GA 30302

Telephone: {LesseeContactPhone}  
Facsimile: {LesseeContactFax}  
E-mail address: {LesseeContactEmail}

Exhibit I to Equipment Schedule  
Tax Exempt Lease/Purchase Agreement

PAYMENT SCHEDULE

The annual interest rate applicable to the Agreement shall be ~~AnnualInterestRate~~ percent (~~AnnualInterestRate~~%). Lessee will make Rental Payments each consisting of principal and interest as set forth below for a Lease Term of ~~LeaseTerm~~ (~~LeaseTerm~~) months. Rental Payments are due ~~PaymentFrequency~~ as set forth below. Rental Payments may be prepaid in whole on each Payment Date. The first Payment Date on which Rental Payments may be prepaid is ~~FirstEligiblePrepaymentDate~~.

Payment Number	Payment Date	Total Payment	Principal Component	Interest Component	Prepayment Price*
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\* After payment of the Rental Payment due on such date.

Howard County, Maryland  
Lessee

By: \_\_\_\_\_  
Name: ~~LesseeSignatoryName~~  
Title: ~~LesseeSignatoryTitle~~

LESSEE'S GENERAL AND TAX CERTIFICATE

[Bond Counsel to provide]

**OPINION OF LESSEE'S COUNSEL**

[Bond Counsel to provide]

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SUNTRUST EQUIPMENT FINANCE & LEASING CORP.

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ESCROW AGREEMENT

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[To be provided]



Exhibit 5 to Equipment Schedule  
Tax Exempt Lease/Purchase Agreement

SELF INSURANCE LETTER

SUNTRUST EQUIPMENT FINANCE & LEASING CORP.  
P.O. Box 4418  
Atlanta, GA 30302

Ladies and Gentlemen:

\_\_\_\_\_The undersigned is the risk manager or insurance consultant for **Howard County, Maryland** (the "Lessee"), and in such connection the undersigned is familiar with Lessee's insurance and self insurance arrangements. In connection with the Tax Exempt Lease/Purchase Agreement (the "Agreement"), between Lessee and SunTrust Equipment Finance and Leasing Corp. (the "Lessor"), the undersigned makes the following certifications to Lessor, effective as of the Commencement Date. Capitalized terms used but not defined herein have the meanings given in the Agreement.

1. \_\_\_\_\_Howard County, Maryland has created and funded a self insurance program to provide compensation for injury to persons or damage to property resulting from the negligence or other wrongful acts of the County's public officials, employees and agents for which the County is legally liable. Further, Howard County, Maryland, provides self insured workers' compensation coverage for all employees in accordance with Maryland law and all risk property coverage for County property, vehicles and equipment. The establishment of this Fund does not constitute a waiver of the immunities, liability caps and defenses available to Howard County, Maryland, for its officers, agents and employees. (Section 23-100 Title 23, Howard County Code).

2. \_\_\_\_\_Upon delivery of the Equipment described in the Agreement, Howard County shall cause its contracted transit service provider to purchase and maintain the following coverage:

a. All Risk Physical Damage Insurance on the leased Equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Loss Payee.

The Coverage Required is \$2,540,059.

b. Commercial General Liability Insurance evidenced by a Certificate of Insurance naming SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Additional Insured.

The following minimum coverage is required and will be provided:

Liability: \_\_\_\_\_ \$500,000 per person  
Liability- Bodily Injury: \_\_\_\_\_ \$1,000,000 aggregate  
Liability- Property Damage: \_\_\_\_\_ \$1,000,000 property damage liability

PROPERTY: Seven (7) Transit Buses at \$362,866.50 each (or \$2,540,059 for all seven).

LOCATION: 8800 Corridor Road, Annapolis Junction, MD 20701.

Upon issuance of the coverage outlined above, a Certificate of Insurance will be mailed to SUNTRUST EQUIPMENT FINANCE & LEASING CORP., P.O. Box 4418, Atlanta, GA 30302.

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

Very truly yours,

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

Name: Lynne K. Levin

Title: Risk Management Administrator

Exhibit 6 to Equipment Schedule  
Tax Exempt Lease/Purchase Agreement

FORM 8038-G or 8038-G1

**PAGE TO BE REPLACED BY UCC FINANCING STATEMENT**

**SCHEDULE A TO FINANCING STATEMENT OF  
~~HOWARD COUNTY, MARYLAND, AS DEBTOR, AND  
SUNTRUST EQUIPMENT FINANCE & LEASING CORP., AS SECURED PARTY~~**

Continuation of Collateral Description

The financing statement to which this Schedule A is attached covers the types of property described on the face of such financing statement and all of the Debtor's right, title and interest in and to (collectively, the "Collateral"):

~~(a) the equipment described in the Tax-Exempt Lease/Purchase Agreement between Debtor, as lessee, and Secured Party, as lessor, as such agreement may be amended, modified or supplemented from time to time;~~

~~(b) to the extent not included in the foregoing, all books and records solely to the extent related to the Collateral; and~~

~~(c) to the extent not included in the foregoing, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications and all proceeds and products of any or all of the foregoing, whether existing on the date hereof or arising hereafter, including insurance proceeds.~~

Question	Answer
Lease Number?	[?/?]
Master Lease Date?	[?/?]
Lessee Name?	[?/?]
Lessee State Short?	[?/?]
Lessee Signatory Name?	[?/?]
Lessee Signatory Title?	[?/?]
Lessee Street Address?	[?/?]
Lessee City State Zip?	[?/?]
Lessee Contact Phone?	[?/?]
Lessee Contact Fax?	[?/?]
Lessee Contact Email?	[?/?]
Lease Schedule Number?	[?/?]
Equipment Cost?	[?/?]
Equipment Description?	[?/?]
Equipment Location Street Address?	[?/?]
Equipment Location City State Zip?	[?/?]
Lease Schedule Date?	[?/?]
<b>Annual Interest Rate?</b>	[?/?]
<i>Insert as a straight number (e.g., "2.75")</i>	
<b>Lease Term?</b>	[?/?]
<i>Enter number of months in lease term (e.g., "36").</i>	
Payment Frequency?	[?/?]
First Eligible Prepayment Date?	[?/?]
Lessee Attestation Signatory Name?	[?/?]
Lessee Attestation Signatory Title?	[?/?]
Ordinance Resolution Date?	[?/?]
Escrow Agreement Ending Date?	[?/?]
Lessee Taxpayer ID Number?	[?/?]
Insurance Agent Name?	[?/?]
Rental Interruption Insurance Coverage Required?	[?/?]
Funding Date?	[?/?]
Name of Payee?	[?/?]
Method of Payment?	[?/?]
Payment Instructions?	[?/?]

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**SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**  
**TAX-EXEMPT LEASE/PURCHASE AGREEMENT (LEASE NO. {LeaseNumber})**

This **TAX-EXEMPT LEASE/PURCHASE AGREEMENT** (the "Agreement"), dated as of **{MasterLeaseDate}**, is made and entered into by and between **SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**, a Virginia corporation, as lessor ("Lessor"), and **Howard County, Maryland**, a political subdivision of the State of Maryland, as lessee ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Lease; Possession and Use.** Lessor leases the property (the "Equipment") described in the Equipment Schedule attached hereto as Exhibit A (the "Equipment Schedule") to Lessee, and Lessee leases the Equipment from Lessor, upon the terms and conditions set forth herein and in the Equipment Schedule. The Equipment Schedule (including all exhibits and attachments thereto) is incorporated herein by reference. Lessee shall have quiet use and enjoyment of the Equipment during the Lease Term, except as expressly set forth in this Agreement.

**Term.** The "Lease Term" shall consist of an "Original Term" commencing on the date (such date, the "Commencement Date") the proceeds of this Agreement are deposited in escrow with SunTrust Bank (the "Escrow Agent") pursuant to an Escrow Agreement attached to the Equipment Schedule as Exhibit 4 (the "Escrow Agreement") and ending at the end of the budget year of Lessee in effect on such date, and one or more "Renewal Terms" each having a duration of one year, coextensive with Lessee's budget year. The Lease Term shall commence on the Commencement Date and shall terminate upon payment of the final Rental Payment and the exercise of the purchase option described herein, unless sooner terminated pursuant to this Agreement. Lessee hereby authorizes and instructs Lessor to insert the Commencement Date as appropriate in any blanks in this Agreement and the schedules and exhibits hereto.

**Rental Payments.** Lessee agrees to pay the rental payments due as specified in the Payment Schedule in Exhibit 1 to the Equipment Schedule (collectively, the "Rental Payments"). A portion of each Rental Payment is paid as interest as specified in the Payment Schedule, and the first Rental Payment shall include interest accruing from the date set forth in the Equipment Schedule. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor. To the extent permitted by applicable law, Lessor shall have the right to require a late payment charge for each Rental Payment or any other amount due hereunder which is not paid within 10 days of the date when due equal to the lesser of 5% of such late payment or the legal maximum.

**Inclusion in Budget.** The person or entity in charge of preparing Lessee's budget will include in the budget request for each budget year the Rental Payments to become due during such budget year, and will use reasonable and lawful means available to secure the appropriation of money for such budget year sufficient to pay all Rental Payments coming due therein. Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will be lawfully appropriated. Lessor acknowledges that appropriation for Rental Payments is a governmental function which Lessee cannot contractually commit itself in advance to perform, and that this Agreement does not constitute such a commitment. No remedy is provided, and Lessee shall not be liable for any damages, for failure to comply with this paragraph.

**Nonappropriation.** If sufficient funds are not appropriated to make Rental Payments required under this Agreement for the Original Term or any Renewal Term, this Agreement shall terminate at the end of the then-current Original Term or Renewal Term, and Lessee shall not be obligated to make Rental Payments under this Agreement beyond the then-current Original Term or Renewal Term, and all of Lessee's right, title and interest in and to the Equipment shall terminate as of the end of the then-current Original Term or Renewal Term. If such a nonappropriation (an "Event of Nonappropriation") occurs, Lessee shall (subject to the appropriation of money for such purpose), no later than the end of the then-current Original Term or Renewal Term, return the Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement; provided that, if Lessee does not appropriate money for such purpose, it shall make the Equipment available for Lessor to take possession of, at the location listed in the Equipment Schedule. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the termination of Lessee's interest in the Equipment and passage of title to the Equipment to Lessor. Lessee shall notify Lessor in writing within seven (7) days after the occurrence of an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee. If Lessee has failed

to return the Equipment as required by this paragraph, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments that would thereafter have come due if this Agreement had not been terminated and which are attributable to the number of days after which Lessee fails to return the Equipment and for any other loss suffered by Lessor as a result of Lessee's failure to deliver the Equipment. In addition, Lessor may, by written instructions to the Escrow Agent, instruct the Escrow Agent to release all such proceeds and any earnings thereon to Lessor. For the avoidance of doubt, all payment obligations of Lessee hereunder are subject to the appropriation of funds.

**Current Expense.** The obligations of Lessee, including its obligation to pay Rental Payments due in any budget year, shall constitute a current expense of Lessee for such budget year, and shall not constitute indebtedness of Lessee within the meaning of the Constitution and laws of the State of Maryland (the "State"). This Agreement does not constitute a pledge of the full faith or taxing power of Lessee. Upon appropriation of Rental Payments for a budget year, the Rental Payments for such budget year shall be a binding obligation of Lessee, provided that such obligation shall not include a pledge of the taxing power of Lessee.

**Unconditional Rental Payments.** Subject in all cases to Lessee's right to non-appropriate Rental Payments, Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional in all events, without set-off, counterclaim, deduction, defense or abatement for any reason, including through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment, obsolescence of the Equipment or condemnation of the Equipment. This paragraph shall not limit Lessee's rights against any manufacturer or vendor of the Equipment.

**Option to Purchase.** Lessee shall have the option to purchase Lessor's entire interest in the Equipment on the last day of the Lease Term, if this Agreement is still in effect on such day, upon payment in full of the Rental Payments and any other amounts due hereunder plus payment of one dollar (\$1) to Lessor. Lessee shall also have the option to prepay its obligations under this Agreement, in whole but not in part, to the extent and on the terms set forth in the Equipment Schedule. Lessee shall give written notice to Lessor of its intention to exercise its option to prepay not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under this Agreement (including the Rental Payment due on the Payment Date on which the option shall be effective) plus the applicable Prepayment Price set forth in the Payment Schedule. Lessee's obligations under this Agreement shall be prepaid in part from the excess proceeds of this Agreement on the terms set forth in the Escrow Agreement.

**Representations and Warranties of Lessee.** Lessee represents and warrants to Lessor as follows: (a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"), duly organized and existing under the Constitution and laws of the State, and has requisite power and authority under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations under this Agreement; (b) the execution and delivery of this Agreement have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee; (c) this Agreement has been duly executed and delivered by and constitutes the valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms; (d) Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the Original Term; (e) Lessee's exact legal name is as set forth on the first page of this Agreement; (e) the execution, delivery and performance of this Agreement by

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Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound; (f) there is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement; (g) except as otherwise disclosed in writing by Lessee to Lessor, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been the obligated party required to make the payments, at any time during the past ten (10) years has been terminated by Lessee solely as a result of insufficient funds being appropriated in any budget year, and no event has occurred which would constitute an event of default by the Lessee under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years; and (h) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the Lease Term.

**Tax Covenants.** The parties contemplate that interest payable under this Agreement will be excluded from gross income for federal income tax purposes under Section 103 of the Code. Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments under this Agreement and will not use or permit the use of the Equipment in such a manner as to cause this Agreement to be a "private activity bond" under Section 141(a) of the Code. Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purposes for which this Agreement has been entered into, and no part of the proceeds of this Agreement shall be invested in any securities, obligations or other investments except for the temporary period pending such use. The Lessee will not use the proceeds of this Agreement or cause the proceeds of this Agreement to be used, at any time, directly or indirectly in a manner which, if such use had been reasonably anticipated on the Commencement Date, would have caused this Agreement to become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the Commencement Date.

**Tax Representations.** Lessee represents and warrants to Lessor that: (a) the estimated total costs, including taxes, freight, installation, cost of issuance, of the Equipment will not be less than the total principal amount of the Rental Payments; (b) the Equipment has been ordered or is expected to be ordered within six months after the Commencement Date and the Equipment is expected to be delivered and installed, and the vendor fully paid, within eighteen months from the Commencement Date; (c) Lessee will pursue the acquisition of the Equipment and the expenditure of the net proceeds of this Agreement with due diligence; (d) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (1) that is reasonably expected to be used to pay the Rental Payments, or (2) that may be used solely to prevent a default in the payment of the Rental Payments; (e) the Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments; (f) there are no other obligations of Lessee which (1) are being sold within 15 days of the Commencement Date, or (2) are being sold pursuant to the same plan of financing as this Agreement, and (3) are expected to be paid from substantially the same source of funds; and (g) the officer or official who has executed this Agreement on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of this Agreement. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in this paragraph are accurate and the expectations of Lessee set forth in this paragraph are reasonable. The representations, warranties and covenants set forth in this paragraph are superseded by the representations, warranties and covenants set forth in any arbitrage or tax certificate executed and delivered by Lessee in connection with this Agreement.

**Interest Rate Adjustment.** If Lessor either (i) receives notice, in any form, from the Internal Revenue Service, or (ii) reasonably determines, based on an

opinion of independent tax counsel selected by Lessor, that Lessor may not exclude the interest component of Rental Payments paid under this Agreement from its federal gross income, Lessee shall pay to Lessor upon demand (A) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the highest marginal corporate tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by this Agreement through the date of such event, and (B) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor. If, during the Lease Term, the federal corporate income tax rate decreases (whether or not Lessor is actually taxed at the maximum marginal statutory rate) or the federal tax laws are changed to reduce or cap the benefit of the tax exemption for the interest component of Rental Payments under this Agreement (whether or not Lessor is actually subject to such reduction or cap), the annual interest rate on this Agreement shall be adjusted as follows: (x) the interest rate shall be divided by 0.65, (y) the resulting quotient shall be multiplied by the difference between 1.0 and the actual new maximum federal corporate income tax rate or the effective maximum federal corporate income tax rate after giving effect to any reduction or cap on the benefit of the tax exemption, as applicable, and (z) the resulting amount shall be the new interest rate for this Agreement. Such increase in the interest rate shall take effect on the effective date of the change in federal tax laws. For the fiscal year of Lessee in which the effective date of the change in federal tax law falls, the increased interest accruing shall be due and payable on the first due date for Rental Payments in the fiscal year of Lessee following the fiscal year in which the effective date of the change in federal tax law falls. Appropriation of said increased interest shall be subject to the appropriation of funds, and failure to appropriate such increased interest shall be an Event of Nonappropriation hereunder. Upon an increase in the interest rate under this paragraph, Lessor shall provide to Lessee a revised Payment Schedule for this Agreement reflecting the increased interest rate.

**Liability and Property Insurance.** All risk of loss to the Equipment shall be borne by Lessee. Lessee shall, at its own expense, or through its transit contractor procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor from liability in all events, with coverage similar to the coverage Lessee or its transit contractor maintains for other comparable Equipment and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price. Lessee will also carry or require its transit contractor to carry workers' compensation insurance covering all employees on, in near or about the Equipment, if required by applicable law. All insurance policies shall be taken out and maintained with insurance companies acceptable to Lessor and Lessee shall request a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. In addition to any notice provided by the insurer, Lessee shall provide written notice to Lessor prior to any such change in coverage. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor as loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. At Lessor's request, Lessee shall deliver to Lessor the evidence of insurance which complies with this paragraph. Lessee may self-insure against the risks described in this paragraph. If Lessee self-insures, Lessee shall deliver to Lessor at Lessor's request, a letter from its risk manager or insurance consultant in substantially the form attached to the Equipment Schedule. If Lessee fails to maintain the insurance required by this paragraph, Lessor may (but shall not be obligated to) take such action to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 12% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

**Application.** If the Equipment is stolen, lost or destroyed, in whole or in part, or is damaged by fire or other casualty, or title to, or the temporary use of, the Equipment has been 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, Lessor and Lessee will cause the net proceeds of any insurance claim, condemnation award or sale



under threat of condemnation (the "Net Proceeds") to be applied, at the option of Lessee, to (a) the prompt replacement, repair, restoration, modification or improvement of the Equipment in substantial conformance with the original specifications, or (b) the prepayment of this Agreement in whole. Lessee will give Lessor written notice of its election within ninety (90) days after its receipt of the Net Proceeds. The insufficiency of the Net Proceeds to pay in full the cost of any repair, restoration, modification or improvement shall not affect Lessee's obligations under this paragraph, and Lessee shall not be entitled to any reimbursement therefor from Lessor or any diminution of the Rental Payments. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement may be retained by Lessee.

**Use and Maintenance of Equipment; Liens.** Lessee shall, at its own expense, maintain the Equipment in good condition and working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. The initial principal garage of the Equipment shall be located at the address specified in the Equipment Schedule. If Lessee changes the principal garage of the Equipment, it shall use good faith efforts to provide thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor with the address of the principal garage of the Equipment upon Lessor's reasonable request. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment. Without limiting the foregoing sentence, Lessor acknowledges that Lessee may affix or install decals, paint and other accessories to identify the Equipment as the equipment of Lessee. Lessee will not affix the Equipment to real property such that the Equipment becomes fixtures.

**Taxes.** Lessor and Lessee contemplated that the Equipment will be used for a governmental or proprietary purpose of Lessee, and therefore that the Equipment will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement have been established to reflect the savings resulting from this exemption. Lessee will take all necessary actions under applicable law to obtain or maintain such exemption. Nevertheless, if the use, possession or acquisition of the Equipment is determined to be subject to taxation or later becomes subject to taxation, Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any 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 then current budget year of the Lease Term.

