

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2019 Legislative Session

Legislative Day No. **9**

Bill No. 34 -2019

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

AN ACT pursuant to Section 612 of the Howard County Charter, approving a Capital Equipment Lease Agreement for financing the acquisition of smart water meters; 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 _____, 2019. 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 _____, 2019.

By order _____
Jessica Feldmark, Administrator

This Bill was read the third time on _____, 2019 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 _____, 2019 at ___ a.m./p.m.

By order _____
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive _____, 2019

Calvin Ball, 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**, Council Bill 48-2017 authorized a capital equipment lease for Capital Project
2 W8289 – FY2009 Water Meter Battery Replacement; and

3
4 **WHEREAS**, Howard County’s Capital Budget includes lease financing for the first year’s
5 payment of a 10-year lease-to-purchase program for the acquisition of new water meters; and

6
7 **WHEREAS**, the County would like to purchase 24,715 Sensus iPerl Water Meters from
8 L/B Water Service Inc.; and

9
10 **WHEREAS**, the County has issued the Request for Proposal, attached as Exhibit A, for
11 the financing of the smart water meters; and

12
13 **WHEREAS**, the County seeks to finance the lease-to-purchase of the water meters for a
14 term of 10 years beginning upon the execution of a Capital Equipment Lease Agreement (the
15 “Agreement”), substantially in the form of Exhibit B attached to this Act; and

16
17 **WHEREAS**, the total cost of the water meters is \$3,040,000 including financing costs, to
18 be paid over the term of the Agreement; and

19
20 **WHEREAS**, _____ will finance the water meters pursuant to the Agreement;
21 and

22
23 **WHEREAS**, the Agreement requires the payment by the County of funds from an
24 appropriation in a later fiscal year and therefore requires County Council approval as a multi-year
25 agreement pursuant to Section 612 of the Howard County Charter.

26
27 **NOW, THEREFORE,**

28
29 *Section 1. Be It Enacted by the County Council of Howard County, Maryland that in accordance*
30 *with Section 612 of the Howard County Charter, it approves the Capital Equipment Lease*

1 Agreement, substantially in the form of Exhibit B attached to this Act, between Howard County
2 and _____ for the lease-to-purchase of 24,715 smart water meters.

3

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

7

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

16

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

Davenport Public Finance

Phone: 410-296-9426

Toll Free: 800-586-2076

Fax: 866-932-6660

Maryland Executive Park
8600 LaSalle Road, Suite 618
Towson, MD 21286

VIA EMAIL

REQUEST FOR PROPOSALS

June 10, 2019



\$3,040,000*
Howard County, Maryland
Tax-Exempt Financing
Series 2019

Responses Due: Noon on Monday, July 1

Davenport & Company LLC (“Davenport”), in our capacity as Financial Advisor to Howard County, Maryland (the “County”), is distributing this Request for Proposals (the “RFP”) to interested banking and financial institutions for an estimated not to exceed amount of \$3,040,000* of Tax-Exempt Financing (the “2019 Financing”). The proceeds will be used to fund the acquisition of smart water meters, as well as the cost of issuance associated with this transaction. The 2019 Financing will be structured as a subject to annual appropriation Lease Purchase Agreement between the County and the selected financial institution with the equipment purchased serving as collateral.

Overview of the County

Howard County, Maryland is 251 square miles in area and is home to approximately 321,000 residents. The County is located between Baltimore, Maryland and Washington, D.C., and at its closest point is less than four miles from the former and 13 miles from the latter. The County was formed in 1851 and bears the name of Colonel John Eager Howard, the fifth Governor of Maryland. The County was predominantly agricultural until 1966, when construction began on the new town of Columbia. The County’s population has grown at an average 1.74 percent since 2000, and is the third wealthiest in the nation. Under a home rule charter since 1968, the County is governed by an elected County Executive and a five-member council. **The County enjoys Aaa/AAA/AAA ratings on its outstanding general obligation debt from Moody’s/S&P/Fitch, respectively.**

* Preliminary, subject to change

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Overview of the 2019 Financing

The 2019 Financing will be structured with level debt service payments over a 10-year term. Please see EXHIBIT 1 for the preliminary amortization schedule. Please note this schedule is preliminary and subject to change.

A description of the equipment to be funded with the 2019 Financing, and their costs, are included as EXHIBIT 2.

Other Key Considerations

Flexible terms and conditions are of the utmost importance to the County. The County desires to enter into a financing with flexible prepayment provisions. The County reserves the right to reject any or all proposals, to waive irregularities in any proposal, and to negotiate with any proposer.

The 2018 Comprehensive Annual Financial Report (CAFR) is available at:

<https://www.howardcountymd.gov/LinkClick.aspx?fileticket=q7ZstuUzn34%3d&tabid=2073&portalid=0>

Prior years' financial statements can be found at:

<https://www.howardcountymd.gov/Departments/Finance/Financial-Information/Audits/Audit-Information>

Information on the County's budget can be found at:

<https://www.howardcountymd.gov/Departments/County-Administration/Budget/Budget-Documents>

The summary in this request for proposals does not purport nor is it intended to contain all of the information that a respondent to this request may deem essential to making an informed investment decision. Requests for additional information should be directed to Davenport per the contact information below.

The County/Davenport are anticipating that by submitting an offer for the 2019 Financing your institution has given final credit approval for the issue and that your institution is ready and able to fund the 2019 Financing should it be selected as the successful offeror. If the 2019 Financing requires additional credit approvals after submission of your response, please clearly indicate in your response the process by which these additional approvals will be obtained, the timing of receiving these approvals, and any additional information that will need to be provided by the County. To the extent your institution requires closing costs or bank legal fees to be paid by the County, please clearly indicate what these fees are and provide not to exceed amounts in your response.

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Please utilize the following set of uniform criteria when formulating your response:

<i>Issuer:</i>	Howard County, Maryland
<i>Purpose:</i>	Fund the acquisition of smart water meters, as well as the cost of issuance associated with the transaction.
<i>Estimate Size of Issuance:</i>	Not to exceed \$3,040,000.
<i>Bank Qualified:</i>	No.
<i>Tax Treatment:</i>	Fully Tax-Exempt.
<i>Credit:</i>	The 2019 Financing will be structured as a subject to annual appropriation Lease Purchase Agreement with the equipment purchased as collateral.
<i>Rating:</i>	While no ratings will be obtained for the 2019 Financing, the County does carry credit ratings of Aaa/AAA/AAA on its outstanding general obligation debt from Moody's/S&P/Fitch, respectively. The winning offeror shall not request ratings without the County's permission.
<i>Drawdown(s):</i>	A Project Fund Escrow Account will be established and remain open until all smart water meters have been acquired. Please include sample escrow documents with your response.
<i>Interest Rate:</i>	The County requires a fixed rate to maturity for the 2019 Financing. Interest rate quotes should be held firm through the latest possible closing date, as outlined in the timetable on page 5 of this RFP. The County will not agree to an interest rate gross-up, interest rate protection or a most favored nation provision.
<i>Semiannual Payments:</i>	Combined payments of principal and Interest will be paid semiannually beginning on February 1, 2020.
<i>Interest Basis:</i>	30/360
<i>Final Maturity:</i>	August 1, 2029
<i>Amortization:</i>	The County requires a level payment debt service structure. A preliminary principal amortization schedule is included as EXHIBIT 1. Please note this schedule is preliminary and subject to change.
<i>Prepayment:</i>	The County is looking for maximum flexibility. Please specify the call structure that would provide the County with the most flexibility at the lowest cost of funds.
<i>Bank Closing Costs:</i>	None anticipated to be paid by the County. Please specify any exceptions and provide not-to-exceed amounts if applicable. The county will not agree to a breakage fee.

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- Annual/Ongoing Fees:* Please provide cost estimate of fees associated with the project fund escrow account. If you anticipate any additional fees, please specify any and provide not-to-exceed amount if applicable.
- Ongoing Disclosure:* The County will provide annual audited financial statements within 275 days after the end of the County's fiscal year by posting such statements on EMMA. Please specify any additional requirements.
- Bond Counsel Opinion:* Provided by McKennon Shelton & Henn LLP, Baltimore, MD, Bond Counsel to the County.
- Capital Equipment Lease Agreement:* The County will enter into a Capital Equipment Lease Agreement with the winning offeror. **A form of the Capital Equipment Lease Agreement is included with this distribution. The offeror should provide any substantial comments or significant changes it would require to the form agreement as part of its proposal.**
- Direct Bank Loan:* Proposals are requested for a direct bank loan evidenced by the 2019 Financing, by a single financial institution or a syndicate of financial institutions represented by one lead institution with which the County and their consultants will deal with exclusively on all aspects of the financing. The successful offeror(s) will be expected to provide a letter in form satisfactory to the County and Bond Counsel regarding the qualifications of the lender and stating that the loan is being made for its own account and with no intention of sale or distribution. No formal offering document will be prepared, although offerors should feel free to direct any questions about the County or its finances to the undersigned.
- Award:* County Staff, in consultation with Davenport, will determine which proposal offers the most attractive financing cost and terms to the County. The County reserves the right to reject any or all proposals and to waive any irregularity in any proposal or the process. **A formal award to the winning offeror will be made on July 30, 2019 after anticipated approval by the County Council on July 29. All proposals should hold firm through this date.**
- Closing:* **Closing is expected to take place by Monday, August 5, 2019. However, to provide additional time to finalize documentation and negotiations, interested offerors are requested to provide rates fixed through Monday, August 12.** The opinion of Bond Counsel will be delivered at the closing of the 2019 Financing.

Please specify any other terms or conditions that would impact the proposed structure of the 2019 Financing agreement (form included with this distribution). The preliminary timetable for action appears below:

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Preliminary Timetable*

<u>Date</u>	<u>Action</u>
Monday, June 10	Davenport distributes RFP to interested banking and financial Institutions.
Monday, July 1	Responses to RFP due back to Davenport by noon.
Tuesday, July 2 – Wednesday, July 10	On behalf of the County, Davenport negotiates with offerors and makes a recommendation to County as to a winning proposal; County notifies winning offeror. Finalize terms/conditions as needed; Final term sheet provided by winning offeror. Work on finalizing the Capital Equipment Lease Agreement, Escrow Agreement and other transactional documents.
Monday, July 15	County holds Public Hearing on 2019 Financing.
Monday, July 29	Anticipated County Council approval/vote.
Tuesday, July 30	Award made to winning offeror.
Monday, August 5	Target Closing Date.
Monday, August 12	Latest possible Closing Date (please hold rates through this date).

.....
**Please note that the above time schedule is preliminary and subject to change.*

We look forward to your response by noon EST on Monday, July 1. Responses should be e-mailed to our office as follows:

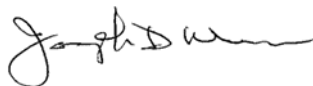
Kyle Laux
Davenport & Company LLC
Phone: (804) 697-2913
klaux@investdavenport.com

Jennifer Diercksen
Davenport & Company LLC
Phone: (804) 297-9050
jdiercksen@investdavenport.com

Susan Ostazeski
Davenport & Company LLC
Phone: (410) 296-9426
sostazeski@investdavenport.com

Please direct requests for further information and/or questions to the professionals above. Thank you in advance for your interest in supporting Howard County and we look forward to your response.

Sincerely,



Joseph D. Mason
Senior Vice President
Davenport Public Finance

DAVENPORT & COMPANY

cc: Janet Irvin, Director of Finance, *Howard County, Maryland*
Nicole Griffith, Bureau Chief, Cash & Debt Management, *Howard County, Maryland*
John Vu, Treasury Analyst, *Howard County, Maryland*
Joe Mason, Senior Vice President, *Davenport & Company*
Kyle Laux, Senior Vice President, *Davenport & Company*
Ty Wellford, Senior Vice President, *Davenport & Company*
Jennifer Diercksen, First Vice President, *Davenport & Company*
Paul Shelton, Esq., Partner, *McKennon Shelton & Henn LLP*
Will Taylor, Esq., Partner, *McKennon Shelton & Henn LLP*
Emily Fusting, Esq., Associate, *McKennon Shelton & Henn LLP*