**Financial Information.** To the extent not publicly available, Lessee shall deliver to Lessor upon request such financial statements and information relating to the ability of Lessee to satisfy its obligation under this Agreement as Lessor may request from time to time.

**Title; Security Interest.** During the Lease Term, title to the Equipment shall be in Lessee, subject to Lessor's interests under this Agreement. In order to secure Lessee's payment of all Rental Payments and the performance of all other obligations hereunder, Lessee hereby grants to Lessor a continuing security interest in and to (a) the Equipment, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications thereto; (b) all books and records solely to the extent related to the Equipment; (c) all moneys and investments in any escrow account into which proceeds of this Agreement have been deposited; and (d) all proceeds of the foregoing, including insurance proceeds. Lessee hereby authorizes Lessor to prepare and file such financing statements and other such documents to establish and maintain Lessor's valid first lien and perfected security interest. Lessee will execute and deliver such documents and will perform such acts as Lessor may request to establish and maintain Lessor's security interest. Lessee will not change its legal name in any respect without giving Lessor 30 days prior written notice.

**Acceptance; Disclaimer of Warranties.** Lessee covenants with Lessor that it will cause the Equipment to be delivered and installed in its entirety in accordance with the bid or purchase order specifications pursuant to which Lessee ordered the Equipment from the vendor or manufacturer, and will pay all taxes, delivery costs and installation costs, if any, in connection therewith. All of the Equipment and the vendor of the Equipment have been selected by

Lessee. Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by Lessee, the acceptance by any vendor or its sales representative of any order submitted, or any delay or failure by such vendor or its sales representative to manufacture, deliver or install any Equipment for use by Lessee. Proceeds of this Agreement will be disbursed in accordance with the Escrow Agreement. Lessor assigns to Lessee for the Lease Term all of vendors' warranties in connection with the Equipment. The insufficiency of proceeds under this Agreement to pay costs of the Equipment shall not affect Lessee's obligations under this paragraph. When the Equipment has been delivered, installed and accepted, Lessee shall promptly execute and deliver to Lessor (with a copy to the Escrow Agent) an acceptance certificate in the form attached to the Escrow Agreement. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. In no event shall Lessor be liable for any incidental or consequential damages in connection with or arising out of this Agreement or the Equipment or Lessee's use of the Equipment.

**Risk of Loss.** Lessee shall not be required to indemnify Lessor from liabilities associated with this Agreement, however, to the extent permitted by applicable laws of the State, as between Lessor and Lessee, Lessee assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, and Lessee agrees to defend Lessor against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses that relate to or arise out of this Agreement, including but not limited to, (a) the selection, manufacture, purchase, acceptance or rejection of Equipment or the ownership of the Equipment, (b) the delivery, lease, possession, maintenance, use, condition, return or operation of the Equipment, (c) the condition of the Equipment sold or otherwise disposed of after possession by Lessee, (d) the conduct of Lessee, its officers, employees and agents, (e) any claim, loss, cost or expense involving alleged damage to the environment relating to the Equipment, including, but not limited to investigation, removal, cleanup and remedial costs, and (f) any strict liability under the laws or judicial decisions of any state or the United States. The indemnification obligations of the Lessee in this Agreement, if any, are provided to the extent of the provisions of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Maryland Annotated Code and subject to the appropriation of funds. As a condition of indemnification, Lessor agree(s) to notify Lessee of any suits, claims or potential claims as soon as practicable following Lessor's receipt of written notice thereof, provided, however, that the failure of Lessor to provide timely notice to Lessee with respect to any such suit, claim or potential claim shall not affect the obligations of Lessee hereunder with respect to such suit, claim or potential claim except to the extent that Lessee is materially prejudiced by Lessor's failure to give Lessee timely notice thereof. The foregoing indemnification, if any, is not to be deemed as a waiver of any immunity that may exist in any action against Lessee or its officers, agents, volunteers and employees. This provision shall survive the termination of this Agreement.

**Assignment by Lessor.** Lessor may assign, sell or encumber all or any part of this Agreement, the Rental Payments and any other rights hereunder, including with respect to the Equipment, without Lessee's consent. Such assignees may include trust agents for the benefit of holders of certificates of participation. No such assignment shall be effective as against Lessee unless and until written notice of the assignment is provided to Lessee. When presented with a notice of assignment, Lessee will acknowledge in writing receipt of such notice for the benefit of Lessor and any assignee. Lessee shall keep a complete and accurate record of all such assignments. Lessee makes no representation as to the effect that such assignment or participation may have on the tax exemption for the interest component of Rental Payments under this Agreement.

**Assignment and Subleasing by Lessee.** Neither this Agreement nor any interest herein or in the Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

**Events of Default Defined.** The occurrence of any of the following events shall constitute an Event of Default: (a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under this Agreement within ten (10) days following the due date thereof; (b) Lessee's failure to maintain insurance required by this Agreement; (c) Lessee's failure to perform or abide by any other condition, agreement or covenant set forth in this

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Agreement for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied; (d) Lessor's determination that any representation, warranty or statement made by Lessee in or pursuant to this Agreement was untrue in any material respect on the date made; (e) the filing of a petition in bankruptcy or receivership or similar proceeding by or against Lessee, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental functions or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of any adjustment of indebtedness of Lessee, or the dissolution or liquidation of Lessee. An Event of Nonappropriation shall not constitute an Event of Default.

**Remedies on Default.** Upon the occurrence of any Event of Default, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies: (a) Lessor may terminate this Agreement and all of Lessee's rights hereunder as to any or all items of Equipment; (b) Lessor may declare all Rental Payments payable under this Agreement to the end of the then-current budget year of Lessee to be immediately due and payable by Lessee; (c) Lessor may repossess any or all of the Equipment by giving Lessee written notice to deliver such Equipment; or in the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where such Equipment is kept and take possession of such Equipment and charge Lessee for costs incurred, including reasonable attorneys' fees; (d) Lessor may proceed by appropriate court action or actions to enforce performance by Lessee of its obligations hereunder or to recover damages for the breach hereof; (e) by written notice to the Escrow Agent, Lessor may instruct the escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under this Agreement; and (f) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default. Any Equipment returned (subject to the appropriation of money for such purpose) under clause (c) above shall be to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement; provided that, if Lessee does not appropriate money for such purpose, it shall make the Equipment available for Lessor to take possession of, at the location listed in the Equipment Schedule. If Lessor takes possession of the Equipment, Lessor may thereafter dispose of the Equipment in accordance with the requirements of Article 9 of the Uniform Commercial Code; provided that any proceeds of such disposition in excess of the sum of (i) the unpaid principal component of Rental Payments (including Rental Payments due in future budget years), (ii) Lessor's costs and expenses associated with the disposition of the Equipment and the Event of Default (including attorneys fees), and (iii) any other amounts then due under this Agreement, shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto. No deficiency shall be allowed against Lessee, except with respect to any unpaid Rental Payments to the end of the then-current budget year of Lessee and unpaid costs and expenses incurred by Lessor in connection with the repossession and disposition of the Equipment. Each of the rights and remedies of Lessor under this Agreement is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of this Agreement, or to exercise any right, power or remedy consequent upon a breach hereof, shall

constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

**Notices.** All written notices to be given under this Agreement shall be given (a) personally, (b) by mail in registered or certified form, with postage prepaid, or (c) by overnight courier, charges prepaid, in each case to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, on the next business day after deposit for overnight delivery with a courier, or, if given by other means, when delivered.

**Construction.** This Agreement is binding upon and inures to the benefit of Lessor and Lessee and their respective successors and permitted assigns. In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Agreement may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of this Agreement. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. This Agreement shall be governed by and construed in accordance with the laws of the State.

**Usury.** It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein, in no event shall this Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the Lease Term so that the interest is uniform through such term.

**Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSOR AND LESSEE HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT.

**USA Patriot Act Compliance Notification.** Lessor hereby notifies Lessee that pursuant to the requirements of the USA PATRIOT Act (the "Act"), it is required to obtain, verify and record information that identifies Lessee, which information includes the name and address of Lessee and other information that will allow Lessor to identify Lessee in accordance with the Act. Lessee shall, promptly upon Lessor's request, provide all documentation and other information that Lessor requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

WITNESS/ATTEST: HOWARD COUNTY, MARYLAND

\_\_\_\_\_  
Lonnie R. Robbins  
Chief Administrator Officer

By: \_\_\_\_\_  
Allan H. Kittleman  
County Executive

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
Clive Graham  
Administrator, Office of Transportation

**APPROVED FOR SUFFICIENCY OF FUNDS:**

\_\_\_\_\_  
Stanley J. Milesky, Director  
Department of Finance

**APPROVED FOR FORM AND LEGAL SUFFICIENCY**

this \_\_\_\_\_ day of \_\_\_\_\_, 2017:

\_\_\_\_\_  
Gary W. Kuc  
County Solicitor

**REVIEWING ATTORNEY:**

\_\_\_\_\_  
Norman E. Parker, Jr.  
Senior Assistant County Solicitor

**SUNTRUST EQUIPMENT FINANCE & LEASING**  
**CORP.,**  
Lessor

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

Address:  
P.O. Box 4418  
Atlanta, GA 30302

**EXHIBIT A**

**EQUIPMENT SCHEDULE  
TO TAX-EXEMPT LEASE/PURCHASE AGREEMENT**

The following described equipment (the "Equipment") is the subject of the Tax-Exempt Lease/Purchase Agreement dated as of {MasterLeaseDate} (the "Agreement") between the undersigned Lessor and Lessee.

1. Equipment. The cost of the Equipment to be funded by Lessor under this Agreement is \$2,540,058.50. The Equipment consists of the following equipment which has been or shall be purchased from the manufacturer(s) and/or vendor(s) named below for the prices set forth below:

<u>Manufacturer and/or Vendor Name &amp; Invoice No.</u>	<u>Description</u>	<u>Invoice Cost</u>
<u>EIDorado National California, Inc. HGAC Contract No. BT01-17</u>	<u>Seven (7) E-Z Rider II 32' Low- Floor, Transit Buses. Product Code: MMD</u>	<u>\$ 2,540,058.50</u>
	<u>Total Invoice Cost:</u>	<u>\$ 2,540,058.50</u>

2. Location of Equipment. The Equipment is essential to the governmental functions of Lessee. The initial principal garage of the Equipment will be located at the following address(es): 8800 Corridor Road, Annapolis Junction, MD, 20701.

3. Commencement Date. The Commencement Date of this Agreement is \_\_\_\_\_.

4. Interest Accrual Date. The amounts of the interest component of Rental Payments payable under this Agreement have been calculated based on the assumption that the proceeds of this Agreement were disbursed on the Commencement Date, and such payments of interest component will be payable as set forth in the Payment Schedule regardless of when the proceeds of this Agreement were actually disbursed.

5. Payment Schedule. The Payment Schedule is attached to this Equipment Schedule as Exhibit 1.

6. Lessee's Certificate. The Lessee's General and Tax Certificate is attached to this Equipment Schedule as Exhibit 2.

7. Opinion. The opinion of Lessee's counsel is attached to this Equipment Schedule as Exhibit 3.

8. Proceeds. Lessor shall disburse the proceeds of this Equipment Schedule in accordance with the Escrow Agreement attached hereto as Exhibit 4.

9. Insurance. Check Item A and/or Item B.

A Lessee's insurance letter is attached to this Equipment Schedule as Exhibit 5. \_\_\_\_\_

B. A letter from Lessee's risk manager or insurance consultant is attached as Exhibit 5.  X

10. Form 8038-G or -GC. The Form 8038-G or Form 8038-GC with respect to the Agreement is attached to this Equipment Schedule as Exhibit 6.

IN WITNESS WHEREOF, Lessor has caused this Equipment Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Equipment Schedule to be executed in its name by its duly authorized officer.

**HOWARD COUNTY, MARYLAND**

Lessee

**SUNTRUST EQUIPMENT FINANCE & LEASING**

**CORP.**

Lessor

By:

Name: Allan H. Kittleman

Title: County Executive

By:

Name:

Title:

Address:

Office of Transportation

3430 Courthouse Drive

Ellicott City, MD 21043

ATTN: Jai Saunders

Telephone: 410-313-0539

Facsimile: 410-313-1655

E-mail address: jasaunders@howardcountymd.gov

Address:

P.O. Box 4418

Atlanta, GA 30302

**Exhibit 1 to Equipment Schedule**  
**Tax-Exempt Lease/Purchase Agreement**

**PAYMENT SCHEDULE**

The annual interest rate applicable to the Agreement shall be 2.59 percent. Lessee will make Rental Payments each consisting of principal and interest as set forth below for a Lease Term of 120 months. Rental payments are due annually as set forth below.

<b><u>Payment Number</u></b>	<b><u>Payment Date</u></b>	<b><u>Total Payment</u></b>	<b><u>Principal Component</u></b>	<b><u>Interest Component</u></b>	<b><u>Prepayment Price*</u></b>
<u>1</u>	<u>3/15/2017</u>	<u>\$ 284,214.07</u>	<u>\$ 284,214.07</u>	<u>\$ 0.00</u>	<u>\$ 2,278,402.88</u>
<u>2</u>	<u>3/15/2018</u>	<u>\$ 284,214.07</u>	<u>\$ 225,787.82</u>	<u>\$ 58,426.25</u>	<u>\$ 2,050,357.18</u>
<u>3</u>	<u>3/15/2019</u>	<u>\$ 284,214.07</u>	<u>\$ 231,635.71</u>	<u>\$ 52,578.35</u>	<u>\$ 1,816,405.11</u>
<u>4</u>	<u>3/15/2020</u>	<u>\$ 284,214.07</u>	<u>\$ 237,635.06</u>	<u>\$ 46,579.00</u>	<u>\$ 1,576,393.70</u>
<u>5</u>	<u>3/15/2021</u>	<u>\$ 284,214.07</u>	<u>\$ 243,789.80</u>	<u>\$ 40,424.27</u>	<u>\$ 1,330,166.00</u>
<u>6</u>	<u>3/15/2022</u>	<u>\$ 284,214.07</u>	<u>\$ 250,103.94</u>	<u>\$ 34,110.12</u>	<u>\$ 1,077,561.02</u>
<u>7</u>	<u>3/15/2023</u>	<u>\$ 284,214.07</u>	<u>\$ 256,581.62</u>	<u>\$ 27,632.45</u>	<u>\$ 818,413.59</u>
<u>8</u>	<u>3/15/2024</u>	<u>\$ 284,214.07</u>	<u>\$ 263,227.07</u>	<u>\$ 20,987.00</u>	<u>\$ 552,554.25</u>
<u>9</u>	<u>3/15/2025</u>	<u>\$ 284,214.07</u>	<u>\$ 270,044.64</u>	<u>\$ 14,169.43</u>	<u>\$ 279,809.16</u>
<u>10</u>	<u>3/15/2026</u>	<u>\$ 284,214.07</u>	<u>\$ 277,038.78</u>	<u>\$ 7,175.29</u>	<u>\$ 0.00</u>

\* After payment of the Rental Payment due on such date.

**HOWARD COUNTY, MARYLAND**

Lessee

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

Name: Allan H. Kittleman

Title: County Executive



LESSEE'S GENERAL AND TAX CERTIFICATE

[Bond Counsel to provide]

OPINION OF LESSEE'S COUNSEL

[Bond Counsel to provide]

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SUNTRUST EQUIPMENT FINANCE & LEASING CORP.

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ESCROW AGREEMENT

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[To be provided]

SELF-INSURANCE LETTER

SUNTRUST EQUIPMENT FINANCE & LEASING CORP.  
P.O. Box 4418  
Atlanta, GA 30302

Ladies and Gentlemen:

The undersigned is the risk manager or insurance consultant for Howard County, Maryland (the "Lessee"), and in such connection the undersigned is familiar with Lessee's insurance and self-insurance arrangements. In connection with the Tax-Exempt Lease/Purchase Agreement (the "Agreement"), between Lessee and SunTrust Equipment Finance and Leasing Corp. (the "Lessor"), the undersigned makes the following certifications to Lessor, effective as of the Commencement Date. Capitalized terms used but not defined herein have the meanings given in the Agreement.

1. Howard County, Maryland has created and funded a self-insurance program to provide compensation for injury to persons or damage to property resulting from the negligence or other wrongful acts of the County's public officials, employees and agents for which the County is legally liable. Further, Howard County, Maryland, provides self-insured workers' compensation coverage for all employees in accordance with Maryland law and all-risk property coverage for County property, vehicles and equipment. The establishment of this Fund does not constitute a waiver of the immunities, liability caps and defenses available to Howard County, Maryland, for its officers, agents and employees. (Section 23.100 Title 23, Howard County Code).

2. Upon delivery of the Equipment described in the Agreement, Howard County shall cause its contracted transit service provider to purchase and maintain the following coverage:

- a. All Risk Physical Damage Insurance on the leased Equipment evidenced by a **Certificate of Insurance and Long Form Loss Payable Clause** naming **SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Loss Payee.**

The Coverage Required is \$2,540,059.

- b. Commercial General Liability Insurance evidenced by a **Certificate of Insurance** naming **SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Additional Insured.**

The following minimum coverage is required and will be provided:

Liability:	\$500,000 per person
Liability – Bodily Injury:	\$1,000,000 aggregate
Liability – Property Damage:	\$1,000,000 property damage liability

PROPERTY Seven (7) Transit Buses at \$362,865.57 each (or \$2,540,059 for all seven).

LOCATION: 8800 Corridor Road, Annapolis Junction, MD 20701.

Upon issuance of the coverage outlined above, a **Certificate of Insurance** will be mailed to **SUNTRUST EQUIPMENT FINANCE & LEASING CORP., P.O. Box 4418, Atlanta, GA 30302.**

Dated: Feb. 15, 2017

Very truly yours,

By: 

Name: Lynne K. Levin

Title: Risk Management Administrator



Exhibit 6 to Equipment Schedule  
Tax-Exempt Lease/Purchase Agreement

**[FORM 8038-G or 8038-GC]**

**PAGE TO BE REPLACED BY UCC FINANCING STATEMENT**

PAGE 14 - EEDS

FORM ST-MUN-6002 MASTER INSTALLMENT PURCHASE AGREEMENT DWT

24258764v1 0096069-000010

WCSR 38389806v3

REVISION DATE: 04/01/2015

**SCHEDULE A TO FINANCING STATEMENT OF**  
**HOWARD COUNTY, MARYLAND, AS DEBTOR, AND**  
**SUNTRUST EQUIPMENT FINANCE & LEASING CORP., AS SECURED PARTY**

Continuation of Collateral Description

The financing statement to which this Schedule A is attached covers the types of property described on the face of such financing statement and all of the Debtor's right, title and interest in and to (collectively, the "Collateral"):

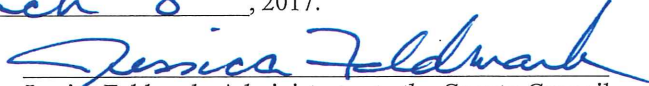
(a) the equipment described in the Tax-Exempt Lease/Purchase Agreement between Debtor, as lessee, and Secured Party, as lessor, as such agreement may be amended, modified or supplemented from time to time;

(b) to the extent not included in the foregoing, all books and records solely to the extent related to the Collateral; and

(c) to the extent not included in the foregoing, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications and all proceeds and products of any or all of the foregoing, whether existing on the date hereof or arising hereafter, including insurance proceeds.

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on March 8, 2017.