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EXHIBIT 1

Preliminary Debt Service Schedule* 2019 Financing

Principal Due	Estimated Principal Amortization	Estimated Interest	Estimated Debt Service
2/1/2020	\$129,000.00	TBD	TBD
8/1/2020	134,000.00	TBD	TBD
2/1/2021	135,000.00	TBD	TBD
8/1/2021	138,000.00	TBD	TBD
2/1/2022	140,000.00	TBD	TBD
8/1/2022	142,000.00	TBD	TBD
2/1/2023	144,000.00	TBD	TBD
8/1/2023	146,000.00	TBD	TBD
2/1/2024	148,000.00	TBD	TBD
8/1/2024	150,000.00	TBD	TBD
2/1/2025	153,000.00	TBD	TBD
8/1/2025	155,000.00	TBD	TBD
2/1/2026	157,000.00	TBD	TBD
8/1/2026	160,000.00	TBD	TBD
2/1/2027	162,000.00	TBD	TBD
8/1/2027	164,000.00	TBD	TBD
2/1/2028	167,000.00	TBD	TBD
8/1/2028	169,000.00	TBD	TBD
2/1/2029	172,000.00	TBD	TBD
8/1/2029	175,000.00	TBD	TBD
Total	\$3,040,000.00		

**While the preliminary debt service schedule only includes principal estimates, the County requires a level debt service payment structure. Please note, this schedule is preliminary and subject to change based on final amounts and final interest rate.*

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EXHIBIT 2
Project List
2019 Financing

Project	Description	Cost
Smart Water Meters	County will purchase 24,715 Sensus iPerl Smart Water Meters (3/4 inch with iron connector), each with an estimated cost of \$121.38.	\$2,999,906.70

HOWARD COUNTY, MARYLAND

CAPITAL EQUIPMENT LEASE AGREEMENT

Dated as of _____, _____

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EXHIBIT A -- Form of Schedule

ATTACHMENTS TO SCHEDULE:

- A -- Equipment and Proceeds
- B -- Acceptance Certificate
- C -- Payment Schedule
- D -- Form of Bond Counsel Opinion

CAPITAL EQUIPMENT LEASE AGREEMENT

THIS CAPITAL EQUIPMENT LEASE AGREEMENT, dated as of _____, _____ (this “Capital Equipment Agreement”) is adopted by **HOWARD COUNTY, MARYLAND**, a body corporate and politic and political subdivision of the State of Maryland (the “County”).

RECITALS

The County has determined that it is necessary and desirable to enter into this Capital Equipment Agreement for the lease of certain equipment (the “Equipment,” as defined herein) upon the terms and conditions set forth herein. Neither the State nor any political subdivision thereof other than the County shall be obligated to pay any amount payable under this Capital Equipment Agreement or any Agreement (defined herein) and neither this Capital Equipment Agreement nor any Agreement shall create or constitute any indebtedness or obligation of the State or any political subdivision thereof other than the County.

ARTICLE I

DEFINITIONS

Section 1.01. Definitions.

In addition to the terms defined elsewhere herein, the following terms will have the meanings indicated below when used herein unless the context requires otherwise.

“**Acceptance Certificate**” means an Acceptance Certificate, in substantially the form set forth as Attachment B to a Schedule, executed and delivered by the County.

“**Additional Payments**” means any amounts, other than Lease Payments, payable by the County pursuant to the provisions of this Capital Equipment Agreement, as set forth in Sections 5.04 and 10.04.

“**Agreement**” means this Capital Equipment Agreement and a Schedule, as the same may be amended or modified from time to time, including (without limitation) the Attachments to such Schedule, which shall constitute a fully integrated agreement existing in accordance with its own terms and conditions separate from and independent of all other transactions pursuant to this Capital Equipment Agreement.

“**Bond Counsel**” means McKennon Shelton & Henn LLP or any other law firm having a national reputation in the field of municipal law whose legal opinions are generally accepted by purchasers of municipal bonds appointed by the County.

“**Closing**” means, with respect to each Agreement, the date of delivery of such Agreement in accordance with this Capital Equipment Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the applicable regulations thereunder.

“**Equipment**” means the personal property and any fixtures identified in a Schedule, together with all replacement parts, additions, repairs, modifications, substitutions, accessions and accessories incorporated therein or affixed to such personal property.

“**Equipment Costs**” means, with respect to any Schedule, the net purchase price paid or to be paid to the Vendors for any portion of the Equipment described therein upon the County’s acceptance thereof and in accordance with the Purchase Agreement therefor, including (without limitation) fees for software licenses, maintenance, consulting, training and other services described on such Schedule and administrative, engineering, legal, financing and other costs incurred by the County in connection with the acquisition, installation (which may include renovations to buildings), and financing and refinancing by the Lessor of such Equipment.

“**Event of Default**” has the meaning specified in Section 10.01.

“**Lease Payments**” means those scheduled payments (but excluding any indemnity payments and Additional Payments payable to the Lessor hereunder) payable by the County pursuant to an Agreement, as specifically set forth in a Schedule to this Capital Equipment Agreement.

“**Lessor**” means the institution specified in a Schedule, acting in its relationship to the County under this Capital Equipment Agreement and each Agreement executed hereunder, but not in its relationship, if any, to the County as Vendor, and its successors and assigns.

“**Net Proceeds**” means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including, without limitation, reasonable attorneys’ fees) incurred in the collection of such claim or award.

“**Purchase Agreement**” means a purchase agreement between the County and the Vendor of Equipment.

“**Purchase Price**” means, with respect to any Agreement or the Equipment described therein, as of any particular date, the amount required to purchase such Equipment, as provided in Article VIII, such amount being equal to the total principal amount payable under such Agreement as set forth in the Schedule to such Agreement remaining unpaid as of such date, plus accrued interest, if any, thereon as of such date, plus all other amounts then owed under such Agreement by the County.

“**Schedule**” means a schedule of equipment and any fixtures and Lease Payments, a form of which is set forth as Exhibit A, which has been executed by the County and the Lessor, subject to such modifications, additions and deletions as approved by the County Executive or the Chief Administrative Officer of the County.

“**State**” means the State of Maryland.

“**Term**” means, with respect to each Agreement the term specified in such Agreement in accordance with Article III.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State.

“**Vendor**” means the manufacturer of an item of Equipment, as well as the agents or dealers of the manufacturer, from whom the County has purchased or is purchasing items of Equipment. The Lessor may become a Vendor of certain items of Equipment.

Section 1.02. Rules of Construction.

Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Capital Equipment Agreement and the Agreements:

(a) Words importing the singular number include the plural number and words importing the plural number include the singular number.