  
\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council



Amendment 1 to Council Bill No. 11-2017

BY: The Chairperson at the  
request of the County Executive

Legislative Day No. 5  
Date: March 6, 2017

Amendment No. 1

*(This amendment clarifies language and substitutes a revised Exhibit B that incorporates the agreed-upon rate quote.)*

- 1 On page 1, in line 8, strike “for the first”.
- 2
- 3 On page 1, in line 9, strike “year’s payment of a 10-year lease-to-purchase program”.
- 4
- 5 Remove the Tax-Exempt Lease/Purchase Agreement, attached to the Bill as Exhibit B, in its
- 6 entirety and substitute a revised Exhibit B as attached to this Amendment.

ADOPTED 3/6/17  
FAILED  
SIGNATURE Jessica Toddman

**SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**  
**TAX-EXEMPT LEASE/PURCHASE AGREEMENT (LEASE NO. {LeaseNumber})**

This **TAX-EXEMPT LEASE/PURCHASE AGREEMENT** (the "Agreement"), dated as of **{MasterLeaseDate}**, is made and entered into by and between **SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**, a Virginia corporation, as lessor ("Lessor"), and **Howard County, Maryland**, a political subdivision of the State of Maryland, as lessee ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Lease; Possession and Use.** Lessor leases the property (the "Equipment") described in the Equipment Schedule attached hereto as Exhibit A (the "Equipment Schedule") to Lessee, and Lessee leases the Equipment from Lessor, upon the terms and conditions set forth herein and in the Equipment Schedule. The Equipment Schedule (including all exhibits and attachments thereto) is incorporated herein by reference. Lessee shall have quiet use and enjoyment of the Equipment during the Lease Term, except as expressly set forth in this Agreement.

**Term.** The "Lease Term" shall consist of an "Original Term" commencing on the date (such date, the "Commencement Date") the proceeds of this Agreement are deposited in escrow with SunTrust Bank (the "Escrow Agent") pursuant to an Escrow Agreement attached to the Equipment Schedule as Exhibit 4 (the "Escrow Agreement") and ending at the end of the budget year of Lessee in effect on such date, and one or more "Renewal Terms," each having a duration of one year, coextensive with Lessee's budget year. The Lease Term shall commence on the Commencement Date and shall terminate upon payment of the final Rental Payment and the exercise of the purchase option described herein, unless sooner terminated pursuant to this Agreement. Lessee hereby authorizes and instructs Lessor to insert the Commencement Date as appropriate in any blanks in this Agreement and the schedules and exhibits hereto.

**Rental Payments.** Lessee agrees to pay the rental payments due as specified in the Payment Schedule in Exhibit 1 to the Equipment Schedule (collectively, the "Rental Payments"). A portion of each Rental Payment is paid as interest as specified in the Payment Schedule, and the first Rental Payment shall include interest accruing from the date set forth in the Equipment Schedule. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor. To the extent permitted by applicable law, Lessor shall have the right to require a late payment charge for each Rental Payment or any other amount due hereunder which is not paid within 10 days of the date when due equal to the lesser of 5% of such late payment or the legal maximum.

**Inclusion in Budget.** The person or entity in charge of preparing Lessee's budget will include in the budget request for each budget year the Rental Payments to become due during such budget year, and will use reasonable and lawful means available to secure the appropriation of money for such budget year sufficient to pay all Rental Payments coming due therein. Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will be lawfully appropriated. Lessor acknowledges that appropriation for Rental Payments is a governmental function which Lessee cannot contractually commit itself in advance to perform, and that this Agreement does not constitute such a commitment. No remedy is provided, and Lessee shall not be liable for any damages, for failure to comply with this paragraph.

**Nonappropriation.** If sufficient funds are not appropriated to make Rental Payments required under this Agreement for the Original Term or any Renewal Term, this Agreement shall terminate at the end of the then-current Original Term or Renewal Term, and Lessee shall not be obligated to make Rental Payments under this Agreement beyond the then-current Original Term or Renewal Term, and all of Lessee's right, title and interest in and to the Equipment shall terminate as of the end of the then-current Original Term or Renewal Term. If such a nonappropriation (an "Event of Nonappropriation") occurs, Lessee shall (subject to the appropriation of money for such purpose), no later than the end of the then-current Original Term or Renewal Term, return the Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement; provided that, if Lessee does not appropriate money for such purpose, it shall make the Equipment available for Lessor to take possession of, at the location listed in the Equipment Schedule. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the termination of Lessee's interest in the Equipment and passage of title to the Equipment to Lessor. Lessee shall notify Lessor in writing within seven (7) days after the occurrence of an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee. If Lessee has failed

to return the Equipment as required by this paragraph, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments that would thereafter have come due if this Agreement had not been terminated and which are attributable to the number of days after which Lessee fails to return the Equipment and for any other loss suffered by Lessor as a result of Lessee's failure to deliver the Equipment. In addition, Lessor may, by written instructions to the Escrow Agent, instruct the Escrow Agent to release all such proceeds and any earnings thereon to Lessor. For the avoidance of doubt, all payment obligations of Lessee hereunder are subject to the appropriation of funds.

**Current Expense.** The obligations of Lessee, including its obligation to pay Rental Payments due in any budget year, shall constitute a current expense of Lessee for such budget year, and shall not constitute indebtedness of Lessee within the meaning of the Constitution and laws of the State of Maryland (the "State"). This Agreement does not constitute a pledge of the full faith or taxing power of Lessee. Upon appropriation of Rental Payments for a budget year, the Rental Payments for such budget year shall be a binding obligation of Lessee, provided that such obligation shall not include a pledge of the taxing power of Lessee.

**Unconditional Rental Payments.** Subject in all cases to Lessee's right to non-appropriate Rental Payments, Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional in all events, without set-off, counterclaim, deduction, defense or abatement for any reason, including through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment, obsolescence of the Equipment or condemnation of the Equipment. This paragraph shall not limit Lessee's rights against any manufacturer or vendor of the Equipment.

**Option to Purchase.** Lessee shall have the option to purchase Lessor's entire interest in the Equipment on the last day of the Lease Term, if this Agreement is still in effect on such day, upon payment in full of the Rental Payments and any other amounts due hereunder plus payment of one dollar (\$1) to Lessor. Lessee shall also have the option to prepay its obligations under this Agreement, in whole but not in part, to the extent and on the terms set forth in the Equipment Schedule. Lessee shall give written notice to Lessor of its intention to exercise its option to prepay not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under this Agreement (including the Rental Payment due on the Payment Date on which the option shall be effective) plus the applicable Prepayment Price set forth in the Payment Schedule. Lessee's obligations under this Agreement shall be prepaid in part from the excess proceeds of this Agreement on the terms set forth in the Escrow Agreement.

**Representations and Warranties of Lessee.** Lessee represents and warrants to Lessor as follows: (a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"), duly organized and existing under the Constitution and laws of the State, and has requisite power and authority under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations under this Agreement; (b) the execution and delivery of this Agreement have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee; (c) this Agreement has been duly executed and delivered by and constitutes the valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms; (e) Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the Original Term; (d) Lessee's exact legal name is as set forth on the first page of this Agreement; (e) the execution, delivery and performance of this Agreement by

Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound; (f) there is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement; (g) except as otherwise disclosed in writing by Lessee to Lessor, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been the obligated party required to make the payments, at any time during the past ten (10) years has been terminated by Lessee solely as a result of insufficient funds being appropriated in any budget year, and no event has occurred which would constitute an event of default by the Lessee under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years; and (h) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the Lease Term.

**Tax Covenants.** The parties contemplate that interest payable under this Agreement will be excluded from gross income for federal income tax purposes under Section 103 of the Code. Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments under this Agreement and will not use or permit the use of the Equipment in such a manner as to cause this Agreement to be a "private activity bond" under Section 141(a) of the Code. Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purposes for which this Agreement has been entered into, and no part of the proceeds of this Agreement shall be invested in any securities, obligations or other investments except for the temporary period pending such use. The Lessee will not use the proceeds of this Agreement or cause the proceeds of this Agreement to be used, at any time, directly or indirectly in a manner which, if such use had been reasonably anticipated on the Commencement Date, would have caused this Agreement to become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the Commencement Date.

**Tax Representations.** Lessee represents and warrants to Lessor that: (a) the estimated total costs, including taxes, freight, installation, cost of issuance, of the Equipment will not be less than the total principal amount of the Rental Payments; (b) the Equipment has been ordered or is expected to be ordered within six months after the Commencement Date and the Equipment is expected to be delivered and installed, and the vendor fully paid, within eighteen months from the Commencement Date; (c) Lessee will pursue the acquisition of the Equipment and the expenditure of the net proceeds of this Agreement with due diligence; (d) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (1) that is reasonably expected to be used to pay the Rental Payments, or (2) that may be used solely to prevent a default in the payment of the Rental Payments; (e) the Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments; (f) there are no other obligations of Lessee which (1) are being sold within 15 days of the Commencement Date, or (2) are being sold pursuant to the same plan of financing as this Agreement, and (3) are expected to be paid from substantially the same source of funds; and (g) the officer or official who has executed this Agreement on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of this Agreement. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in this paragraph are accurate and the expectations of Lessee set forth in this paragraph are reasonable. The representations, warranties and covenants set forth in this paragraph are superseded by the representations, warranties and covenants set forth in any arbitrage or tax certificate executed and delivered by Lessee in connection with this Agreement.

**Interest Rate Adjustment.** If Lessor either (i) receives notice, in any form, from the Internal Revenue Service, or (ii) reasonably determines, based on an

ST-MUN-6005B – TAX-EXEMPT LEASE/PURCHASE AGREEMENT – ESCROW

opinion of independent tax counsel selected by Lessor, that Lessor may not exclude the interest component of Rental Payments paid under this Agreement from its federal gross income, Lessee shall pay to Lessor upon demand (A) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the highest marginal corporate tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by this Agreement through the date of such event, and (B) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor. If, during the Lease Term, the federal corporate income tax rate decreases (whether or not Lessor is actually taxed at the maximum marginal statutory rate) or the federal tax laws are changed to reduce or cap the benefit of the tax exemption for the interest component of Rental Payments under this Agreement (whether or not Lessor is actually subject to such reduction or cap), the annual interest rate on this Agreement shall be adjusted as follows: (x) the interest rate shall be divided by 0.65, (y) the resulting quotient shall be multiplied by the difference between 1.0 and the actual new maximum federal corporate income tax rate or the effective maximum federal corporate income tax rate after giving effect to any reduction or cap on the benefit of the tax exemption, as applicable, and (z) the resulting amount shall be the new interest rate for this Agreement. Such increase in the interest rate shall take effect on the effective date of the change in federal tax laws. For the fiscal year of Lessee in which the effective date of the change in federal tax law falls, the increased interest accruing shall be due and payable on the first due date for Rental Payments in the fiscal year of Lessee following the fiscal year in which the effective date of the change in federal tax law falls. Appropriation of said increased interest shall be subject to the appropriation of funds, and failure to appropriate such increased interest shall be an Event of Nonappropriation hereunder. Upon an increase in the interest rate under this paragraph, Lessor shall provide to Lessee a revised Payment Schedule for this Agreement reflecting the increased interest rate.

**Liability and Property Insurance.** All risk of loss to the Equipment shall be borne by Lessee. Lessee shall, at its own expense, or through its transit contractor procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor from liability in all events, with coverage similar to the coverage Lessee or its transit contractor maintains for other comparable Equipment, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price. Lessee will also carry or require its transit contractor to carry workers' compensation insurance covering all employees on, in near or about the Equipment, if required by applicable law. All insurance policies shall be taken out and maintained with insurance companies acceptable to Lessor and Lessee shall request a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. In addition to any notice provided by the insurer, Lessee shall provide written notice to Lessor prior to any such change in coverage. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor as loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. At Lessor's request, Lessee shall deliver to Lessor the evidence of insurance which complies with this paragraph. Lessee may self-insure against the risks described in this paragraph. If Lessee self-insures, Lessee shall deliver to Lessor at Lessor's request, a letter from its risk manager or insurance consultant in substantially the form attached to the Equipment Schedule. If Lessee fails to maintain the insurance required by this paragraph, Lessor may (but shall not be obligated to) take such action to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 12% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

**Application.** If the Equipment is stolen, lost or destroyed, in whole or in part, or is damaged by fire or other casualty, or title to, or the temporary use of, the Equipment has been 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, Lessor and Lessee will cause the net proceeds of any insurance claim, condemnation award or sale

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under threat of condemnation (the "Net Proceeds") to be applied, at the option of Lessee, to (a) the prompt replacement, repair, restoration, modification or improvement of the Equipment in substantial conformance with the original specifications, or (b) the prepayment of this Agreement in whole. Lessee will give Lessor written notice of its election within ninety (90) days after its receipt of the Net Proceeds. The insufficiency of the Net Proceeds to pay in full the cost of any repair, restoration, modification or improvement shall not affect Lessee's obligations under this paragraph, and Lessee shall not be entitled to any reimbursement therefor from Lessor or any diminution of the Rental Payments. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement may be retained by Lessee.

**Use and Maintenance of Equipment; Liens.** Lessee shall, at its own expense, maintain the Equipment in good condition and working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. The initial principal garage of the Equipment shall be located at the address specified in the Equipment Schedule. If Lessee changes the principal garage of the Equipment, it shall use good faith efforts to provide thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor with the address of the principal garage of the Equipment upon Lessor's reasonable request. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment. Without limiting the foregoing sentence, Lessor acknowledges that Lessee may affix or install decals, paint and other accessories to identify the Equipment as the equipment of Lessee. Lessee will not affix the Equipment to real property such that the Equipment becomes fixtures.

**Taxes.** Lessor and Lessee contemplated that the Equipment will be used for a governmental or proprietary purpose of Lessee, and therefore that the Equipment will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement have been established to reflect the savings resulting from this exemption. Lessee will take all necessary actions under applicable law to obtain or maintain such exemption. Nevertheless, if the use, possession or acquisition of the Equipment is determined to be subject to taxation or later becomes subject to taxation, Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any 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 then current budget year of the Lease Term.

**Financial Information.** To the extent not publicly available, Lessee shall deliver to Lessor upon request such financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement as Lessor may request from time to time.

**Title; Security Interest.** During the Lease Term, title to the Equipment shall be in Lessee, subject to Lessor's interests under this Agreement. In order to secure Lessee's payment of all Rental Payments and the performance of all other obligations hereunder, Lessee hereby grants to Lessor a continuing security interest in and to (a) the Equipment, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications thereto; (b) all books and records solely to the extent related to the Equipment; (c) all moneys and investments in any escrow account into which proceeds of this Agreement have been deposited; and (d) all proceeds of the foregoing, including insurance proceeds. Lessee hereby authorizes Lessor to prepare and file such financing statements and other such documents to establish and maintain Lessor's valid first lien and perfected security interest. Lessee will execute and deliver such documents and will perform such acts as Lessor may request to establish and maintain Lessor's security interest. Lessee will not change its legal name in any respect without giving Lessor 30 days prior written notice.

**Acceptance; Disclaimer of Warranties.** Lessee covenants with Lessor that it will cause the Equipment to be delivered and installed in its entirety in accordance with the bid or purchase order specifications pursuant to which Lessee ordered the Equipment from the vendor or manufacturer, and will pay all taxes, delivery costs and installation costs, if any, in connection therewith. All of the Equipment and the vendor of the Equipment have been selected by

Lessee. Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by Lessee, the acceptance by any vendor or its sales representative of any order submitted, or any delay or failure by such vendor or its sales representative to manufacture, deliver or install any Equipment for use by Lessee. Proceeds of this Agreement will be disbursed in accordance with the Escrow Agreement. Lessor assigns to Lessee for the Lease Term all of vendors' warranties in connection with the Equipment. The insufficiency of proceeds under this Agreement to pay costs of the Equipment shall not affect Lessee's obligations under this paragraph. When the Equipment has been delivered, installed and accepted, Lessee shall promptly execute and deliver to Lessor (with a copy to the Escrow Agent) an acceptance certificate in the form attached to the Escrow Agreement. **LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.** In no event shall Lessor be liable for any incidental or consequential damages in connection with or arising out of this Agreement or the Equipment or Lessee's use of the Equipment.

**Risk of Loss.** Lessee shall not be required to indemnify Lessor from liabilities associated with this Agreement; however, to the extent permitted by applicable laws of the State, as between Lessor and Lessee, Lessee assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, and Lessee agrees to defend Lessor against, all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses that relate to or arise out of this Agreement, including but not limited to, (a) the selection, manufacture, purchase, acceptance or rejection of Equipment or the ownership of the Equipment, (b) the delivery, lease, possession, maintenance, use, condition, return or operation of the Equipment, (c) the condition of the Equipment sold or otherwise disposed of after possession by Lessee, (d) the conduct of Lessee, its officers, employees and agents, (e) any claim, loss, cost or expense involving alleged damage to the environment relating to the Equipment, including, but not limited to investigation, removal, cleanup and remedial costs, and (f) any strict liability under the laws or judicial decisions of any state or the United States. The indemnification obligations of the Lessee in this Agreement, if any, are provided to the extent of the provisions of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Maryland Annotated Code and subject to the appropriation of funds. As a condition of indemnification, Lessor agree(s) to notify Lessee of any suits, claims or potential claims as soon as practicable following Lessor's receipt of written notice thereof; provided, however, that the failure of Lessor to provide timely notice to Lessee with respect to any such suit, claim or potential claim shall not affect the obligations of Lessee hereunder with respect to such suit, claim or potential claim except to the extent that Lessee is materially prejudiced by Lessor's failure to give Lessee timely notice thereof. The foregoing indemnification, if any, is not to be deemed as a waiver of any immunity that may exist in any action against Lessee or its officers, agents, volunteers and employees. This provision shall survive the termination of this Agreement.

**Assignment by Lessor.** Lessor may assign, sell or encumber all or any part of this Agreement, the Rental Payments and any other rights hereunder, including with respect to the Equipment, without Lessee's consent. Such assignees may include trust agents for the benefit of holders of certificates of participation. No such assignment shall be effective as against Lessee unless and until written notice of the assignment is provided to Lessee. When presented with a notice of assignment, Lessee will acknowledge in writing receipt of such notice for the benefit of Lessor and any assignee. Lessee shall keep a complete and accurate record of all such assignments. Lessee makes no representation as to the effect that such assignment or participation may have on the tax exemption for the interest component of Rental Payments under this Agreement.

**Assignment and Subleasing by Lessee.** Neither this Agreement nor any interest herein or in the Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

**Events of Default Defined.** The occurrence of any of the following events shall constitute an Event of Default: (a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under this Agreement within ten (10) days following the due date thereof; (b) Lessee's failure to maintain insurance required by this Agreement; (c) Lessee's failure to perform or abide by any other condition, agreement or covenant set forth in this

REVISION DATE: 2/16/2017



Agreement for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied; (d) Lessor's determination that any representation, warranty or statement made by Lessee in or pursuant to this Agreement was untrue in any material respect on the date made; (e) the filing of a petition in bankruptcy or receivership or similar proceeding by or against Lessee, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental functions or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of any adjustment of indebtedness of Lessee, or the dissolution or liquidation of Lessee. An Event of Nonappropriation shall not constitute an Event of Default.

**Remedies on Default.** Upon the occurrence of any Event of Default, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies: (a) Lessor may terminate this Agreement and all of Lessee's rights hereunder as to any or all items of Equipment; (b) Lessor may declare all Rental Payments payable under this Agreement to the end of the then-current budget year of Lessee to be immediately due and payable by Lessee; (c) Lessor may repossess any or all of the Equipment by giving Lessee written notice to deliver such Equipment; or in the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where such Equipment is kept and take possession of such Equipment and charge Lessee for costs incurred, including reasonable attorneys' fees; (d) Lessor may proceed by appropriate court action or actions to enforce performance by Lessee of its obligations hereunder or to recover damages for the breach hereof; (e) by written notice to the Escrow Agent, Lessor may instruct the escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under this Agreement; and (f) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default. Any Equipment returned (subject to the appropriation of money for such purpose) under clause (c) above shall be to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement; provided that, if Lessee does not appropriate money for such purpose, it shall make the Equipment available for Lessor to take possession of, at the location listed in the Equipment Schedule. If Lessor takes possession of the Equipment, Lessor may thereafter dispose of the Equipment in accordance with the requirements of Article 9 of the Uniform Commercial Code; provided that any proceeds of such disposition in excess of the sum of (i) the unpaid principal component of Rental Payments (including Rental Payments due in future budget years), (ii) Lessor's costs and expenses associated with the disposition of the Equipment and the Event of Default (including attorneys fees), and (iii) any other amounts then due under this Agreement, shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto. No deficiency shall be allowed against Lessee, except with respect to any unpaid Rental Payments to the end of the then-current budget year of Lessee and unpaid costs and expenses incurred by Lessor in connection with the repossession and disposition of the Equipment. Each of the rights and remedies of Lessor under this Agreement is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of this Agreement, or to exercise any right, power or remedy consequent upon a breach hereof, shall

constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

**Notices.** All written notices to be given under this Agreement shall be given (a) personally, (b) by mail in registered or certified form, with postage prepaid, or (c) by overnight courier, charges prepaid, in each case to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, on the next business day after deposit for overnight delivery with a courier, or, if given by other means, when delivered.

**Construction.** This Agreement is binding upon and inures to the benefit of Lessor and Lessee and their respective successors and permitted assigns. In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Agreement may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of this Agreement. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. This Agreement shall be governed by and construed in accordance with the laws of the State.

**Usury.** It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein, in no event shall this Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the Lease Term so that the interest is uniform through such term.

**Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSOR AND LESSEE HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT.

**USA Patriot Act Compliance Notification.** Lessor hereby notifies Lessee that pursuant to the requirements of the USA PATRIOT Act (the "Act"), it is required to obtain, verify and record information that identifies Lessee, which information includes the name and address of Lessee and other information that will allow Lessor to identify Lessee in accordance with the Act. Lessee shall, promptly upon Lessor's request, provide all documentation and other information that Lessor requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

WITNESS/ATTEST:

HOWARD COUNTY, MARYLAND

\_\_\_\_\_  
Lonnie R. Robbins  
Chief Administrator Officer

By: \_\_\_\_\_  
Allan H. Kittleman  
County Executive

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Clive Graham  
Administrator, Office of Transportation

APPROVED FOR SUFFICIENCY OF FUNDS:

\_\_\_\_\_  
Stanley J. Milesky, Director  
Department of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY  
this \_\_\_\_ day of \_\_\_\_\_, 2017:

\_\_\_\_\_  
Gary W. Kuc  
County Solicitor

REVIEWING ATTORNEY:

\_\_\_\_\_  
Norman E. Parker, Jr.  
Senior Assistant County Solicitor

SUNTRUST EQUIPMENT FINANCE & LEASING  
CORP.,  
Lessor

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

Address:  
P.O. Box 4418  
Atlanta, GA 30302

**EXHIBIT A**

**EQUIPMENT SCHEDULE  
TO TAX-EXEMPT LEASE/PURCHASE AGREEMENT**

The following described equipment (the "Equipment") is the subject of the Tax-Exempt Lease/Purchase Agreement dated as of {MasterLeaseDate} (the "Agreement") between the undersigned Lessor and Lessee.

1. Equipment. The cost of the Equipment to be funded by Lessor under this Agreement is \$2,540,058.50. The Equipment consists of the following equipment which has been or shall be purchased from the manufacturer(s) and/or vendor(s) named below for the prices set forth below:

Manufacturer and/or Vendor Name & Invoice No.	Description	Invoice Cost
EIDorado National California, Inc. HGAC Contract No. BT01-17	Seven (7) E-Z Rider II 32' Low-Floor, Transit Buses. Product Code: MMD	\$ 2,540,058.50
	<b>Total Invoice Cost:</b>	<b>\$ 2,540,058.50</b>

2. Location of Equipment. The Equipment is essential to the governmental functions of Lessee. The initial principal garage of the Equipment will be located at the following address(es): 8800 Corridor Road, Annapolis Junction, MD, 20701.
3. Commencement Date. The Commencement Date of this Agreement is \_\_\_\_\_.
4. Interest Accrual Date. The amounts of the interest component of Rental Payments payable under this Agreement have been calculated based on the assumption that the proceeds of this Agreement were disbursed on the Commencement Date, and such payments of interest component will be payable as set forth in the Payment Schedule regardless of when the proceeds of this Agreement were actually disbursed.
5. Payment Schedule. The Payment Schedule is attached to this Equipment Schedule as Exhibit 1.
6. Lessee's Certificate. The Lessee's General and Tax Certificate is attached to this Equipment Schedule as Exhibit 2.
7. Opinion. The opinion of Lessee's counsel is attached to this Equipment Schedule as Exhibit 3.
8. Proceeds. Lessor shall disburse the proceeds of this Equipment Schedule in accordance with the Escrow Agreement attached hereto as Exhibit 4.
9. Insurance. Check Item A and/or Item B.
  - A. Lessee's insurance letter is attached to this Equipment Schedule as Exhibit 5. \_\_\_\_\_
  - B. A letter from Lessee's risk manager or insurance consultant is attached as Exhibit 5.  X
10. Form 8038-G or -GC. The Form 8038-G or Form 8038-GC with respect to the Agreement is attached to this Equipment Schedule as Exhibit 6.

**IN WITNESS WHEREOF**, Lessor has caused this Equipment Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Equipment Schedule to be executed in its name by its duly authorized officer.

**HOWARD COUNTY, MARYLAND**  
Lessee

**SUNTRUST EQUIPMENT FINANCE & LEASING  
CORP.,**  
Lessor

By: \_\_\_\_\_  
Name: Allan H. Kittleman  
Title: County Executive

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

Address:  
Office of Transportation  
3430 Courthouse Drive  
Ellicott City, MD 21043  
ATTN: Jai Saunders

Address:  
P.O. Box 4418  
Atlanta, GA 30302

Telephone: 410-313-0539  
Facsimile: 410-313-1655  
E-mail address: [jasaunders@howardcountymd.gov](mailto:jasaunders@howardcountymd.gov)

**Exhibit 1 to Equipment Schedule  
Tax-Exempt Lease/Purchase Agreement**

**PAYMENT SCHEDULE**

The annual interest rate applicable to the Agreement shall be 2.59 percent. Lessee will make Rental Payments each consisting of principal and interest as set forth below for a Lease Term of 120 months. Rental payments are due annually as set forth below.

<b>Payment Number</b>	<b>Payment Date</b>	<b>Total Payment</b>	<b>Principal Component</b>	<b>Interest Component</b>	<b>Prepayment Price*</b>
1	3/15/2017	\$ 284,214.07	\$ 284,214.07	\$ 0.00	\$ 2,278,402.88
2	3/15/2018	\$ 284,214.07	\$ 225,787.82	\$ 58,426.25	\$ 2,050,357.18
3	3/15/2019	\$ 284,214.07	\$ 231,635.71	\$ 52,578.35	\$ 1,816,405.11
4	3/15/2020	\$ 284,214.07	\$ 237,635.06	\$ 46,579.00	\$ 1,576,393.70
5	3/15/2021	\$ 284,214.07	\$ 243,789.80	\$ 40,424.27	\$ 1,330,166.00
6	3/15/2022	\$ 284,214.07	\$ 250,103.94	\$ 34,110.12	\$ 1,077,561.02
7	3/15/2023	\$ 284,214.07	\$ 256,581.62	\$ 27,632.45	\$ 818,413.59
8	3/15/2024	\$ 284,214.07	\$ 263,227.07	\$ 20,987.00	\$ 552,554.25
9	3/15/2025	\$ 284,214.07	\$ 270,044.64	\$ 14,169.43	\$ 279,809.16
10	3/15/2026	\$ 284,214.07	\$ 277,038.78	\$ 7,175.29	\$ 0.00

\* After payment of the Rental Payment due on such date.

**HOWARD COUNTY, MARYLAND**

Lessee

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

Name: Allan H. Kittleman

Title: County Executive



**LESSEE'S GENERAL AND TAX CERTIFICATE**

[Bond Counsel to provide]

**OPINION OF LESSEE'S COUNSEL**

[Bond Counsel to provide]

SUNTRUST EQUIPMENT FINANCE & LEASING CORP.

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ESCROW AGREEMENT

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[To be provided]

SELF-INSURANCE LETTER

SUNTRUST EQUIPMENT FINANCE & LEASING CORP.  
P.O. Box 4418  
Atlanta, GA 30302

Ladies and Gentlemen:

The undersigned is the risk manager or insurance consultant for Howard County, Maryland (the "Lessee"), and in such connection the undersigned is familiar with Lessee's insurance and self-insurance arrangements. In connection with the Tax-Exempt Lease/Purchase Agreement (the "Agreement"), between Lessee and SunTrust Equipment Finance and Leasing Corp. (the "Lessor"), the undersigned makes the following certifications to Lessor, effective as of the Commencement Date. Capitalized terms used but not defined herein have the meanings given in the Agreement.

1. Howard County, Maryland has created and funded a self-insurance program to provide compensation for injury to persons or damage to property resulting from the negligence or other wrongful acts of the County's public officials, employees and agents for which the County is legally liable. Further, Howard County, Maryland, provides self-insured workers' compensation coverage for all employees in accordance with Maryland law and all-risk property coverage for County property, vehicles and equipment. The establishment of this Fund does not constitute a waiver of the immunities, liability caps and defenses available to Howard County, Maryland, for its officers, agents and employees. (Section 23.100 Title 23, Howard County Code).
2. Upon delivery of the Equipment described in the Agreement, Howard County shall cause its contracted transit service provider to purchase and maintain the following coverage:
  - a. All Risk Physical Damage Insurance on the leased Equipment evidenced by a **Certificate of Insurance and Long Form Loss Payable Clause naming SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Loss Payee.**

The Coverage Required is \$2,540,059.

- b. Commercial General Liability Insurance evidenced by a **Certificate of Insurance naming SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Additional Insured.**

The following minimum coverage is required and will be provided:

Liability:	\$500,000 per person
Liability – Bodily Injury:	\$1,000,000 aggregate
Liability – Property Damage:	\$1,000,000 property damage liability

PROPERTY Seven (7) Transit Buses at \$362,865.57 each (or \$2,540,059 for all seven).

LOCATION: 8800 Corridor Road, Annapolis Junction, MD 20701.

Upon issuance of the coverage outlined above, a Certificate of Insurance will be mailed to SUNTRUST EQUIPMENT FINANCE & LEASING CORP., P.O. Box 4418, Atlanta, GA 30302.

Dated: Feb. 15, 2017

Very truly yours,

By: 

Name: Lynne K. Levin

Title: Risk Management Administrator

**Exhibit 6 to Equipment Schedule  
Tax-Exempt Lease/Purchase Agreement**

**[FORM 8038-G or 8038-GC]**



[PAGE TO BE REPLACED BY UCC FINANCING STATEMENT]

PAGE 14 -BEDS

FORM ST-MUN-6002 MASTER INSTALLMENT PURCHASE AGREEMENT

REVISION DATE: 04/01/2015

DWT 24258764v1 0096069-000010  
WCSR 38389806v3

**SCHEDULE A TO FINANCING STATEMENT OF  
HOWARD COUNTY, MARYLAND, AS DEBTOR, AND  
SUNTRUST EQUIPMENT FINANCE & LEASING CORP., AS SECURED PARTY**

Continuation of Collateral Description

The financing statement to which this Schedule A is attached covers the types of property described on the face of such financing statement and all of the Debtor's right, title and interest in and to (collectively, the "Collateral"):

- (a) the equipment described in the Tax-Exempt Lease/Purchase Agreement between Debtor, as lessee, and Secured Party, as lessor, as such agreement may be amended, modified or supplemented from time to time;
- (b) to the extent not included in the foregoing, all books and records solely to the extent related to the Collateral; and
- (c) to the extent not included in the foregoing, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications and all proceeds and products of any or all of the foregoing, whether existing on the date hereof or arising hereafter, including insurance proceeds.

Introduced \_\_\_\_\_  
Public Hearing \_\_\_\_\_  
Council Action \_\_\_\_\_  
Executive Action \_\_\_\_\_  
Effective Date \_\_\_\_\_

## County Council of Howard County, Maryland

2017 Legislative Session

Legislative Day No. 2

Bill No. 11 -2017

Introduced by: The Chairperson at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a Multi-Year Tax-Exempt Lease/Purchase Agreement between Howard County and SunTrust Equipment Finance & Leasing Corp. for financing the acquisition of seven new buses to be used as part of the Regional Transit Agency's fixed-route fleet; authorizing the Executive to make changes to the Agreement, under certain conditions; authorizing the County Executive to execute the Agreement; and generally relating to the Agreement.

Introduced and read first time \_\_\_\_\_, 2017. Ordered posted and hearing scheduled.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on \_\_\_\_\_, 2017.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

This Bill was read the third time on \_\_\_\_\_, 2017 and Passed \_\_\_\_, Passed with amendments \_\_\_\_, Failed \_\_\_\_.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this \_\_\_ day of \_\_\_\_\_, 2017 at \_\_\_ a.m./p.m.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

Approved/Vetoes by the County Executive \_\_\_\_\_, 2017

\_\_\_\_\_  
Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1           **WHEREAS**, the Regional Transportation Agency of Central Maryland (RTA) fixed-route  
2 fleet includes 42 buses and 20 of the buses are at or above their useful life under Federal Transit  
3 Administration standards; and

4  
5           **WHEREAS**, Howard County (the “County”) manages the contract under which the RTA  
6 delivers transit services and wishes to begin replacing the outdated buses; and

7  
8           **WHEREAS**, the Operating Budget for Fiscal Year 2017 includes \$300,000 for the first  
9 year’s payment of a 10-year lease-to-purchase program for the acquisition of seven new buses;  
10 and

11  
12           **WHEREAS**, the County would like to purchase seven E-Z Rider II buses from EIDorado  
13 National California, Inc (“EIDorado”), pursuant to an agreement substantially in the form attached  
14 as Exhibit A; and

15  
16           **WHEREAS**, EIDorado holds a contract with the Houston-Galveston Area Council (“H-  
17 GAC”) to provide buses for purchase by governmental agencies, and

18  
19           **WHEREAS**, the County is a member of the Baltimore Metropolitan Council which is a  
20 member of the H-GAC thereby allowing the County to purchase buses through the H-GAC; and

21  
22           **WHEREAS**, the County seeks to finance the lease-to-purchase of the buses for a term of  
23 10 years beginning upon the execution of a Tax-Exempt Lease/Purchase Agreement (the  
24 “Agreement”), substantially in the form of Exhibit B attached to this Act; and

25  
26           **WHEREAS**, the total cost of the buses is \$2,540,059 plus financing costs, to be paid over  
27 the term of the Agreement; and

28  
29           **WHEREAS**, SunTrust Equipment Finance & Leasing Corp., a Virginia Corporation, will  
30 finance the buses pursuant to the Agreement; and



**SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**  
**TAX-EXEMPT LEASE/PURCHASE AGREEMENT (LEASE NO. {LeaseNumber})**

This **TAX-EXEMPT LEASE/PURCHASE AGREEMENT** (the "Agreement"), dated as of {MasterLeaseDate}, is made and entered into by and between **SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**, a Virginia corporation, as lessor ("Lessor"), and **Howard County, Maryland**, a political subdivision of the State of Maryland, as lessee ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Lease; Possession and Use.** Lessor leases the property (the "Equipment") described in the Equipment Schedule attached hereto as Exhibit A (the "Equipment Schedule") to Lessee, and Lessee leases the Equipment from Lessor, upon the terms and conditions set forth herein and in the Equipment Schedule. The Equipment Schedule (including all exhibits and attachments thereto) is incorporated herein by reference. Lessee shall have quiet use and enjoyment of the Equipment during the Lease Term, except as expressly set forth in this Agreement.

**Term.** The "Lease Term" shall consist of an "Original Term" commencing on the date (such date, the "Commencement Date") the proceeds of this Agreement are deposited in escrow with SunTrust Bank (the "Escrow Agent") pursuant to an Escrow Agreement attached to the Equipment Schedule as Exhibit 4 (the "Escrow Agreement") and ending at the end of the budget year of Lessee in effect on such date, and one or more "Renewal Terms," each having a duration of one year, coextensive with Lessee's budget year. The Lease Term shall commence on the Commencement Date and shall terminate upon payment of the final Rental Payment and the exercise of the purchase option described herein, unless sooner terminated pursuant to this Agreement. Lessee hereby authorizes and instructs Lessor to insert the Commencement Date as appropriate in any blanks in this Agreement and the schedules and exhibits hereto.

**Rental Payments.** Lessee agrees to pay the rental payments due as specified in the Payment Schedule in Exhibit 1 to the Equipment Schedule (collectively, the "Rental Payments"). A portion of each Rental Payment is paid as interest as specified in the Payment Schedule, and the first Rental Payment shall include interest accruing from the date set forth in the Equipment Schedule. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor. To the extent permitted by applicable law, Lessor shall have the right to require a late payment charge for each Rental Payment or any other amount due hereunder which is not paid within 10 days of the date when due equal to the lesser of 5% of such late payment or the legal maximum.

**Inclusion in Budget.** The person or entity in charge of preparing Lessee's budget will include in the budget request for each budget year the Rental Payments to become due during such budget year, and will use reasonable and lawful means available to secure the appropriation of money for such budget year sufficient to pay all Rental Payments coming due therein. Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will be lawfully appropriated. Lessor acknowledges that appropriation for Rental Payments is a governmental function which Lessee cannot contractually commit itself in advance to perform, and that this Agreement does not constitute such a commitment. No remedy is provided, and Lessee shall not be liable for any damages, for failure to comply with this paragraph.

**Nonappropriation.** If sufficient funds are not appropriated to make Rental Payments required under this Agreement for the Original Term or any Renewal Term, this Agreement shall terminate at the end of the then-current Original Term or Renewal Term, and Lessee shall not be obligated to make Rental Payments under this Agreement beyond the then-current Original Term or Renewal Term, and all of Lessee's right, title and interest in and to the Equipment shall terminate as of the end of the then-current Original Term or Renewal Term. If such a nonappropriation (an "Event of Nonappropriation") occurs, Lessee shall (subject to the appropriation of money for such purpose), no later than the end of the then-current Original Term or Renewal Term, return the Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the termination of Lessee's interest in the Equipment and passage of title to the Equipment to Lessor. Lessee shall notify Lessor in writing within seven (7) days after the occurrence of an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee. If Lessee has failed to return the Equipment as required by this paragraph, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount

of the Rental Payments that would thereafter have come due if this Agreement had not been terminated and which are attributable to the number of days after which Lessee fails to return the Equipment and for any other loss suffered by Lessor as a result of Lessee's failure to deliver the Equipment. In addition, Lessor may, by written instructions to the Escrow Agent, instruct the Escrow Agent to release all such proceeds and any earnings thereon to Lessor. For the avoidance of doubt, all payment obligations of Lessee hereunder are subject to the appropriation of funds.