(b) Words of the masculine gender include correlative words of the feminine and neuter genders.

(c) The headings and the table of contents set forth in this Capital Equipment Agreement are solely for convenience of reference and shall not constitute a part of this Capital Equipment Agreement, nor shall they affect its meaning, construction or effect.

(d) Words importing persons include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof.

(e) Any reference to a particular Article, Section, Exhibit or Schedule shall be to such Article, Section, Exhibit or Schedule of or to this Capital Equipment Agreement unless the context shall otherwise require.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS OF COUNTY AND LESSOR

Section 2.01. County’s Representations.

The County represents in order to induce the Lessor to enter into an Agreement as follows:

(a) The County is a validly created and existing body corporate and politic and political subdivision of the State.

(b) The County has been fully authorized to execute and deliver this Capital Equipment Agreement and any Schedule hereunder; all requirements have been met and all procedures have

taken place in order to ensure the validity and enforceability of this Capital Equipment Agreement and any Schedule hereunder in accordance with their respective terms.

Section 2.02. Lessor's Representations, Warranties and Covenants.

The Lessor represents, warrants and covenants in order to induce the County to enter into an Agreement as follows:

(a) The Lessor has sufficient knowledge and experience in financial and business matters, including (without limitation) purchase and ownership of municipal and other taxable and tax-exempt obligations, to be able to evaluate the risks and merits of the extension of credit represented by the Agreements. The Lessor is able to bear the economic risks of such extension of credit.

(b) The Lessor understands that (i) neither the State nor any political subdivision thereof other than the County shall be obligated to pay any amount payable under this Capital Equipment Agreement or any Agreement; and (ii) neither this Capital Equipment Agreement nor any Agreement shall create or constitute any indebtedness or obligation of the State or any political subdivision thereof other than the County and that such obligation of the County is subject to annual appropriation.

(c) The Lessor understands that no official statement, prospectus, offering circular or other offering statement is being prepared with respect to any Agreement. The Lessor has made its own inquiry and analysis with respect to the security for and sources of payment of any Agreement and has received all information which it deems necessary or relevant in connection with its evaluation of the credit of the County and the security for the Agreements in relation to the Lessor's decision to enter into any Agreement.

(d) The Lessor understands that neither this Capital Equipment Agreement nor any Agreement (i) is being registered under the Securities Act of 1933, as amended, (ii) is being registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state, (iii) will be listed on any stock or other securities exchange or (iv) will carry any rating from any securities rating agency.

(e) The Lessor is entering into the Agreement to evidence an extension of its credit for its own loan portfolio and it does not have any present intention to resell, dispose of or otherwise distribute such Agreement, except as permitted by law and subject to applicable banking and securities laws and regulations thereunder; *provided*, however, that the disposition of the Lessor's property shall at all times be within its control. In the event that, in the future, the Lessor sells any Agreement or any part thereof or grants participations therein, the Lessor agrees to comply with applicable federal and state securities laws in connection therewith.

Section 2.03. Tax Covenant.

With respect to the interest portion of the Lease Payments that the County intends be and remain excludable from gross income for purposes of federal income taxation, the County covenants that (i) it will take any and all actions lawfully within its powers so as to maintain the

excludability from gross income for federal income tax purposes of the interest portion of the Lease Payments and (ii) it will not perform any act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall adversely affect the excludability from gross income for federal income tax purposes of the interest portion of the Lease Payments received by the Lessor, including (without limitation) leasing or transferring all or any portion of the Equipment or contracting with a third party for the use or operation of all or any portion of the Equipment if entering into such lease, transfer or contract would have such effect.

During the term of this Capital Equipment Agreement, the County shall be the sole beneficial and legal owner of the Equipment and the licensee of the right to use any software license component thereof, and the County will report on such basis for financial accounting, tax and all other purposes. The Lessor shall not take any action inconsistent with the County's ownership of the Equipment for federal income tax purposes except pursuant to the exercise of remedies under Article X.

ARTICLE III

LEASE OF EQUIPMENT

Section 3.01. Lease of Equipment.

From time to time, the County may enter into an Agreement with a Lessor for the leasing of Equipment. Upon the execution of each Schedule, the Lessor shall lease to the County and the County shall lease from the Lessor, the Equipment described therein in accordance with the provisions of this Capital Equipment Agreement. Subject to the payment of the Lease Payments, the County shall have the right to have and to hold the Equipment for the Term. The Lessor hereby covenants that, as to claims of the Lessor, the County shall peaceably and quietly have, hold, possess, use and enjoy the Equipment, without suit, trouble or hindrance from the Lessor, subject to the terms and provisions hereof.

Section 3.02. Term.

The Term of each Agreement shall commence on the date specified in the Schedule thereto and shall terminate upon the payment by the County of all Lease Payments with respect to such Agreement and any other payments required to be paid by the County with respect to such Agreement unless earlier terminated as provided in this Capital Equipment Agreement or such Schedule.

Unless extended by an ordinance of the County, this Capital Equipment Agreement shall terminate upon the later of (i) the first anniversary of the date of this Capital Equipment Agreement and (ii) earliest date as of which all Agreements in effect on the first anniversary of the effective date of this Capital Equipment Agreement have terminated.

Section 3.03. Delivery, Installation and Acceptance of Equipment.

The County shall order the Equipment pursuant to one or more Purchase Agreements from one or more Vendors. The County shall cause the Equipment to be delivered and installed at the locations specified in the Schedule with respect to such Equipment and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. When the Equipment described in a Schedule is delivered and installed to the County's specifications and the County has accepted such Equipment, the County shall execute and deliver to Lessor an Acceptance Certificate substantially in the form attached to the Schedule with respect thereto.

ARTICLE IV

LEASE PAYMENTS; SECURITY

Section 4.01. Lease Payments.

Subject to Section 4.05 and the further provisions of this Section, the County agrees to pay the Lease Payments specified in each Agreement in the amounts and on the dates set forth in the Schedule thereto and all other payments and fees due hereunder. The Lease Payments due under each Agreement shall be paid without notice or demand in lawful money of the United States of America to the Lessor at its address set forth in the Schedule or at such other place as Lessor may from time to time designate in writing. Any other amounts required to be paid by the County hereunder shall be paid in lawful money of the United States of America within 30 days of the receipt of notice therefor by the County, unless otherwise provided herein. Any Lease Payment or other amount payable hereunder paid after the due date for the payment thereof shall bear interest from such date and at such rate as shall be provided in the Schedule.

The obligation of the County to pay the Lease Payments and any other amounts required to be paid under any Schedule shall constitute a current expense of the County, shall be payable solely from amounts appropriated by the County that are legally available for the payment thereof and shall not constitute a debt or a pledge of the full faith and credit of the County.

Except as provided in this Section and Section 4.05, the obligations of the County to make payment of the Lease Payments and any other payments due under the Agreements and to perform and observe all other covenants thereunder shall be absolute and unconditional in all events, without abatement, diminution, deduction, set-off or defense for any reason (other than the defense that such amounts have been paid), including (without limitation) any failure of the Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation, destruction or unforeseen circumstances. Nothing herein shall limit the County's rights or actions against any Vendor as provided in Section 7.02.

Section 4.02. Interest and Principal Components.

A portion of each Lease Payment is paid as, and represents payment of, interest, and the balance of each Lease Payment is paid as, and represents payment of, principal. Each Schedule

to an Agreement shall set forth the principal and interest components of each Lease Payment payable thereunder.

Section 4.03. Title.

Legal title to the Equipment leased under each Agreement, including (without limitation) the license of the right to use any software license component thereof, shall be in the County, subject to the rights of the Lessor under such Agreement.

Section 4.04. Continuation of Term by County.

The County agrees to use reasonable efforts annually to obtain the appropriation of sufficient funds from which the Lease Payments and other amounts payable hereunder may be made. Such efforts shall include (without limitation) the inclusion of such funds in the proposed budget of the County submitted to the County Council and a request for adequate funds to meet its annual obligations hereunder in full in its next fiscal year budget.

Section 4.05. Nonappropriation.

The obligation of the County to pay the Lease Payments and all other amounts payable by the County hereunder, including (without limitation) any indemnity payments, is subject to the appropriation of money legally available for such purpose by the County Council. In the event sufficient funds shall not be appropriated by the County Council for the payment of the Lease Payments required to be paid under any Agreement, the County may terminate such Agreement at the end of the last fiscal year or earlier date for which an appropriation is available without penalty and the County shall not be obligated to make payment of the Lease Payments and other payments provided for in such Agreement beyond the last date for which an appropriation is available. The County shall deliver written notice to the Lessor of such termination no later than seven business days after the County has knowledge that an appropriation will not be available. The failure to give such notice shall not extend the Term beyond such fiscal year and the County shall have no liability therefor. Upon termination of any Agreement for nonappropriation, the obligations of the County requiring the expenditure of money will cease so long as all payments previously appropriated have been made, and all title and interest of the County in the Equipment will terminate and be vested in the Lessor.

Section 4.06. Security Interest; Notice of Name Change.

Each Agreement is intended to constitute a security agreement within the meaning of the UCC. In order to secure its obligations under each Agreement, the County hereby grants to the Lessor a purchase money security interest constituting a first lien on any and all right, title and interest of the County in the Equipment thereunder, whether now owned or hereafter acquired, all additions, attachments, alterations and accessions to such Equipment, all substitutions and replacements for such Equipment and on any proceeds of any of the foregoing, including insurance proceeds. The County agrees to execute and deliver such additional documents, including (without limitation) financing statements, certificates of title, affidavits, notices and similar instruments, in form satisfactory to the Lessor, necessary or appropriate to perfect and maintain such security interest in the Equipment. The County hereby authorizes the Lessor to

file all financing statements which the Lessor deems necessary or appropriate to establish, maintain and perfect such security interest.

The Lessor's security interest in the Equipment shall terminate, and the Lessor shall execute and deliver to the County documents which evidence the termination of the Lessor's security or other interest in such Equipment in accordance with Section 8.01.

Section 4.07. Financial Statements and Other Information.

During the Term of each Agreement, the County shall provide to the Lessor annually, within 275 days after the last day of each fiscal year, audited financial statements of the County for such fiscal year. The County may satisfy the foregoing provision by posting such audited financial statements on the Electronic Municipal Market Access System or any substitute system maintained by the Municipal Securities Rulemaking Board.

ARTICLE V

**MAINTENANCE; MODIFICATION; TAXES;
INSURANCE AND OTHER CHARGES**

Section 5.01. Use and Maintenance of Equipment.

During the Term of each Agreement, the County shall keep and maintain the Equipment leased under such Agreement in good condition and working order (ordinary wear and tear accepted) and in compliance with the manufacturers' specifications and shall use, operate and maintain the Equipment in material compliance with all laws and regulations concerning the Equipment.

Section 5.02. Liens, Taxes, Other Governmental Charges and Utility Charges.

The County shall keep the Equipment free of all levies, liens and encumbrances except the liens created by the Agreement under which the Equipment is leased during the Term of such Agreement. The County contemplates that the Equipment will be exempt from all property taxes. If the use, possession or acquisition of any Equipment is found to be subject to taxation, the County shall pay during the Term of the Agreement under which such Equipment is leased, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to such Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of such Equipment; *provided* that, with respect to any governmental charges that lawfully may be paid in installments over a period of years, the County shall be obligated to pay only such installments as have accrued during the Term of such Agreement.

Section 5.03. Insurance.

At its own expense, subject to appropriated funds, the County shall self-insure, or at its option, commercially insure, the Equipment against loss or damage due to fire and risks

normally included in extended coverage, malicious mischief, and vandalism. The Net Proceeds of the insurance required in this Section shall be applied as provided in Article VI.

Section 5.04. Advances.

In the event the County shall fail to maintain the full insurance coverage required by this Capital Equipment Agreement, after ten business days' written notice to the County, the Lessor may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same; and all amounts so advanced therefor by the Lessor, together with interest thereon, to the extent permitted by law, at an annual rate equal to the rate utilized to establish the interest component for the Lease Payments with respect to such Equipment shall constitute Additional Payments.

Section 5.05. Modifications and Substitutions.