**Current Expense.** The obligations of Lessee, including its obligation to pay Rental Payments due in any budget year, shall constitute a current expense of Lessee for such budget year, and shall not constitute indebtedness of Lessee within the meaning of the Constitution and laws of the State of Maryland (the "State"). This Agreement does not constitute a pledge of the full faith or taxing power of Lessee. Upon appropriation of Rental Payments for a budget year, the Rental Payments for such budget year shall be a binding obligation of Lessee, provided that such obligation shall not include a pledge of the taxing power of Lessee.

**Unconditional Rental Payments.** Subject in all cases to Lessee's right to non-appropriate Rental Payments, Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional in all events, without set-off, counterclaim, deduction, defense or abatement for any reason, including through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment, obsolescence of the Equipment or condemnation of the Equipment. This paragraph shall not limit Lessee's rights against any manufacturer or vendor of the Equipment.

**Option to Purchase.** Lessee shall have the option to purchase Lessor's entire interest in the Equipment on the last day of the Lease Term, if this Agreement is still in effect on such day, upon payment in full of the Rental Payments and any other amounts due hereunder plus payment of one dollar (\$1) to Lessor. Lessee shall also have the option to prepay its obligations under this Agreement, in whole but not in part, to the extent and on the terms set forth in the Equipment Schedule. Lessee shall give written notice to Lessor of its intention to exercise its option to prepay not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under this Agreement (including the Rental Payment due on the Payment Date on which the option shall be effective) plus the applicable Prepayment Price set forth in the Payment Schedule. Lessee's obligations under this Agreement shall be prepaid in part from the excess proceeds of this Agreement on the terms set forth in the Escrow Agreement.

**Representations and Warranties of Lessee.** Lessee represents and warrants to Lessor as follows: (a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"), duly organized and existing under the Constitution and laws of the State, and has requisite power and authority under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations under this Agreement; (b) the execution and delivery of this Agreement have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee; (c) this Agreement has been duly executed and delivered by and constitutes the valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms; (e) Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the Original Term; (d) Lessee's exact legal name is as set forth on the first page of this Agreement; (e) the execution, delivery and performance of this Agreement by Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or



result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound; (f) there is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement; (g) except as otherwise disclosed in writing by Lessee to Lessor, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been the obligated party required to make the payments, at any time during the past ten (10) years has been terminated by Lessee solely as a result of insufficient funds being appropriated in any budget year, and no event has occurred which would constitute an event of default by the Lessee under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years; and (h) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the Lease Term.

**Tax Covenants.** The parties contemplate that interest payable under this Agreement will be excluded from gross income for federal income tax purposes under Section 103 of the Code. Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments under this Agreement and will not use or permit the use of the Equipment in such a manner as to cause this Agreement to be a "private activity bond" under Section 141(a) of the Code. Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purposes for which this Agreement has been entered into, and no part of the proceeds of this Agreement shall be invested in any securities, obligations or other investments except for the temporary period pending such use. The Lessee will not use the proceeds of this Agreement or cause the proceeds of this Agreement to be used, at any time, directly or indirectly in a manner which, if such use had been reasonably anticipated on the Commencement Date, would have caused this Agreement to become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the Commencement Date.

**Tax Representations.** Lessee represents and warrants to Lessor that (a) the estimated total costs, including taxes, freight, installation, cost of insurance, of the Equipment will not be less than the total principal amount of the Rental Payments; (b) the Equipment has been ordered or is expected to be ordered within six months after the Commencement Date and the Equipment is expected to be delivered and installed, and the vendor fully paid, within eighteen months from the Commencement Date; (c) Lessee will pursue the acquisition of the Equipment and the expenditure of the net proceeds of this Agreement with due diligence; (d) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (1) that is reasonably expected to be used to pay the Rental Payments, or (2) that may be used solely to prevent a default in the payment of the Rental Payments; (e) the Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments; (f) there are no other obligations of Lessee which (1) are being sold within 15 days of the Commencement Date, or (2) are being sold pursuant to the same plan of financing as this Agreement, and (3) are expected to be paid from substantially the same source of funds; and (g) the officer or official who has executed this Agreement on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of this Agreement. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in this paragraph are accurate and the expectations of Lessee set forth in this paragraph are reasonable. The representations, warranties and covenants set forth in this paragraph are superseded by the representations, warranties and covenants set forth in any arbitrage or tax certificate executed and delivered by Lessee in connection with this Agreement.

**Interest Rate Adjustment.** If Lessor either (i) receives notice, in any form, from the Internal Revenue Service, or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor, that Lessor may not exclude the interest component of Rental Payments paid under this Agreement from its federal gross income, Lessee shall pay to Lessor upon demand (A) an amount which, with respect to Rental Payments previously paid and taking

into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the highest marginal corporate tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by this Agreement through the date of such event, and (B) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor. If, during the Lease Term, the federal corporate income tax rate decreases (whether or not Lessor is actually taxed at the maximum marginal statutory rate) or the federal tax laws are changed to reduce or cap the benefit of the tax exemption for the interest component of Rental Payments under this Agreement (whether or not Lessor is actually subject to such reduction or cap), the annual interest rate on this Agreement shall be adjusted as follows: (x) the interest rate shall be divided by 0.65, (y) the resulting quotient shall be multiplied by the difference between 1.0 and the actual new maximum federal corporate income tax rate or the effective maximum federal corporate income tax rate after giving effect to any reduction or cap on the benefit of the tax exemption, as applicable, and (z) the resulting amount shall be the new interest rate for this Agreement. Such increase in the interest rate shall take effect on the effective date of the change in federal tax laws. For the fiscal year of Lessee in which the effective date of the change in federal tax law falls, the increased interest accruing shall be due and payable on the first due date for Rental Payments in the fiscal year of Lessee following the fiscal year in which the effective date of the change in federal tax law falls. Appropriation of said increased interest shall be subject to the appropriation of funds, and failure to appropriate such increased interest shall be an Event of Nonappropriation hereunder. Upon an increase in the interest rate under this paragraph, Lessor shall provide to Lessee a revised Payment Schedule for this Agreement reflecting the increased interest rate.

**Liability and Property Insurance.** All risk of loss to the Equipment shall be borne by Lessee. Lessee shall, at its own expense, or through its transit contractor procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor from liability in all events, with coverage similar to the coverage Lessee or its transit contractor maintains for other comparable Equipment, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price. Lessee will also carry or require its transit contractor to carry workers' compensation insurance covering all employees on, in near or about the Equipment, if required by applicable law. All insurance policies shall be taken out and maintained with insurance companies acceptable to Lessor and Lessee shall request a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. In addition to any notice provided by the insurer, Lessee shall provide written notice to Lessor prior to any such change in coverage. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor as loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. At Lessor's request, Lessee shall deliver to Lessor the evidence of insurance which complies with this paragraph. Lessee may self-insure against the risks described in this paragraph. If Lessee self-insures, Lessee shall deliver to Lessor at Lessor's request, a letter from its risk manager or insurance consultant in substantially the form attached to the Equipment Schedule. If Lessee fails to maintain the insurance required by this paragraph, Lessor may (but shall not be obligated to) take such action to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 12% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

**Application.** If the Equipment is stolen, lost or destroyed, in whole or in part, or is damaged by fire or other casualty, or title to, or the temporary use of, the Equipment has been 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, Lessor and Lessee will cause the net proceeds of any insurance claim, condemnation award or sale under threat of condemnation (the "Net Proceeds") to be applied, at the option of Lessee, to (a) the prompt replacement, repair, restoration, modification or improvement of the Equipment in substantial conformance with the original specifications, or (b) the prepayment of this Agreement in whole. Lessee will give Lessor written notice of its election within ninety (90) days after its



receipt of the Net Proceeds. The insufficiency of the Net Proceeds to pay in full the cost of any repair, restoration, modification or improvement shall not affect Lessee's obligations under this paragraph, and Lessee shall not be entitled to any reimbursement therefor from Lessor or any diminution of the Rental Payments. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement may be retained by Lessee.

**Use and Maintenance of Equipment; Liens.** Lessee shall, at its own expense, maintain the Equipment in good condition and working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. The initial principal garage of the Equipment shall be located at the address specified in the Equipment Schedule. If Lessee changes the principal garage of the Equipment, it shall use good faith efforts to provide thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor with the address of the principal garage of the Equipment upon Lessor's reasonable request. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment. Without limiting the foregoing sentence, Lessor acknowledges that Lessee may affix or install decals, paint and other accessories to identify the Equipment as the equipment of Lessee. Lessee will not affix the Equipment to real property such that the Equipment becomes fixtures.

**Taxes.** Lessor and Lessee contemplated that the Equipment will be used for a governmental or proprietary purpose of Lessee, and therefore that the Equipment will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement have been established to reflect the savings resulting from this exemption. Lessee will take all necessary actions under applicable law to obtain or maintain such exemption. Nevertheless, if the use, possession or acquisition of the Equipment is determined to be subject to taxation or later becomes subject to taxation, Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any 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 then current budget year of the Lease Term.

**Financial Information.** To the extent not publicly available, Lessee shall deliver to Lessor upon request such financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement as Lessor may request from time to time.

**Title; Security Interest.** During the Lease Term, title to the Equipment shall be in Lessee, subject to Lessor's interests under this Agreement. In order to secure Lessee's payment of all Rental Payments and the performance of all other obligations hereunder, Lessee hereby grants to Lessor a continuing security interest in and to (a) the Equipment, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications thereto; (b) all books and records solely to the extent related to the Equipment; (c) all moneys and investments in any escrow account into which proceeds of this Agreement have been deposited; and (d) all proceeds of the foregoing, including insurance proceeds. Lessee hereby authorizes Lessor to prepare and file such financing statements and other such documents to establish and maintain Lessor's valid first lien and perfected security interest. Lessee will execute and deliver such documents and will perform such acts as Lessor may request to establish and maintain Lessor's security interest. Lessee will not change its legal name in any respect without giving Lessor 30 days prior written notice.

**Acceptance; Disclaimer of Warranties.** Lessee covenants with Lessor that it will cause the Equipment to be delivered and installed in its entirety in accordance with the bid or purchase order specifications pursuant to which Lessee ordered the Equipment from the vendor or manufacturer, and will pay all taxes, delivery costs and installation costs, if any, in connection therewith. All of the Equipment and the vendor of the Equipment have been selected by Lessee. Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by Lessee, the acceptance by any vendor or its sales representative of any order submitted, or any delay or failure by such vendor or its sales representative to manufacture, deliver or install any Equipment for use by Lessee. Proceeds of this Agreement will be disbursed in accordance with the

Escrow Agreement. Lessor assigns to Lessee for the Lease Term all of vendors' warranties in connection with the Equipment. The insufficiency of proceeds under this Agreement to pay costs of the Equipment shall not affect Lessee's obligations under this paragraph. When the Equipment has been delivered, installed and accepted, Lessee shall promptly execute and deliver to Lessor (with a copy to the Escrow Agent) an acceptance certificate in the form attached to the Escrow Agreement. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. In no event shall Lessor be liable for any incidental or consequential damages in connection with or arising out of this Agreement or the Equipment or Lessee's use of the Equipment.

**Risk of Loss.** Lessee shall not be required to indemnify Lessor from liabilities associated with this Agreement; however, to the extent permitted by applicable laws of the State, as between Lessor and Lessee, Lessee assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, and Lessee agrees to defend Lessor against, all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses that relate to or arise out of this Agreement, including but not limited to, (a) the selection, manufacture, purchase, acceptance or rejection of Equipment or the ownership of the Equipment, (b) the delivery, lease, possession, maintenance, use, condition, return or operation of the Equipment, (c) the condition of the Equipment sold or otherwise disposed of after possession by Lessee, (d) the conduct of Lessee, its officers, employees and agents, (e) any claim, loss, cost or expense involving alleged damage to the environment relating to the Equipment, including, but not limited to investigation, removal, cleanup and remedial costs, and (f) any strict liability under the laws or judicial decisions of any state or the United States. The indemnification obligations of the Lessee in this Agreement, if any, are provided to the extent of the provisions of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Maryland Annotated Code and subject to the appropriation of funds. As a condition of indemnification, Lessor agree(s) to notify Lessee of any suits, claims or potential claims within 10 days of its own notice of such suits, claims or potential claims. The foregoing indemnification, if any, is not to be deemed as a waiver of any immunity that may exist in any action against Lessee or its officers, agents, volunteers and employees. This provision shall survive the termination of this Agreement.

**Assignment by Lessor.** Lessor may assign, sell or encumber all or any part of this Agreement, the Rental Payments and any other rights hereunder, including with respect to the Equipment, without Lessee's consent. Such assignees may include trust agents for the benefit of holders of certificates of participation. No such assignment shall be effective as against Lessee unless and until written notice of the assignment is provided to Lessee. When presented with a notice of assignment, Lessee will acknowledge in writing receipt of such notice for the benefit of Lessor and any assignee. Lessee shall keep a complete and accurate record of all such assignments. Lessee makes no representation as to the effect that such assignment or participation may have on the tax exemption for the interest component of Rental Payments under this Agreement.

**Assignment and Subleasing by Lessee.** Neither this Agreement nor any interest herein or in the Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

**Events of Default Defined.** The occurrence of any of the following events shall constitute an Event of Default: (a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under this Agreement within ten (10) days following the due date thereof; (b) Lessee's failure to maintain insurance required by this Agreement; (c) Lessee's failure to perform or abide by any other condition, agreement or covenant set forth in this Agreement for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied; (d) Lessor's determination that any representation, warranty or statement made by Lessee in or pursuant to this Agreement was untrue in any material respect on the date made; (e) the filing of a petition in bankruptcy or receivership or similar proceeding by or against Lessee, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental functions or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of any adjustment of indebtedness of Lessee, or the dissolution or



liquidation of Lessee. An Event of Nonappropriation shall not constitute an Event of Default.

**Remedies on Default.** Upon the occurrence of any Event of Default, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies: (a) Lessor may terminate this Agreement and all of Lessee's rights hereunder as to any or all items of Equipment; (b) Lessor may declare all Rental Payments payable under this Agreement to the end of the then-current budget year of Lessee to be immediately due and payable by Lessee; (c) Lessor may repossess any or all of the Equipment by giving Lessee written notice to deliver such Equipment; or in the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where such Equipment is kept and take possession of such Equipment and charge Lessee for costs incurred, including reasonable attorneys' fees; (d) Lessor may proceed by appropriate court action or actions to enforce performance by Lessee of its obligations hereunder or to recover damages for the breach hereof; (e) by written notice to the Escrow Agent, Lessor may instruct the escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under this Agreement; and (f) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default. Any Equipment returned (subject to the appropriation of money for such purpose) under clause (c) above shall be to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement. If Lessor takes possession of the Equipment, Lessor may thereafter dispose of the Equipment in accordance with the requirements of Article 9 of the Uniform Commercial Code; provided that any proceeds of such disposition in excess of the sum of (i) the unpaid principal component of Rental Payments (including Rental Payments due in future budget years), (ii) Lessor's costs and expenses associated with the disposition of the Equipment and the Event of Default (including attorneys fees), and (iii) any other amounts then due under this Agreement, shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto. No deficiency shall be allowed against Lessee, except with respect to any unpaid Rental Payments to the end of the then-current budget year of Lessee and unpaid costs and expenses incurred by Lessor in connection with the repossession and disposition of the Equipment. Each of the rights and remedies of Lessor under this Agreement is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of this Agreement, or to exercise any right, power or remedy consequent upon a breach hereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

**Notices.** All written notices to be given under this Agreement shall be given (a) personally, (b) by mail in registered or certified form, with postage prepaid, or (c) by overnight courier, charges prepaid, in each case to the party

entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, on the next business day after deposit for overnight delivery with a courier, or, if given by other means, when delivered.

**Construction.** This Agreement is binding upon and inures to the benefit of Lessor and Lessee and their respective successors and permitted assigns. In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Agreement may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of this Agreement. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. This Agreement shall be governed by and construed in accordance with the laws of the State.

**Usury.** It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein, in no event shall this Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the Lease Term so that the interest is uniform through such term.

**Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSOR AND LESSEE HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT.

**USA Patriot Act Compliance Notification.** Lessor hereby notifies Lessee that pursuant to the requirements of the USA PATRIOT Act (the "Act"), it is required to obtain, verify and record information that identifies Lessee, which information includes the name and address of Lessee and other information that will allow Lessor to identify Lessee in accordance with the Act. Lessee shall, promptly upon Lessor's request, provide all documentation and other information that Lessor requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.



IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

WITNESS/ATTEST:

HOWARD COUNTY, MARYLAND

\_\_\_\_\_  
Lonnie R. Robbins  
Chief Administrator Officer

By: \_\_\_\_\_  
Allan H. Kittleman  
County Executive

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Clive Graham  
Administrator, Office of Transportation

APPROVED FOR SUFFICIENCY OF FUNDS:

\_\_\_\_\_  
Stanley J. Milesky, Director  
Department of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY  
this \_\_\_\_ day of \_\_\_\_\_, 2017:

\_\_\_\_\_  
Gary W. Kuc  
County Solicitor

REVIEWING ATTORNEY:

\_\_\_\_\_  
Norman E. Parker, Jr.  
Senior Assistant County Solicitor

SUNTRUST EQUIPMENT FINANCE & LEASING  
CORP.,  
Lessor

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

Address:  
P.O. Box 4418  
Atlanta, GA 30302

EXHIBIT A

EQUIPMENT SCHEDULE  
TO TAX-EXEMPT LEASE/PURCHASE AGREEMENT

The following described equipment (the "Equipment") is the subject of the Tax-Exempt Lease/Purchase Agreement dated as of {MasterLeaseDate} (the "Agreement") between the undersigned Lessor and Lessee.

1. Equipment. The cost of the Equipment to be funded by Lessor under this Agreement is \${EquipmentCost}. The Equipment consists of the following equipment which has been or shall be purchased from the manufacturer(s) and/or vendor(s) named below for the prices set forth below:

Manufacturer and/or Vendor Name & Invoice No.	Description	Invoice Cost
	Total Invoice Cost:	

2. Location of Equipment. The Equipment is essential to the governmental functions of Lessee. The initial principal garage of the Equipment will be located at the following address(es): {EquipmentLocationStreetAddress}, {EquipmentLocationCityStateZip}.

3. Commencement Date. The Commencement Date of this Agreement is \_\_\_\_\_.

4. Interest Accrual Date. The amounts of the interest component of Rental Payments payable under this Agreement have been calculated based on the assumption that the proceeds of this Agreement were disbursed on the Commencement Date, and such payments of interest component will be payable as set forth in the Payment Schedule regardless of when the proceeds of this Agreement were actually disbursed.

5. Payment Schedule. The Payment Schedule is attached to this Equipment Schedule as Exhibit 1.

6. Lessee's Certificate. The Lessee's General and Tax Certificate is attached to this Equipment Schedule as Exhibit 2.

7. Opinion. The opinion of Lessee's counsel is attached to this Equipment Schedule as Exhibit 3.

8. Proceeds. Lessor shall disburse the proceeds of this Equipment Schedule in accordance with the Escrow Agreement attached hereto as Exhibit 4.

9. Insurance. Check Item A and/or Item B.

A Lessee's insurance letter is attached to this Equipment Schedule as Exhibit 5. \_\_\_\_\_

B. A letter from Lessee's risk manager or insurance consultant is attached as Exhibit 5.  X

10. Form 8038-G or -GC. The Form 8038-G or Form 8038-GC with respect to the Agreement is attached to this Equipment Schedule as Exhibit 6.

IN WITNESS WHEREOF, Lessor has caused this Equipment Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Equipment Schedule to be executed in its name by its duly authorized officer.

Howard County, Maryland  
Lessee

SUNTRUST EQUIPMENT FINANCE & LEASING  
CORP.,  
Lessor

By: \_\_\_\_\_  
Name: {LesseeSignatoryName}  
Title: {LesseeSignatoryTitle}

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

Address:  
{LesseeStreetAddress}  
{LesseeCityStateZip}

Address:  
P.O. Box 4418  
Atlanta, GA 30302

Telephone: {LesseeContactPhone}  
Facsimile: {LesseeContactFax}  
E-mail address: {LesseeContactEmail}

**PAYMENT SCHEDULE**

The annual interest rate applicable to the Agreement shall be {AnnualInterestRate} percent ({AnnualInterestRate}%). Lessee will make Rental Payments each consisting of principal and interest as set forth below for a Lease Term of {LeaseTerm} ({LeaseTerm}) months. Rental Payments are due {PaymentFrequency} as set forth below. **[Rental Payments may be prepaid in whole on each Payment Date. The first Payment Date on which Rental Payments may be prepaid is «FirstEligiblePrepaymentDate».]**

<u>Payment Number</u>	<u>Payment Date</u>	<u>Total Payment</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Prepayment Price*</u>
---------------------------	-------------------------	--------------------------	--------------------------------	-------------------------------	------------------------------

\* After payment of the Rental Payment due on such date.

Howard County, Maryland  
Lessee

By: \_\_\_\_\_  
Name: {LesseeSignatoryName}  
Title: {LesseeSignatoryTitle}

**LESSEE'S GENERAL AND TAX CERTIFICATE**

[Bond Counsel to provide]



**OPINION OF LESSEE'S COUNSEL**

[Bond Counsel to provide]

SUNTRUST EQUIPMENT FINANCE & LEASING CORP.

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ESCROW AGREEMENT

---

[To be provided]

SELF-INSURANCE LETTER

SUNTRUST EQUIPMENT FINANCE & LEASING CORP.  
P.O. Box 4418  
Atlanta, GA 30302

Ladies and Gentlemen:

The undersigned is the risk manager or insurance consultant for Howard County, Maryland (the "Lessee"), and in such connection the undersigned is familiar with Lessee's insurance and self-insurance arrangements. In connection with the Tax-Exempt Lease/Purchase Agreement (the "Agreement"), between Lessee and SunTrust Equipment Finance and Leasing Corp. (the "Lessor"), the undersigned makes the following certifications to Lessor, effective as of the Commencement Date. Capitalized terms used but not defined herein have the meanings given in the Agreement.

1. Howard County, Maryland has created and funded a self-insurance program to provide compensation for injury to persons or damage to property resulting from the negligence or other wrongful acts of the County's public officials, employees and agents for which the County is legally liable. Further, Howard County, Maryland, provides self-insured workers' compensation coverage for all employees in accordance with Maryland law and all-risk property coverage for County property, vehicles and equipment. The establishment of this Fund does not constitute a waiver of the immunities, liability caps and defenses available to Howard County, Maryland, for its officers, agents and employees. (Section 23.100 Title 23, Howard County Code).
2. Upon delivery of the Equipment described in the Agreement, Howard County shall cause its contracted transit service provider to purchase and maintain the following coverage:
  - a. All Risk Physical Damage Insurance on the leased Equipment evidenced by a **Certificate of Insurance and Long Form Loss Payable Clause naming SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Loss Payee.**

The Coverage Required is \$2,540,059.

- b. Commercial General Liability Insurance evidenced by a **Certificate of Insurance naming SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Additional Insured.**

The following minimum coverage is required and will be provided:

Liability:	\$500,000 per person
Liability – Bodily Injury:	\$1,000,000 aggregate
Liability – Property Damage:	\$1,000,000 property damage liability

PROPERTY Seven (7) Transit Buses at \$362,866.50 each (or \$2,540,059 for all seven).

LOCATION: 8800 Corridor Road, Annapolis Junction, MD 20701.

Upon issuance of the coverage outlined above, a Certificate of Insurance will be mailed to SUNTRUST EQUIPMENT FINANCE & LEASING CORP., P.O. Box 4418, Atlanta, GA 30302.

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

Very truly yours,

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

Name: Lynne K. Levin

Title: Risk Management Administrator

[FORM 8038-G or 8038-GC]

[PAGE TO BE REPLACED BY UCC FINANCING STATEMENT]



**SCHEDULE A TO FINANCING STATEMENT OF  
HOWARD COUNTY, MARYLAND, AS DEBTOR, AND  
SUNTRUST EQUIPMENT FINANCE & LEASING CORP., AS SECURED PARTY**

Continuation of Collateral Description

The financing statement to which this Schedule A is attached covers the types of property described on the face of such financing statement and all of the Debtor's right, title and interest in and to (collectively, the "Collateral"):

(a) the equipment described in the Tax-Exempt Lease/Purchase Agreement between Debtor, as lessee, and Secured Party, as lessor, as such agreement may be amended, modified or supplemented from time to time;

(b) to the extent not included in the foregoing, all books and records solely to the extent related to the Collateral; and

(c) to the extent not included in the foregoing, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications and all proceeds and products of any or all of the foregoing, whether existing on the date hereof or arising hereafter, including insurance proceeds.

Question	Answer
Lease Number?	[??]
Master Lease Date?	[??]
Lessee Name?	[??]
Lessee State Short?	[??]
Lessee Signatory Name?	[??]
Lessee Signatory Title?	[??]
Lessee Street Address?	[??]
Lessee City State Zip?	[??]
Lessee Contact Phone?	[??]
Lessee Contact Fax?	[??]
Lessee Contact Email?	[??]
Lease Schedule Number?	[??]
Equipment Cost?	[??]
Equipment Description?	[??]
Equipment Location Street Address?	[??]
Equipment Location City State Zip?	[??]
Lease Schedule Date?	[??]
<b>Annual Interest Rate?</b> <i>Insert as a straight number (e.g., "2.75")</i>	[??]
<b>Lease Term?</b> <i>Enter number of months in lease term (e.g., "36").</i>	[??]
Payment Frequency?	[??]
First Eligible Prepayment Date?	[??]
Lessee Attestation Signatory Name?	[??]
Lessee Attestation Signatory Title?	[??]
Ordinance Resolution Date?	[??]
Escrow Agreement Ending Date?	[??]
Lessee Taxpayer ID Number?	[??]
Insurance Agent Name?	[??]
Rental Interruption Insurance Coverage Required?	[??]
Funding Date?	[??]
Name of Payee?	[??]
Method of Payment?	[??]
Payment Instructions?	[??]

40114.69 263403v2

Amendment 1 to Council Bill No. 11-2017

BY: The Chairperson at the  
request of the County Executive

Legislative Day No. 5  
Date: March 6, 2017

Amendment No. 1

*(This amendment clarifies language and substitutes a revised Exhibit B that incorporates the agreed-upon rate quote.)*

- 1 On page 1, in line 8, strike “for the first”.
- 2
- 3 On page 1, in line 9, strike “year’s payment of a 10-year lease-to-purchase program”.
- 4
- 5 Remove the Tax-Exempt Lease/Purchase Agreement, attached to the Bill as Exhibit B, in its
- 6 entirety and substitute a revised Exhibit B as attached to this Amendment.



**SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**  
**TAX-EXEMPT LEASE/PURCHASE AGREEMENT (LEASE NO. {LeaseNumber})**

This **TAX-EXEMPT LEASE/PURCHASE AGREEMENT** (the "Agreement"), dated as of **{MasterLeaseDate}**, is made and entered into by and between **SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**, a Virginia corporation, as lessor ("Lessor"), and **Howard County, Maryland**, a political subdivision of the State of Maryland, as lessee ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Lease; Possession and Use.** Lessor leases the property (the "Equipment") described in the Equipment Schedule attached hereto as Exhibit A (the "Equipment Schedule") to Lessee, and Lessee leases the Equipment from Lessor, upon the terms and conditions set forth herein and in the Equipment Schedule. The Equipment Schedule (including all exhibits and attachments thereto) is incorporated herein by reference. Lessee shall have quiet use and enjoyment of the Equipment during the Lease Term, except as expressly set forth in this Agreement.

**Term.** The "Lease Term" shall consist of an "Original Term" commencing on the date (such date, the "Commencement Date") the proceeds of this Agreement are deposited in escrow with SunTrust Bank (the "Escrow Agent") pursuant to an Escrow Agreement attached to the Equipment Schedule as Exhibit 4 (the "Escrow Agreement") and ending at the end of the budget year of Lessee in effect on such date, and one or more "Renewal Terms," each having a duration of one year, coextensive with Lessee's budget year. The Lease Term shall commence on the Commencement Date and shall terminate upon payment of the final Rental Payment and the exercise of the purchase option described herein, unless sooner terminated pursuant to this Agreement. Lessee hereby authorizes and instructs Lessor to insert the Commencement Date as appropriate in any blanks in this Agreement and the schedules and exhibits hereto.

**Rental Payments.** Lessee agrees to pay the rental payments due as specified in the Payment Schedule in Exhibit 1 to the Equipment Schedule (collectively, the "Rental Payments"). A portion of each Rental Payment is paid as interest as specified in the Payment Schedule, and the first Rental Payment shall include interest accruing from the date set forth in the Equipment Schedule. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor. To the extent permitted by applicable law, Lessor shall have the right to require a late payment charge for each Rental Payment or any other amount due hereunder which is not paid within 10 days of the date when due equal to the lesser of 5% of such late payment or the legal maximum.

**Inclusion in Budget.** The person or entity in charge of preparing Lessee's budget will include in the budget request for each budget year the Rental Payments to become due during such budget year, and will use reasonable and lawful means available to secure the appropriation of money for such budget year sufficient to pay all Rental Payments coming due therein. Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will be lawfully appropriated. Lessor acknowledges that appropriation for Rental Payments is a governmental function which Lessee cannot contractually commit itself in advance to perform, and that this Agreement does not constitute such a commitment. No remedy is provided, and Lessee shall not be liable for any damages, for failure to comply with this paragraph.

**Nonappropriation.** If sufficient funds are not appropriated to make Rental Payments required under this Agreement for the Original Term or any Renewal Term, this Agreement shall terminate at the end of the then-current Original Term or Renewal Term, and Lessee shall not be obligated to make Rental Payments under this Agreement beyond the then-current Original Term or Renewal Term, and all of Lessee's right, title and interest in and to the Equipment shall terminate as of the end of the then-current Original Term or Renewal Term. If such a nonappropriation (an "Event of Nonappropriation") occurs, Lessee shall (subject to the appropriation of money for such purpose), no later than the end of the then-current Original Term or Renewal Term, return the Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement; provided that, if Lessee does not appropriate money for such purpose, it shall make the Equipment available for Lessor to take possession of, at the location listed in the Equipment Schedule. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the termination of Lessee's interest in the Equipment and passage of title to the Equipment to Lessor. Lessee shall notify Lessor in writing within seven (7) days after the occurrence of an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee. If Lessee has failed

to return the Equipment as required by this paragraph, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments that would thereafter have come due if this Agreement had not been terminated and which are attributable to the number of days after which Lessee fails to return the Equipment and for any other loss suffered by Lessor as a result of Lessee's failure to deliver the Equipment. In addition, Lessor may, by written instructions to the Escrow Agent, instruct the Escrow Agent to release all such proceeds and any earnings thereon to Lessor. For the avoidance of doubt, all payment obligations of Lessee hereunder are subject to the appropriation of funds.

**Current Expense.** The obligations of Lessee, including its obligation to pay Rental Payments due in any budget year, shall constitute a current expense of Lessee for such budget year, and shall not constitute indebtedness of Lessee within the meaning of the Constitution and laws of the State of Maryland (the "State"). This Agreement does not constitute a pledge of the full faith or taxing power of Lessee. Upon appropriation of Rental Payments for a budget year, the Rental Payments for such budget year shall be a binding obligation of Lessee, provided that such obligation shall not include a pledge of the taxing power of Lessee.

**Unconditional Rental Payments.** Subject in all cases to Lessee's right to non-appropriate Rental Payments, Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional in all events, without set-off, counterclaim, deduction, defense or abatement for any reason, including through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment, obsolescence of the Equipment or condemnation of the Equipment. This paragraph shall not limit Lessee's rights against any manufacturer or vendor of the Equipment.

**Option to Purchase.** Lessee shall have the option to purchase Lessor's entire interest in the Equipment on the last day of the Lease Term, if this Agreement is still in effect on such day, upon payment in full of the Rental Payments and any other amounts due hereunder plus payment of one dollar (\$1) to Lessor. Lessee shall also have the option to prepay its obligations under this Agreement, in whole but not in part, to the extent and on the terms set forth in the Equipment Schedule. Lessee shall give written notice to Lessor of its intention to exercise its option to prepay not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under this Agreement (including the Rental Payment due on the Payment Date on which the option shall be effective) plus the applicable Prepayment Price set forth in the Payment Schedule. Lessee's obligations under this Agreement shall be prepaid in part from the excess proceeds of this Agreement on the terms set forth in the Escrow Agreement.

**Representations and Warranties of Lessee.** Lessee represents and warrants to Lessor as follows: (a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"), duly organized and existing under the Constitution and laws of the State, and has requisite power and authority under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations under this Agreement; (b) the execution and delivery of this Agreement have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee; (c) this Agreement has been duly executed and delivered by and constitutes the valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms; (c) Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the Original Term; (d) Lessee's exact legal name is as set forth on the first page of this Agreement; (e) the execution, delivery and performance of this Agreement by



Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound; (f) there is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement; (g) except as otherwise disclosed in writing by Lessee to Lessor, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been the obligated party required to make the payments, at any time during the past ten (10) years has been terminated by Lessee solely as a result of insufficient funds being appropriated in any budget year, and no event has occurred which would constitute an event of default by the Lessee under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years; and (h) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the Lease Term.

**Tax Covenants.** The parties contemplate that interest payable under this Agreement will be excluded from gross income for federal income tax purposes under Section 103 of the Code. Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments under this Agreement and will not use or permit the use of the Equipment in such a manner as to cause this Agreement to be a "private activity bond" under Section 141(a) of the Code. Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purposes for which this Agreement has been entered into, and no part of the proceeds of this Agreement shall be invested in any securities, obligations or other investments except for the temporary period pending such use. The Lessee will not use the proceeds of this Agreement or cause the proceeds of this Agreement to be used, at any time, directly or indirectly in a manner which, if such use had been reasonably anticipated on the Commencement Date, would have caused this Agreement to become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the Commencement Date.

**Tax Representations.** Lessee represents and warrants to Lessor that: (a) the estimated total costs, including taxes, freight, installation, cost of issuance, of the Equipment will not be less than the total principal amount of the Rental Payments; (b) the Equipment has been ordered or is expected to be ordered within six months after the Commencement Date and the Equipment is expected to be delivered and installed, and the vendor fully paid, within eighteen months from the Commencement Date; (c) Lessee will pursue the acquisition of the Equipment and the expenditure of the net proceeds of this Agreement with due diligence; (d) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (1) that is reasonably expected to be used to pay the Rental Payments, or (2) that may be used solely to prevent a default in the payment of the Rental Payments; (e) the Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments; (f) there are no other obligations of Lessee which (1) are being sold within 15 days of the Commencement Date, or (2) are being sold pursuant to the same plan of financing as this Agreement, and (3) are expected to be paid from substantially the same source of funds; and (g) the officer or official who has executed this Agreement on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of this Agreement. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in this paragraph are accurate and the expectations of Lessee set forth in this paragraph are reasonable. The representations, warranties and covenants set forth in this paragraph are superseded by the representations, warranties and covenants set forth in any arbitrage or tax certificate executed and delivered by Lessee in connection with this Agreement.

**Interest Rate Adjustment.** If Lessor either (i) receives notice, in any form, from the Internal Revenue Service, or (ii) reasonably determines, based on an

opinion of independent tax counsel selected by Lessor, that Lessor may not exclude the interest component of Rental Payments paid under this Agreement from its federal gross income, Lessee shall pay to Lessor upon demand (A) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the highest marginal corporate tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by this Agreement through the date of such event, and (B) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor. If, during the Lease Term, the federal corporate income tax rate decreases (whether or not Lessor is actually taxed at the maximum marginal statutory rate) or the federal tax laws are changed to reduce or cap the benefit of the tax exemption for the interest component of Rental Payments under this Agreement (whether or not Lessor is actually subject to such reduction or cap), the annual interest rate on this Agreement shall be adjusted as follows: (x) the interest rate shall be divided by 0.65, (y) the resulting quotient shall be multiplied by the difference between 1.0 and the actual new maximum federal corporate income tax rate or the effective maximum federal corporate income tax rate after giving effect to any reduction or cap on the benefit of the tax exemption, as applicable, and (z) the resulting amount shall be the new interest rate for this Agreement. Such increase in the interest rate shall take effect on the effective date of the change in federal tax laws. For the fiscal year of Lessee in which the effective date of the change in federal tax law falls, the increased interest accruing shall be due and payable on the first due date for Rental Payments in the fiscal year of Lessee following the fiscal year in which the effective date of the change in federal tax law falls. Appropriation of said increased interest shall be subject to the appropriation of funds, and failure to appropriate such increased interest shall be an Event of Nonappropriation hereunder. Upon an increase in the interest rate under this paragraph, Lessor shall provide to Lessee a revised Payment Schedule for this Agreement reflecting the increased interest rate.

**Liability and Property Insurance.** All risk of loss to the Equipment shall be borne by Lessee. Lessee shall, at its own expense, or through its transit contractor procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor from liability in all events, with coverage similar to the coverage Lessee or its transit contractor maintains for other comparable Equipment, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price. Lessee will also carry or require its transit contractor to carry workers' compensation insurance covering all employees on, in near or about the Equipment, if required by applicable law. All insurance policies shall be taken out and maintained with insurance companies acceptable to Lessor and Lessee shall request a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. In addition to any notice provided by the insurer, Lessee shall provide written notice to Lessor prior to any such change in coverage. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor as loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. At Lessor's request, Lessee shall deliver to Lessor the evidence of insurance which complies with this paragraph. Lessee may self-insure against the risks described in this paragraph. If Lessee self-insures, Lessee shall deliver to Lessor at Lessor's request, a letter from its risk manager or insurance consultant in substantially the form attached to the Equipment Schedule. If Lessee fails to maintain the insurance required by this paragraph, Lessor may (but shall not be obligated to) take such action to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 12% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

**Application.** If the Equipment is stolen, lost or destroyed, in whole or in part, or is damaged by fire or other casualty, or title to, or the temporary use of, the Equipment has been 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, Lessor and Lessee will cause the net proceeds of any insurance claim, condemnation award or sale

REVISION DATE: 2/16/2017



under threat of condemnation (the "Net Proceeds") to be applied, at the option of Lessee, to (a) the prompt replacement, repair, restoration, modification or improvement of the Equipment in substantial conformance with the original specifications, or (b) the prepayment of this Agreement in whole. Lessee will give Lessor written notice of its election within ninety (90) days after its receipt of the Net Proceeds. The insufficiency of the Net Proceeds to pay in full the cost of any repair, restoration, modification or improvement shall not affect Lessee's obligations under this paragraph, and Lessee shall not be entitled to any reimbursement therefor from Lessor or any diminution of the Rental Payments. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement may be retained by Lessee.

**Use and Maintenance of Equipment; Liens.** Lessee shall, at its own expense, maintain the Equipment in good condition and working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. The initial principal garage of the Equipment shall be located at the address specified in the Equipment Schedule. If Lessee changes the principal garage of the Equipment, it shall use good faith efforts to provide thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor with the address of the principal garage of the Equipment upon Lessor's reasonable request. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment. Without limiting the foregoing sentence, Lessor acknowledges that Lessee may affix or install decals, paint and other accessories to identify the Equipment as the equipment of Lessee. Lessee will not affix the Equipment to real property such that the Equipment becomes fixtures.