(a) The County shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Equipment subject to the provisions of this Section. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Equipment. Such alterations, additions, modifications and improvements shall not in any way damage the Equipment, substantially alter its nature or cause it to be used for purposes other than those authorized under the provisions of State and federal law; and the Equipment, on completion of any alterations, additions, modifications or Improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Equipment immediately prior to the making of such alterations, additions, modifications and improvements. The County shall, at its own expense, make such alterations, additions, modifications and improvements to the Equipment as may be required from time to time by applicable law or by any governmental authority during the Term of the Agreement under which such Equipment is leased.

(b) The County may substitute for all or any portion of the Equipment under a Schedule property of approximately equal or greater market value and with an equal or greater useful life as of the date of substitution. In the event of any such substitution, the County shall deliver to the Lessor a certification that the property proposed to be substituted has approximately equal or greater market value and an equal or greater useful life as the portion of the Equipment for which such property is substituted, together with an opinion of Bond Counsel to the effect that the proposed substitution will not adversely affect the excludability from gross income for federal income tax purposes of the interest components of Lease Payments under the Schedule under which such Equipment was leased. The County shall be responsible for all costs and expenses of the Lessor, including reasonable counsel fees, in connection with any such substitution. The County shall cause all financing statements, fixture filings, certificates of title, affidavits, notices and similar instruments, to be made or filed in a timely manner to secure and perfect the security interest of the Lessor in the substituted property.

Section 5.06. Location; Inspection of Equipment.

The Equipment will be initially located or based at the location specified in the Schedule under which it is leased. The County shall not make a permanent change in the location of the

Equipment to a location outside of the County without prior written notice to the Lessor. The Lessor shall have the right at all reasonable times during business hours, upon reasonable advance notice to the County, to enter into and upon the property of the County for the purpose of inspecting the Equipment.

ARTICLE VI

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 6.01. Damage, Destruction and Condemnation.

If during the Term of an Agreement (a) the Equipment thereunder or any portion thereof is destroyed (in whole or in part), lost, stolen or damaged by fire or other casualty, or (b) title to, or the temporary use of, such Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person acting under governmental authority, then the County may, at its option, apply the Net Proceeds in whole or in part to (i) replace, repair, restore, modify or improve such Equipment or any portion thereof, or (ii) exercise its option to purchase such Equipment or provide for the payment of the Lease Payments as provided in Article VIII. Any balance of the Net Proceeds remaining after application in accordance with this Section shall be paid to the County.

Section 6.02. Insufficiency of Net Proceeds.

If the Net Proceeds received with respect to any Equipment are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement referred to in Section 6.01, the County shall either (i) complete the work and pay any cost in excess of the amount of the Net Proceeds, in which event the County shall not be entitled to any reimbursement therefor from the Lessor or to any diminution of the amounts payable under any Agreement; or (ii) purchase such Equipment or provide for the payment of the Lease Payments as provided in Article VIII. The amount of the Net Proceeds in excess of the amount required to purchase such Equipment or provide for the payment of the Lease Payments, if any, may be retained by the County.

ARTICLE VII

DISCLAIMER OF WARRANTIES; VENDORS' WARRANTIES

Section 7.01. Disclaimer of Warranties.

LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY OF MATERIALS OR WORKMANSHIP, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT OR ANY COMPONENT THEREOF OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT THERETO AND, AS TO THE LESSOR, THE COUNTY'S PURCHASE OF THE EQUIPMENT SHALL BE ON

AN "AS IS" BASIS. All such risks, as between the Lessor and the County, are to be borne by the County. The County shall be, and hereby is, authorized during the Term of each Agreement to assert and enforce, at the County's sole cost and expense, from time to time, in the name of and for the account of the Lessor or the County, as their interests may appear, whatever claims and rights the County or the Lessor may have against the Vendor or any prior title holder or possessor of the Equipment described therein. In no event shall the Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of the Agreements, the Equipment or the existence, furnishing, functioning or the County's use of any item or products or services provided for in this Capital Equipment Agreement and the Agreements. Nothing herein shall affect any warranty provided in any Purchase Agreement under which the Lessor is the Vendor.

Section 7.02. Vendor's Warranties.

The Lessor hereby irrevocably assigns to the County all rights that the Lessor may have to assert from time to time any claims and rights, including (without limitation) any breach of any warranty or any other right under any Purchase Agreement, which the Lessor or the County may have against any Vendor with respect to any Equipment. The County's sole remedy for the breach of any such warranty or any other right under any Purchase Agreement shall be against the Vendor of the Equipment, and not against the Lessor, nor shall any breach by any Vendor of any warranty or any other right under any Purchase Agreement have any effect whatsoever on the rights of the Lessor under this Capital Equipment Agreement and the Agreements, including (without limitation) the right to receive full and timely payments of the Lease Payments thereunder.

ARTICLE VIII

PURCHASE; DEFEASANCE

Section 8.01. Purchase Option; Defeasance.

The County shall be entitled to purchase the Equipment identified on any Schedule, and the Lessor's security interest therein shall be terminated, upon written notice delivered at least 30 days in advance of any date on which a Lease Payment is due, and upon the payment on such date of the Lease Payment due and the applicable Purchase Price.

The Lessor's security interest in the Equipment identified in any Schedule shall be terminated and released automatically in conjunction with the receipt of the full Purchase Price or the final Lease Payment due thereunder, together with any Additional Payments due and owing with respect to such Equipment. In connection with such termination and release, the Lessor shall deliver to the County such termination statements and other documents and instruments as the County shall reasonably require to evidence such payment and termination of such security interest.

ARTICLE IX

ASSIGNMENT, MORTGAGING AND SELLING

Section 9.01. Assignment by Lessor.

(a) Any Agreement, including (without limitation) the right to receive Lease Payments, may be assigned and reassigned in whole but not in part to one or more assignees or subassignees by the Lessor at any time subsequent to its execution, without the necessity of obtaining the consent of the County; *provided*, however that (a) the Lessor may not assign its obligation to make advances under any Agreement without the prior written consent of the County and (b) no assignment or reassignment of the rights of the Lessor under any Agreement shall be effective and binding on the County unless and until the County shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee. The County, at the expense of the Lessor, agrees to execute all documents, including (without limitation) notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Lessor or its assignee to protect its interest in the Equipment and any Agreement.