**Taxes.** Lessor and Lessee contemplated that the Equipment will be used for a governmental or proprietary purpose of Lessee, and therefore that the Equipment will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement have been established to reflect the savings resulting from this exemption. Lessee will take all necessary actions under applicable law to obtain or maintain such exemption. Nevertheless, if the use, possession or acquisition of the Equipment is determined to be subject to taxation or later becomes subject to taxation, Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any 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 then current budget year of the Lease Term.

**Financial Information.** To the extent not publicly available, Lessee shall deliver to Lessor upon request such financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement as Lessor may request from time to time.

**Title; Security Interest.** During the Lease Term, title to the Equipment shall be in Lessee, subject to Lessor's interests under this Agreement. In order to secure Lessee's payment of all Rental Payments and the performance of all other obligations hereunder, Lessee hereby grants to Lessor a continuing security interest in and to (a) the Equipment, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications thereto; (b) all books and records solely to the extent related to the Equipment; (c) all moneys and investments in any escrow account into which proceeds of this Agreement have been deposited; and (d) all proceeds of the foregoing, including insurance proceeds. Lessee hereby authorizes Lessor to prepare and file such financing statements and other such documents to establish and maintain Lessor's valid first lien and perfected security interest. Lessee will execute and deliver such documents and will perform such acts as Lessor may request to establish and maintain Lessor's security interest. Lessee will not change its legal name in any respect without giving Lessor 30 days prior written notice.

**Acceptance; Disclaimer of Warranties.** Lessee covenants with Lessor that it will cause the Equipment to be delivered and installed in its entirety in accordance with the bid or purchase order specifications pursuant to which Lessee ordered the Equipment from the vendor or manufacturer, and will pay all taxes, delivery costs and installation costs, if any, in connection therewith. All of the Equipment and the vendor of the Equipment have been selected by

Lessee. Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by Lessee, the acceptance by any vendor or its sales representative of any order submitted, or any delay or failure by such vendor or its sales representative to manufacture, deliver or install any Equipment for use by Lessee. Proceeds of this Agreement will be disbursed in accordance with the Escrow Agreement. Lessor assigns to Lessee for the Lease Term all of vendors' warranties in connection with the Equipment. The insufficiency of proceeds under this Agreement to pay costs of the Equipment shall not affect Lessee's obligations under this paragraph. When the Equipment has been delivered, installed and accepted, Lessee shall promptly execute and deliver to Lessor (with a copy to the Escrow Agent) an acceptance certificate in the form attached to the Escrow Agreement. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. In no event shall Lessor be liable for any incidental or consequential damages in connection with or arising out of this Agreement or the Equipment or Lessee's use of the Equipment.

**Risk of Loss.** Lessee shall not be required to indemnify Lessor from liabilities associated with this Agreement, however, to the extent permitted by applicable laws of the State, as between Lessor and Lessee, Lessee assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, and Lessee agrees to defend Lessor against, all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses that relate to or arise out of this Agreement, including but not limited to, (a) the selection, manufacture, purchase, acceptance or rejection of Equipment or the ownership of the Equipment, (b) the delivery, lease, possession, maintenance, use, condition, return or operation of the Equipment, (c) the condition of the Equipment sold or otherwise disposed of after possession by Lessee, (d) the conduct of Lessee, its officers, employees and agents, (e) any claim, loss, cost or expense involving alleged damage to the environment relating to the Equipment, including, but not limited to investigation, removal, cleanup and remedial costs, and (f) any strict liability under the laws or judicial decisions of any state or the United States. The indemnification obligations of the Lessee in this Agreement, if any, are provided to the extent of the provisions of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Maryland Annotated Code and subject to the appropriation of funds. As a condition of indemnification, Lessor agree(s) to notify Lessee of any suits, claims or potential claims as soon as practicable following Lessor's receipt of written notice thereof; provided, however, that the failure of Lessor to provide timely notice to Lessee with respect to any such suit, claim or potential claim shall not affect the obligations of Lessee hereunder with respect to such suit, claim or potential claim except to the extent that Lessee is materially prejudiced by Lessor's failure to give Lessee timely notice thereof. The foregoing indemnification, if any, is not to be deemed as a waiver of any immunity that may exist in any action against Lessee or its officers, agents, volunteers and employees. This provision shall survive the termination of this Agreement.

**Assignment by Lessor.** Lessor may assign, sell or encumber all or any part of this Agreement, the Rental Payments and any other rights hereunder, including with respect to the Equipment, without Lessee's consent. Such assignees may include trust agents for the benefit of holders of certificates of participation. No such assignment shall be effective as against Lessee unless and until written notice of the assignment is provided to Lessee. When presented with a notice of assignment, Lessee will acknowledge in writing receipt of such notice for the benefit of Lessor and any assignee. Lessee shall keep a complete and accurate record of all such assignments. Lessee makes no representation as to the effect that such assignment or participation may have on the tax exemption for the interest component of Rental Payments under this Agreement.

**Assignment and Subleasing by Lessee.** Neither this Agreement nor any interest herein or in the Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

**Events of Default Defined.** The occurrence of any of the following events shall constitute an Event of Default: (a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under this Agreement within ten (10) days following the due date thereof; (b) Lessee's failure to maintain insurance required by this Agreement; (c) Lessee's failure to perform or abide by any other condition, agreement or covenant set forth in this



Agreement for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied; (d) Lessor's determination that any representation, warranty or statement made by Lessee in or pursuant to this Agreement was untrue in any material respect on the date made; (e) the filing of a petition in bankruptcy or receivership or similar proceeding by or against Lessee, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental functions or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of any adjustment of indebtedness of Lessee, or the dissolution or liquidation of Lessee. An Event of Nonappropriation shall not constitute an Event of Default.

**Remedies on Default.** Upon the occurrence of any Event of Default, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies: (a) Lessor may terminate this Agreement and all of Lessee's rights hereunder as to any or all items of Equipment; (b) Lessor may declare all Rental Payments payable under this Agreement to the end of the then-current budget year of Lessee to be immediately due and payable by Lessee; (c) Lessor may repossess any or all of the Equipment by giving Lessee written notice to deliver such Equipment; or in the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where such Equipment is kept and take possession of such Equipment and charge Lessee for costs incurred, including reasonable attorneys' fees; (d) Lessor may proceed by appropriate court action or actions to enforce performance by Lessee of its obligations hereunder or to recover damages for the breach hereof; (e) by written notice to the Escrow Agent, Lessor may instruct the escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under this Agreement; and (f) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default. Any Equipment returned (subject to the appropriation of money for such purpose) under clause (c) above shall be to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement; provided that, if Lessee does not appropriate money for such purpose, it shall make the Equipment available for Lessor to take possession of, at the location listed in the Equipment Schedule. If Lessor takes possession of the Equipment, Lessor may thereafter dispose of the Equipment in accordance with the requirements of Article 9 of the Uniform Commercial Code; provided that any proceeds of such disposition in excess of the sum of (i) the unpaid principal component of Rental Payments (including Rental Payments due in future budget years), (ii) Lessor's costs and expenses associated with the disposition of the Equipment and the Event of Default (including attorneys fees), and (iii) any other amounts then due under this Agreement, shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto. No deficiency shall be allowed against Lessee, except with respect to any unpaid Rental Payments to the end of the then-current budget year of Lessee and unpaid costs and expenses incurred by Lessor in connection with the repossession and disposition of the Equipment. Each of the rights and remedies of Lessor under this Agreement is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of this Agreement, or to exercise any right, power or remedy consequent upon a breach hereof, shall

constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

**Notices.** All written notices to be given under this Agreement shall be given (a) personally, (b) by mail in registered or certified form, with postage prepaid, or (c) by overnight courier, charges prepaid, in each case to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, on the next business day after deposit for overnight delivery with a courier, or, if given by other means, when delivered.

**Construction.** This Agreement is binding upon and inures to the benefit of Lessor and Lessee and their respective successors and permitted assigns. In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Agreement may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of this Agreement. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. This Agreement shall be governed by and construed in accordance with the laws of the State.

**Usury.** It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein, in no event shall this Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the Lease Term so that the interest is uniform through such term.

**Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSOR AND LESSEE HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT.

**USA Patriot Act Compliance Notification.** Lessor hereby notifies Lessee that pursuant to the requirements of the USA PATRIOT Act (the "Act"), it is required to obtain, verify and record information that identifies Lessee, which information includes the name and address of Lessee and other information that will allow Lessor to identify Lessee in accordance with the Act. Lessee shall, promptly upon Lessor's request, provide all documentation and other information that Lessor requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

WITNESS/ATTEST:

HOWARD COUNTY, MARYLAND

\_\_\_\_\_  
Lonnie R. Robbins  
Chief Administrator Officer

By: \_\_\_\_\_  
Allan H. Kittleman  
County Executive

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Clive Graham  
Administrator, Office of Transportation

APPROVED FOR SUFFICIENCY OF FUNDS:

\_\_\_\_\_  
Stanley J. Milesky, Director  
Department of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY  
this \_\_\_\_ day of \_\_\_\_\_, 2017:

\_\_\_\_\_  
Gary W. Kuc  
County Solicitor

REVIEWING ATTORNEY:

\_\_\_\_\_  
Norman E. Parker, Jr.  
Senior Assistant County Solicitor

SUNTRUST EQUIPMENT FINANCE & LEASING  
CORP.,  
Lessor

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

Address:  
P.O. Box 4418  
Atlanta, GA 30302



EXHIBIT A

EQUIPMENT SCHEDULE  
TO TAX-EXEMPT LEASE/PURCHASE AGREEMENT

The following described equipment (the "Equipment") is the subject of the Tax-Exempt Lease/Purchase Agreement dated as of {MasterLeaseDate} (the "Agreement") between the undersigned Lessor and Lessee.

1. Equipment. The cost of the Equipment to be funded by Lessor under this Agreement is \$2,540,058.50. The Equipment consists of the following equipment which has been or shall be purchased from the manufacturer(s) and/or vendor(s) named below for the prices set forth below:

Manufacturer and/or Vendor Name & Invoice No.	Description	Invoice Cost
EIDorado National California, Inc. HGAC Contract No. BT01-17	Seven (7) E-Z Rider II 32' Low-Floor, Transit Buses. Product Code: MMD	\$ 2,540,058.50
	Total Invoice Cost:	\$ 2,540,058.50

2. Location of Equipment. The Equipment is essential to the governmental functions of Lessee. The initial principal garage of the Equipment will be located at the following address(es): 8800 Corridor Road, Annapolis Junction, MD, 20701.

3. Commencement Date. The Commencement Date of this Agreement is \_\_\_\_\_.

4. Interest Accrual Date. The amounts of the interest component of Rental Payments payable under this Agreement have been calculated based on the assumption that the proceeds of this Agreement were disbursed on the Commencement Date, and such payments of interest component will be payable as set forth in the Payment Schedule regardless of when the proceeds of this Agreement were actually disbursed.

5. Payment Schedule. The Payment Schedule is attached to this Equipment Schedule as Exhibit 1.

6. Lessee's Certificate. The Lessee's General and Tax Certificate is attached to this Equipment Schedule as Exhibit 2.

7. Opinion. The opinion of Lessee's counsel is attached to this Equipment Schedule as Exhibit 3.

8. Proceeds. Lessor shall disburse the proceeds of this Equipment Schedule in accordance with the Escrow Agreement attached hereto as Exhibit 4.

9. Insurance. Check Item A and/or Item B.

A Lessee's insurance letter is attached to this Equipment Schedule as Exhibit 5. \_\_\_\_\_

B. A letter from Lessee's risk manager or insurance consultant is attached as Exhibit 5.  X

10. Form 8038-G or -GC. The Form 8038-G or Form 8038-GC with respect to the Agreement is attached to this Equipment Schedule as Exhibit 6.



IN WITNESS WHEREOF, Lessor has caused this Equipment Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Equipment Schedule to be executed in its name by its duly authorized officer.

**HOWARD COUNTY, MARYLAND**

Lessee

**SUNTRUST EQUIPMENT FINANCE & LEASING  
CORP.,**

Lessor

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

Name: Allan H. Kittleman

Title: County Executive

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

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

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

Address:

Office of Transportation

3430 Courthouse Drive

Ellicott City, MD 21043

ATTN: Jai Saunders

Address:

P.O. Box 4418

Atlanta, GA 30302

Telephone: 410-313-0539

Facsimile: 410-313-1655

E-mail address: [jasaunders@howardcountymd.gov](mailto:jasaunders@howardcountymd.gov)

**Exhibit 1 to Equipment Schedule  
Tax-Exempt Lease/Purchase Agreement**

**PAYMENT SCHEDULE**

The annual interest rate applicable to the Agreement shall be 2.59 percent. Lessee will make Rental Payments each consisting of principal and interest as set forth below for a Lease Term of 120 months. Rental payments are due annually as set forth below.

<b>Payment Number</b>	<b>Payment Date</b>	<b>Total Payment</b>	<b>Principal Component</b>	<b>Interest Component</b>	<b>Prepayment Price*</b>
1	3/15/2017	\$ 284,214.07	\$ 284,214.07	\$ 0.00	\$ 2,278,402.88
2	3/15/2018	\$ 284,214.07	\$ 225,787.82	\$ 58,426.25	\$ 2,050,357.18
3	3/15/2019	\$ 284,214.07	\$ 231,635.71	\$ 52,578.35	\$ 1,816,405.11
4	3/15/2020	\$ 284,214.07	\$ 237,635.06	\$ 46,579.00	\$ 1,576,393.70
5	3/15/2021	\$ 284,214.07	\$ 243,789.80	\$ 40,424.27	\$ 1,330,166.00
6	3/15/2022	\$ 284,214.07	\$ 250,103.94	\$ 34,110.12	\$ 1,077,561.02
7	3/15/2023	\$ 284,214.07	\$ 256,581.62	\$ 27,632.45	\$ 818,413.59
8	3/15/2024	\$ 284,214.07	\$ 263,227.07	\$ 20,987.00	\$ 552,554.25
9	3/15/2025	\$ 284,214.07	\$ 270,044.64	\$ 14,169.43	\$ 279,809.16
10	3/15/2026	\$ 284,214.07	\$ 277,038.78	\$ 7,175.29	\$ 0.00

\* After payment of the Rental Payment due on such date.

**HOWARD COUNTY, MARYLAND**

Lessee

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

Name: Allan H. Kittleman

Title: County Executive

**Exhibit 2 to Equipment Schedule  
Tax-Exempt Lease/Purchase Agreement**

**LESSEE'S GENERAL AND TAX CERTIFICATE**

[Bond Counsel to provide]

**Exhibit 3 to Equipment Schedule  
Tax-Exempt Lease/Purchase Agreement**

**OPINION OF LESSEE'S COUNSEL**

[Bond Counsel to provide]



SUNTRUST EQUIPMENT FINANCE & LEASING CORP.

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ESCROW AGREEMENT

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[To be provided]

SELF-INSURANCE LETTER

SUNTRUST EQUIPMENT FINANCE & LEASING CORP.  
P.O. Box 4418  
Atlanta, GA 30302

Ladies and Gentlemen:

The undersigned is the risk manager or insurance consultant for Howard County, Maryland (the "Lessee"), and in such connection the undersigned is familiar with Lessee's insurance and self-insurance arrangements. In connection with the Tax-Exempt Lease/Purchase Agreement (the "Agreement"), between Lessee and SunTrust Equipment Finance and Leasing Corp. (the "Lessor"), the undersigned makes the following certifications to Lessor, effective as of the Commencement Date. Capitalized terms used but not defined herein have the meanings given in the Agreement.

1. Howard County, Maryland has created and funded a self-insurance program to provide compensation for injury to persons or damage to property resulting from the negligence or other wrongful acts of the County's public officials, employees and agents for which the County is legally liable. Further, Howard County, Maryland, provides self-insured workers' compensation coverage for all employees in accordance with Maryland law and all-risk property coverage for County property, vehicles and equipment. The establishment of this Fund does not constitute a waiver of the immunities, liability caps and defenses available to Howard County, Maryland, for its officers, agents and employees. (Section 23.100 Title 23, Howard County Code).
2. Upon delivery of the Equipment described in the Agreement, Howard County shall cause its contracted transit service provider to purchase and maintain the following coverage:
  - a. All Risk Physical Damage Insurance on the leased Equipment evidenced by a **Certificate of Insurance and Long Form Loss Payable Clause naming SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Loss Payee.**

The Coverage Required is \$2,540,059.

- b. Commercial General Liability Insurance evidenced by a **Certificate of Insurance naming SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Additional Insured.**

The following minimum coverage is required and will be provided:

Liability:	\$500,000 per person
Liability – Bodily Injury:	\$1,000,000 aggregate
Liability – Property Damage:	\$1,000,000 property damage liability


PROPERTY Seven (7) Transit Buses at \$362,865.57 each (or \$2,540,059 for all seven).

LOCATION: 8800 Corridor Road, Annapolis Junction, MD 20701.

Upon issuance of the coverage outlined above, a **Certificate of Insurance** will be mailed to **SUNTRUST EQUIPMENT FINANCE & LEASING CORP., P.O. Box 4418, Atlanta, GA 30302.**

Dated: Feb. 15, 2017

Very truly yours,

By: 

Name: Lynne K. Levin

Title: Risk Management Administrator

Exhibit 6 to Equipment Schedule  
Tax-Exempt Lease/Purchase Agreement

[FORM 8038-G or 8038-GC]

**[PAGE TO BE REPLACED BY UCC FINANCING STATEMENT]**



**SCHEDULE A TO FINANCING STATEMENT OF  
HOWARD COUNTY, MARYLAND, AS DEBTOR, AND  
SUNTRUST EQUIPMENT FINANCE & LEASING CORP., AS SECURED PARTY**

Continuation of Collateral Description

The financing statement to which this Schedule A is attached covers the types of property described on the face of such financing statement and all of the Debtor's right, title and interest in and to (collectively, the "Collateral"):

(a) the equipment described in the Tax-Exempt Lease/Purchase Agreement between Debtor, as lessee, and Secured Party, as lessor, as such agreement may be amended, modified or supplemented from time to time;

(b) to the extent not included in the foregoing, all books and records solely to the extent related to the Collateral; and

(c) to the extent not included in the foregoing, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications and all proceeds and products of any or all of the foregoing, whether existing on the date hereof or arising hereafter, including insurance proceeds.

**HOWARD COUNTY OFFICE OF TRANSPORTATION**

3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-0702

Clive Graham, Administrator

[cgraham@howardcountymd.gov](mailto:cgraham@howardcountymd.gov)

FAX 410-313-3467

TDD 410-313-2323

***Memorandum***

**To:** Lonnie Robbins, Chief Administrative Officer, Department of County Administration

**From:** Clive Graham

**Date:** January 26, 2017

**Subject:** Testimony in support of Ordinance authorizing lease-purchase of seven fixed-route transit buses for use by the Regional Transportation Agency (RTA)

The Office of Transportation's (OoT) approved FY 2017 Operating Budget includes approximately \$300,000 for the first year's payment of a 10-year lease-to-purchase program of seven buses. The OoT presented and explained the proposal to the County Council during budget sessions in Spring 2016.

County Council legislative approval is required for the contract because it will obligate the County for more than one year (Charter Section 612).

***Need for new buses***

The Regional Transportation Agency (RTA) total fixed-route fleet is approximately 42 buses. Of these, approximately 20 are at or above their useful life under Federal Transit Administration standards. Essentially they are too old and/or have been driven many more miles than they were designed for.