(b) Neither the Lessor nor any assignee or subassignee of the Lessor may sell or distribute, in fractionalized interests or participations, its rights to receive payment of the Lease Payments under any Agreement without the prior written consent of the County. If the County gives its consent to such sale or distribution of such fractionalized interests or participations, the Lessor or its assignee or subassignee (i) shall limit the number of holders of such interests or participations to “accredited investors” within the meaning of the Securities Act of 1933, as amended; (ii) shall issue any such interest or participation in the amount of \$100,000 or more; (iii) shall maintain or cause to be maintained, on behalf of the County, registration books or a book entry system with respect to the ownership and transfer of such participations or interests that complies with the requirements of Section 149(a) of the Code; (iv) shall not establish any such participations or interests in a manner that would cause the interest component of the Lease Payments under any Agreement received by owners of such participations or interests to be includable in gross income for federal income tax purposes; and (v) shall provide the County with a copy of all offering materials 30 days prior to the time any such interests or participations are offered for sale or distribution. The Lessor (i) shall be solely responsible for the allocation of payments received from the County among any such participants as their interests may appear; and (ii) shall be solely responsible for the costs and other financial or other liabilities attendant to the establishment, maintenance and operation of the registration books or book entry system. The County shall have the right to inspect the registration books during normal business hours, or, if the registrar is not conveniently located for such inspection, the County shall be furnished, upon request, with photocopies of such books. Notwithstanding the foregoing, the County may, at its option and expense, appoint another agent to establish, maintain and operate the registration books or book entry system contemplated hereunder.

(c) The County has not prepared an official statement, an offering memorandum or other offering materials in connection with any Agreement and does not intend to prepare such

materials. It is the County's intent that the restrictions contained in this Section preclude the offering of fractionalized interests or participations except in a private placement.

Section 9.02. Sale, Assignment or Leasing by County.

The Agreements and the interest of the County in the Equipment may not be sold, assumed, assigned or encumbered by the County without the prior written consent of the respective Lessor; provided, however, the County may assign or transfer the Equipment to a related governmental entity, authority or commission.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.01. Events of Default.

The following constitute "Events of Default" under an Agreement:

(a) failure by the County to pay to the Lessor any Lease Payment under such Agreement when due (other than any such failure that results from the nonappropriation of funds available to pay such Lease Payments); or

(b) failure by the County to pay any other amount required to be paid thereunder, which failure shall continue for a period of 15 days after written notice thereof is delivered to the County by the Lessor (other than any such failure that results from the nonappropriation of funds available to pay such amount); or

(c) failure by the County to observe and perform any other covenant, condition or agreement on its part to be observed or performed under such Agreement, other than as referred to in clause (a) or (b) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to the County by the Lessor; *provided* that, if the failure stated in such notice cannot be corrected within such period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the County within such period and diligently pursued until the default is corrected; or

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

(f) an order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of the County or of all or a substantial part of the assets of the County, in each case without its application, approval

or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days.

Notwithstanding the foregoing: if by reason of *force majeure* the County is unable in whole or in part to perform its agreements under an Agreement (other than the obligations to pay Lease Payments) the County shall not be in default during the continuance of such inability. The term "*force majeure*" as used herein shall mean any of the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, terrorist acts; riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of the County.

Section 10.02. Remedies on Default.

Whenever any Event of Default under an Agreement shall have occurred and be continuing, the Lessor thereunder shall have the right, at its sole option, to exercise one or more of the following remedies:

(a) subject to Section 4.05, to accelerate the payment of the Lease Payments and all other amounts then due and to become due during the then-current fiscal year of the County under such Agreement by written notice to the County, whereupon such Lease Payments and other amounts shall immediately become due and payable without further demand upon the County;

(b) to require the County to return the Equipment leased thereunder to the Lessor, whereupon the County shall promptly make available to the Lessor such Equipment;

(c) to sell or lease such Equipment or to sublease it for the account of the County holding the County liable for the excess, if any, of the sum of all Lease Payments and other amounts then due and to become due during the then-current fiscal year of the County under such Agreement for which funds available for such payments have been appropriated over the proceeds of the sale, lease or sublease of such Equipment; and

(d) to take any other action at law or in equity to enforce the performance and observance of any obligation, agreement or covenant of the County under such Agreement.

Without limiting the generality of the foregoing, if an Event of Default shall occur under an Agreement, then to the extent permitted by law, the Lessor shall be entitled to retake possession of such Equipment wherever situated, without any court order or other process of law and without liability for entering the premises, and sell any or all of such Equipment at a public or private sale, or otherwise dispose of, hold, use, operate, lease to others or keep idle such Equipment, with 10 days' notice to the County, all free and clear of any rights of the County, *provided* that any and all such actions be taken in a commercially reasonable manner.

All proceeds from the sale or other disposition of Equipment shall be applied in the following manner:

FIRST, to pay all proper and reasonable costs and expenses associated with the recovery, repair, storage and sale of such Equipment, including (without limitation) reasonable attorneys' fees and expenses, any advances, any Additional Payments and other amounts payable to the Lessor under such Agreement;

SECOND, to pay the Purchase Price of the Equipment leased under such Agreement;

THIRD, to pay to the United States of America any rebate or payment in lieu thereof due pursuant to Section 148 of the Code; and

FOURTH, the remainder of such proceeds shall be paid to the County.

All of the County's right, title and interest in any Equipment the possession of which is retaken by the Lessor upon the occurrence of an Event of Default (including, without limitation, construction contracts, warranties, guaranties or completion assurances applicable to such Equipment) shall pass to the Lessor, and the County's rights in such Equipment shall terminate immediately upon such repossession.

Section 10.03. No Remedy Exclusive.

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

ARTICLE XI

MISCELLANEOUS

Section 11.01. Notices.

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or five days after they are mailed by registered mail, postage prepaid, to the parties at their addresses specified in the Schedule, or such other address as shall be specified by the County or the Lessor by notice given hereunder.

Section 11.02. Waiver of Jury Trial and Limitation of Forum.

The Lessor and, to the extent permitted by law, the County, hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to the Agreements. Any suit or other proceeding seeking

redress with regard to any claimed failure by the County to perform its obligations under an Agreement must be filed in the Circuit Court of Howard County, Maryland.

Section 11.03. Prohibition on Contingent Fees.

The Lessor warrants and agrees that it has not employed or retained and will not employ or retain any person, other than a bona fide employee or agent working for the Lessor, to solicit or secure any Agreement and that it has not paid or agreed to pay and will not pay or agree to pay any person other than a bona fide employee or agent any fee or other consideration contingent on the execution and delivery of any Agreement.