As a result the buses have frequent mechanical issues. This results in missed trips (over 1 per day July 2015 to May 2016) and road calls (breakdowns while on route); over two per day in FY 15). The RTA does not have enough spare vehicles to cover for broken down buses. The cost to maintain these old buses in labor and parts is very high.

New buses will enable the RTA to provide reliable service on more routes. The buses are the first large expense in a comprehensive planning and investment campaign to upgrade the RTA's services and transform the system from one of last resort to one of choice. As such this first large expenditure will send an important message of positive change to riders, RTA employees, and to the general public.

## ***Buses***

The new buses will be 32-foot long “EZ Rider” buses manufactured by the EIDorado company based in Riverside California. The buses seat up to 33 passengers and meet all ADA requirements. See Attachment 1; Brochure. These buses are true, heavy-duty transit buses, suitable for running 18 hours per day year-round.

## ***Delivery and service date***

It takes several months after contract approval to order the parts and build the buses. EIDorado is holding seven bus production slots for Howard County in Fall 2017 and has advised that assuming a Howard County order around the end of February, they will deliver buses by the end of the calendar year 2017, and possibly sooner.

## ***Cost***

The total cost per bus, not including financing, will be \$362,866.50 (or \$2,540,059 for all seven). This cost will be spread over 10 years. See Exhibit A to the Ordinance.

The cost with financing for the seven buses will be approximately \$285,000 per year or \$2,850,000 over 10 years, this is an estimate based on a quote received in December 2016 (see Attachment 2 Rate Quote). The exact cost is not known as of the legislative pre-filing date, January 26, 2017. This is because the cost will likely change based on interest rate fluctuations and a quote would only be good for 30 days. Were we to get a quote in January, it would expire before the date we hope to get legislative approval; March 6, 2017. The exact cost will be known by February 21, 2017 (date of the legislative public hearing) and we will provide it to Council before the hearing.

Before February 21, 2017 we will also have the final financing documents for the recommended quote. We expect the documents will be similar to the substantially complete form submitted with the Ordinance see Exhibit B to the Ordinance. This document has been reviewed by McKennon Shelton & Henn LLP, (MSH) the County’s bond counsel. SunTrust Equipment Finance and Leasing Corporation, a Virginia Corporation, will finance the buses pursuant to the Agreement. SunTrust is the bank that the REV Group, EIDorado’s parent company, uses for municipal financing.

## ***Contract***

The buses would be purchased from EIDorado National-California, Inc. (EIDorado). EIDorado holds a contract with the Houston Galveston Area Council (HGAC) – a cooperative purchasing program. The Howard County Office of Purchasing has advised that Howard County has an HGAC Interlocal Agreement # 07-1835 under the Baltimore Metropolitan Council (BMC). Under this agreement Howard County can make purchases under the HGAC contract (see Attachment 3, EIDorado contract with HGAC).

The Howard County Department of Finance has reviewed the financing documents. They have advised that the interest rate is competitive with rates the County could get through self-financing.

MSH will review the financing and deliver an opinion regarding tax exemption.

*Attachment I*  
*Brochure*



# E-Z RIDER II

# ENC

REV GROUP



## Unsurpassed Flexibility / Legendary Reliability

### HEAVY-DUTY 30', 32' AND 35' LOW-FLOOR BUS



The Eldorado National E-Z Rider II continues to be the mid-size, heavy-duty low-floor bus gold standard! Designed and built in the USA, the E-Z Rider II offers unmatched floor plan flexibility with ADA compliant wheelchair ramps at front, center or both doors for superior paratransit flexibility. With hundreds of options, the E-Z Rider II is custom built to meet your exacting needs. With the latest in exterior styling, the E-Z Rider II will separate your fleet from the ordinary!

DESIGNED AND BUILT IN THE USA! 



#### BEST AESTHETICS

Swept windshield offers the superior aesthetics you demand with enhanced visibility and reduced wind noise for the driver and passengers.



#### HIGHEST CAPACITY

Best seated capacity in the business! The E-Z Rider II 35' seats as many as the competitors 40' bus! High capacity with superior maneuverability and greater fuel efficiency.



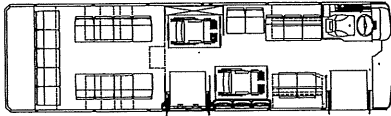
#### MOST WHEELCHAIRS

Up to four wheelchairs can be accommodated with ADA ramps at front, center or rear doors = total access! The available center door ramp is designed to accommodate even the largest electric scooters with ease.

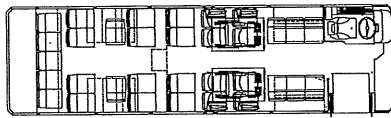
## POPULAR FLOORPLANS

(Note: this is only a partial listing of available floorplans. To find a floorplan meeting your exact needs, contact your ENC representative.)

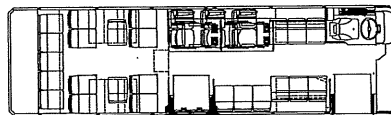
### 30' MODEL



20 Passengers w/2 Wheelchairs  
or 23 Passengers plus Standees

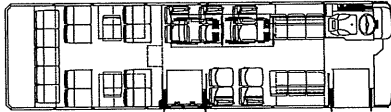


25 Passengers w/2 Wheelchairs  
or 33 Passengers plus Standees

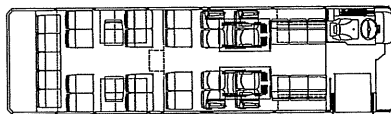


24 Passengers w/2 Wheelchairs  
or 30 Passengers plus Standees

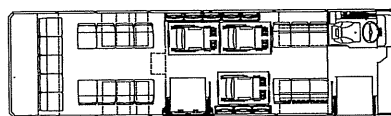
### 32' MODEL



25 Passengers w/2 Wheelchairs  
or 31 Passengers plus Standees

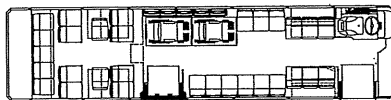


25 Passengers w/2 Wheelchairs  
or 33 Passengers plus Standees



19 Passengers w/3 Wheelchairs  
or 27 Passengers plus Standees

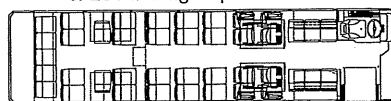
### 35' MODEL



30 Passengers w/2 Wheelchairs  
or 35 Passengers plus Standees



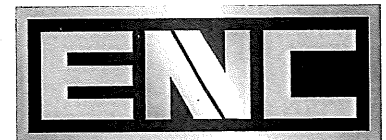
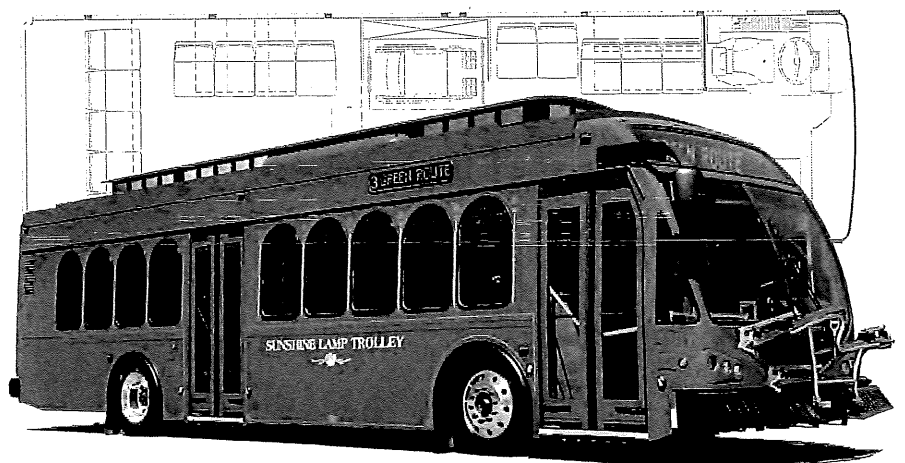
22 Passengers w/2 Wheelchairs  
or 28 Passengers plus Standees



33 Passengers w/2 Wheelchairs  
or 41 Passengers plus Standees

TECHNICAL SPECIFICATIONS	30' MODEL	32' MODEL	35' MODEL
GVWR	35,000 lbs.	35,000 lbs.	35,000 lbs.
Body Length	30' 7"	31' 3"	35' 7"
Body Width	102"	102"	102"
Wheelbase	160"	168"	220"
Approach Angle	8.7°	8.7°	8.7°
Breakover Angle	14°	14°	12°
Departure Angle	8.7°	8.7°	8.7°
Seating	Up to 33	Up to 33	Up to 41

Body Height	125" With Exhaust, 126" With Roof HVAC, 136" With CNG
Interior Height	95" Over Front Axle, 78" Over Rear Axle
Step Height-Front And Rear Doors	14" and 11" Kneeled
Wheelchair Ramp Locations	Front And/Or Center Doors
Available Engines	Cummins - Diesel, CNG, LNG, Diesel/Electric Hybrid
Available Transmissions	Allison - B300R, B400R, Voith, ZF
Passenger HVAC	Roof Or Rear Mounted Plus Dash Mounted Driver's HVAC
Front And Rear Axles	ArvinMeritor
Brakes	S-Cam Drum W/Automatic Slack Adjusters And ABS
Tires	275/70R 22.5
Front And Rear Doors	Vapor Air - Slide Glide
Electrical System	I/O Controls Multiplex - G2A, G3 or G4
Suspension	Air Suspension Front And Rear



REV GROUP

9670 Galena Street • Riverside, CA 92509  
(909) 591-9557  
www.eldorado-ca.com

At ENC, we constantly improve our product; as a result all specifications and dimensions are subject to change without notice.



*Attachment 2*

*Rate Quote December 2016*



December 7, 2016

RE – HOWARD COUNTY/RTA

REV Financial Services is pleased to present the following proposal for the transaction described below:

**LESSEE:** Howard County/RTA  
**EQUIPMENT:** (7) New Transit Buses - \$360,765.50 each  
**EXPIRATION:** January 31, 2017

**LEASE QUOTE:**

Amount	Rate	Annual Pymt Amount	Payment Factor	Residual	Term	Adv. / Arr.
\$2,525,358.50	2.68%	\$284,025.55	0.1124694	\$1/NONE	10 YEARS	ADVANCE
\$2,525,358.50	2.73%	\$292,500.65	0.1158254	\$1/NONE	10 YEARS	ARREARS

**LEASE:** This is a tax-exempt, municipal government lease with the title to the property passing to Lessee. This is a net lease under which, all costs, including insurance, maintenance and taxes, are paid by Lessee for the term of the lease.

**NOTES:** - Transaction must fund/fund to escrow by expiration date or is subject to repricing.  
 - \$400.00 documentation fee due at contract signing

**APPROVAL:** This proposal, until credit approved, serves as a quotation, not a commitment by Lessor to provide credit or property. Lessor acceptance of this Proposal is subject to credit; collateral and essential use review and approval by Lessor. The interest rate quoted herein assumes that the interest component of the Payments is exempt from federal income tax. Lessor will provide a taxable financing proposal if it is determined that the financing will not qualify for tax-exempt interest rates. The financing contemplated by this proposal is subject to the execution and delivery of all appropriate documents (in form and substance satisfactory to Lessor), including without limitation, to the extent applicable, the Master Lease Agreement, any Schedule, financing statements, legal opinion or other documents or agreements reasonably required by Lessor. The quoted interest rate assumes the Lessee designates the Lease as "bank-qualified" pursuant to Section 265(b) of the Code.

Thank you for the opportunity to present this proposal. If you have any questions, please contact me at my number or e-mail address below.

Sincerely,  
 Amanda Carter  
 National Sales Manager  
 Direct: 763-710-9947  
[amanda.carter@revgroup.com](mailto:amanda.carter@revgroup.com)



[www.REVgroup.com](http://www.REVgroup.com)



*Attachment 3*

*ElDorado contract with HGAC*

A CONTRACT BETWEEN  
HOUSTON-GALVESTON AREA COUNCIL  
Houston, Texas  
AND  
ELDORADO NATIONAL - CALIFORNIA, INC  
Riverside, California

This Contract is made and entered into by the Houston-Galveston Area Council of Governments, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, Eldorado National - California, Inc hereinafter referred to as the CONTRACTOR, having its principal place of business at 9670 Galena Street, Riverside, California 92509.

**ARTICLE 1:**

**SCOPE OF SERVICES**

The parties have entered into a Buses – Shuttle, Transit, Trams & Other Specialty Buses Contract to become effective as of January 1, 2017, and to continue through December 31, 2018 (the “Contract”), subject to extension upon mutual agreement of the CONTRACTOR and H-GAC. H-GAC enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as END USER, for the purchase of Buses – Shuttle, Transit, Trams & Other Specialty Buses offered by the CONTRACTOR in states other than Texas. The CONTRACTOR agrees to sell Buses – Shuttle, Transit, Trams & Other Specialty Buses through the H-GAC Contract to END USERS in states other than Texas.

**ARTICLE 2:**

**THE COMPLETE AGREEMENT**

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No:BT01-17, including any relevant suffixes
4. CONTRACTOR’s Response to Bid No: BT01-17, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

**ARTICLE 3:**

**LEGAL AUTHORITY**

CONTRACTOR and H-GAC warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

**ARTICLE 4:**

**APPLICABLE LAWS**

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

**ARTICLE 5:**

**INDEPENDENT CONTRACTOR**

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of H-GAC or CONTRACTOR. No provision of this Contract or act of H-GAC in performance of this Contract shall be construed as making CONTRACTOR the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of CONTRACTOR are subject to the exclusive control and supervision of CONTRACTOR. CONTRACTOR is solely responsible for employee payrolls and claims arising therefrom.

**ARTICLE 6:**

**END USER AGREEMENTS**

H-GAC acknowledges that the END USER may choose to enter into an End User Agreement with the CONTRACTOR through this Contract and that the term of said Agreement may exceed the term of the H-GAC Contract. However this acknowledgement is not to be construed as H-GAC’s endorsement or approval of the End User Agreement terms and conditions. CONTRACTOR agrees not to offer to, agree to or accept from END USER any terms or conditions that conflict with or contravene those in CONTRACTOR’s H-GAC contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between CONTRACTOR and any END USER which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that CONTRACTOR will no longer be able to enter into any new End User Agreements with END USERS pursuant to this Contract. Applicable H-GAC order processing charges will be due and payable to H-GAC on any End User Agreements surviving termination of this Contract between H-GAC and CONTRACTOR.

**ARTICLE 7: SUBCONTRACTS & ASSIGNMENTS**

**CONTRACTOR** agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to **H-GAC**. **H-GAC** reserves the right to accept or reject any such change. **CONTRACTOR** shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. **H-GAC** shall be liable solely to **CONTRACTOR** and not to any of its Subcontractors or Assignees.

**ARTICLE 8: EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

**CONTRACTOR** shall maintain during the course of its work, complete and accurate records of items that are chargeable to **END USER** under this Contract. **H-GAC**, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of **CONTRACTOR**. Failure to provide access to records may be cause for termination of this Contract. **CONTRACTOR** shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. **CONTRACTOR** further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that **H-GAC'S** duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

**ARTICLE 9: REPORTING REQUIREMENTS**

**CONTRACTOR** agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

**ARTICLE 10: MOST FAVORED CUSTOMER CLAUSE**

If **CONTRACTOR**, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **CONTRACTOR** shall notify **H-GAC** within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein **CONTRACTOR** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER**. **H-GAC** shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **CONTRACTOR** is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, **CONTRACTOR** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **CONTRACTOR** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between **H-GAC** and **CONTRACTOR** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to **H-GAC**.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure.

**EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.**

**ARTICLE 11: SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 12: DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of **H-GAC** or his designee, who shall reduce his decision to writing and provide notice thereof to **CONTRACTOR**. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, **CONTRACTOR** requests a rehearing from the Executive Director of **H-GAC**. In connection with any rehearing under this Article, **CONTRACTOR** shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. **CONTRACTOR** may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, **CONTRACTOR** shall proceed diligently with the performance of this Contract and in accordance with **H-GAC'S** final decision.

**ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY**

Except as specified in any separate writing between the CONTRACTOR and an END USER, CONTRACTOR's total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC described in Article 14, is limited to the price of the particular products/services sold hereunder, and CONTRACTOR agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

**ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC**

H-GAC's liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of CONTRACTOR's negligent act or omission under this Contract. CONTRACTOR shall notify H-GAC of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

**ARTICLE 15: TERMINATION FOR CAUSE**

H-GAC may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract; provided that H-GAC shall give CONTRACTOR written notice specifying CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, CONTRACTOR shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then H-GAC may, at its option, place CONTRACTOR in default and the Contract shall terminate on the date specified in such notice. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation was received by CONTRACTOR.

**ARTICLE 16: TERMINATION FOR CONVENIENCE**

Either H-GAC or CONTRACTOR may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. CONTRACTOR may be entitled to payment from END USER for services actually performed; to the extent said services are satisfactory to END USER. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation is received by CONTRACTOR.

**ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS**

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by H-GAC, the State of Texas, and the acts and regulations of any funding entity. CONTRACTOR agrees to notify H-GAC of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

**ARTICLE 18: GOVERNING LAW & VENUE**

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between END USER and CONTRACTOR are to be resolved in accord with the law and venue rules of the state of purchase. CONTRACTOR shall immediately notify H-GAC of such disputes.

**ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE**

CONTRACTOR agrees to sell its products to END USERS based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable H-GAC order processing charge. On notification from an END USER that an order has been placed with CONTRACTOR, H-GAC will invoice CONTRACTOR for the applicable order processing charge. Upon delivery of any product/service by CONTRACTOR and acceptance by END USER, CONTRACTOR shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay H-GAC the full amount of the applicable order processing charge, whether or not CONTRACTOR has received an invoice from H-GAC. For sales made by CONTRACTOR based on this contract, including sales to entities without Interlocal Contracts, CONTRACTOR shall pay the applicable order processing charges to H-GAC. Further, CONTRACTOR agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Contract. H-GAC reserves the right to take appropriate actions including, but not limited to, contract termination if CONTRACTOR fails to promptly remit H-GAC's order processing charge. In no event shall H-GAC have any liability to CONTRACTOR for any goods or services an END USER procures from CONTRACTOR.



**ARTICLE 20:**

**LIQUIDATED DAMAGES**

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

**ARTICLE 21:**

**PERFORMANCE AND PAYMENT BOND FOR INDIVIDUAL ORDERS**

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB), and offered pricing should reflect this cost saving. However, CONTRACTOR must be prepared to offer a PPB to cover any specific order if so requested by END USER. CONTRACTOR shall quote a price to END USER for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of END USER's purchase order.

**ARTICLE 22:**

**CHANGE OF CONTRACTOR STATUS**

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

**ARTICLE 23:**

**LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD *IF APPLICABLE***


CONTRACTOR will for the duration of this Contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston  
Area Council, Houston, Texas:

  
\_\_\_\_\_  
Jack Steele, Executive Director

Attest for Houston-Galveston  
Area Council, Houston, Texas:

  
\_\_\_\_\_  
Deidre Vick, Director of Public Services

Date: Nov 29, 2016

Signed for Eldorado National - California, Inc  
Riverside, California:

  
\_\_\_\_\_

Printed Name & Title: Michael Ammann, Vice President of Sales

Date: November 16, 2016

Attest for Eldorado National - California, Inc  
Riverside, California:

  
\_\_\_\_\_

Printed Name & Title: Karin S. Rexroad, Bid Analyst

Date: November 16, 2016