Section 11.04. Ethics and Fair Employment Practices.

The Lessor certifies that the officer of the Lessor executing a Schedule hereunder has read and understands the provisions of Section 901(a) of the Howard County Charter dealing with conflicts of interest and Section 22.204 of the Howard County Code dealing with conflicts of interest. The Lessor further certifies that it has (1) not been a party to an agreement to bid a fixed or uniform price; (2) not offered nor will offer any gratuity to any County official or employee; and (3) not violated any of the fair employment provisions of Section 4.119 of the Howard County Code (Ethics and Fair Employment Practices).

Section 11.05. Compliance with Laws.

The Lessor represents and warrants that:

- (a) it is, to the extent required by applicable law, qualified to do business in the State and will take such action as, from time to time, may be necessary to remain so qualified;
- (b) it is not in arrears with respect to the payment of any moneys due and owing the State, the County, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Capital Equipment Agreement;
- (c) it shall comply with all federal, state, and local laws applicable to its activities and obligations under this Capital Equipment Agreement; and
- (d) it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Capital Equipment Agreement.

Section 11.06. Retention of Records.

If requested by the County, the Lessor shall deliver to the County background material prepared or obtained by the Lessor incident to the performance of this Capital Equipment Agreement. "Background material" shall include, but not be limited to, work papers, notes, completed questionnaires, other printed materials, pamphlets, maps, drawings, and books acquired by the Lessor during the term of this Capital Equipment Agreement and directly related to the services provided under this Capital Equipment Agreement. Any proprietary computer

programs of the Lessor are expressly excluded from the definition of “background material” as used in this Section. The Lessor shall maintain records and documents relating to the performance of its Agreement hereunder for three years following final payment hereunder or any applicable statute of limitations, whichever is longer, and shall make such records available for inspection and audit by the authorized representatives of the County.

Section 11.07. Nondiscrimination in Employment and Contracting.

The Lessor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, creed, religion, disability, color, sex, national origin, age, occupation, marital status, political opinion, sexual orientation, personal appearance, familial status, source of income, or gender identity or expression; (b) to include a provision similar to that contained in subsection (a) above in any underlying subcontract; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

Section 11.08. Binding Effect.

The Agreements shall inure to the benefit of and shall be binding upon the Lessor, the County and their respective successors and assigns.

Section 11.09. Severability.

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

Section 11.10. Amendments.

No provision of any Agreement may be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties thereto, and then such waiver, alteration, modification, supplement or amendment shall be effective only in the specific instance and for the specific purpose given.

Section 11.11. Execution in Counterparts.

Each Schedule may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 11.12. Applicable Law.

The Agreements shall be governed by and construed in accordance with the laws, excluding the laws relating to the choice of law, of the State.

Section 11.13. Entire Agreement.

This Capital Equipment Agreement, together with each Schedule and the attachments thereto, shall constitute the entire agreement between each Lessor and the County. There are no

understandings, agreements, representations or warranties, express or implied, not specified therein regarding such Agreement or the Equipment financed thereunder.

Section 11.14. Waiver.

Any failure of the Lessor or the County to enforce at any time or for any period of time any provision of an Agreement shall not be construed to be a waiver of such provision or of the right of the Lessor or the County thereafter to enforce any provision of any Agreement. No express or implied waiver by the Lessor or the County of any default or remedy upon any default shall constitute a waiver of any other default or remedy, or a waiver of any of its rights.

[Remainder of page left blank intentionally]

The County has adopted this Capital Equipment Lease Agreement under seal in its names by its duly authorized officer, all as of the date first written above.

ATTEST:

HOWARD COUNTY, MARYLAND

_____ By: _____ (SEAL)

SCHEDULE NO. ____
Dated Date: _____
between
Howard County, Maryland
and

to

CAPITAL EQUIPMENT LEASE AGREEMENT
adopted by
HOWARD COUNTY, MARYLAND

Dated as of _____, 2019

THIS SCHEDULE NO. ____ (this "Schedule") to the Capital Equipment Lease Agreement identified above (the "Capital Equipment Agreement") dated as of the Dated Date shown above and effective from the time of its execution and delivery between the parties, is by and between HOWARD COUNTY, MARYLAND (the "County") and _____ (the "Lessor"). All of the provisions of the Capital Equipment Agreement are incorporated herein by reference as if fully set forth herein. Terms used herein and not defined shall have the meanings assigned them in the Capital Equipment Agreement, unless the context requires otherwise.

1. The Capital Equipment Agreement and this Schedule No. ____ jointly constitute an Agreement (this "Agreement"). Subject to the provisions of this Agreement, the Lessor hereby agrees to lease to the County and the County hereby agrees to lease from the Lessor, the Equipment identified in Attachment A attached hereto, which will be located at the address(es) shown on Attachment A.

2. IF NO ESCROW FUND IS TO BE CREATED:

(a) On the date hereof, proceeds of this Agreement in the amount shown on Attachment A will be advanced by the Lessor to the County by the payment of such amount to the County or a Vendor, as the case may be, to pay the costs of the Equipment described in Attachment A. The Lessor agrees that from time to time from the date of delivery of this Schedule, upon compliance by the County with the further provisions of this paragraph, it shall make additional advances to the County evidenced by this Agreement to finance the Costs of the Equipment described in Attachment A in an amount up to the amount of the additional advances shown in Attachment A.

(b) Additional advances of proceeds of this Agreement shall be disbursed from time to time by the Lessor pursuant to the following procedures.

(i) The County will submit or cause to be submitted to the Lessor Vendors' invoices with respect to the Equipment described in Attachment A.

(ii) The County will execute an Acceptance Certificate with respect to such Equipment and return it to the Lessor.

(iii) The Lessor will pay the Vendor(s) or reimburse the County within five business days of receipt of each Acceptance Certificate.

(c) No additional advances shall be made by the Lessor hereunder if an Event of Default shall have occurred and be continuing.

IF SCHEDULE CONTEMPLATES THE FUNDING OF AN ESCROW:

On the date hereof, proceeds of this Agreement in the amount shown on Attachment A will be advanced by the Lessor to the County to pay the costs of the Equipment described in Attachment A, by the payment of such amount to the Escrow Agent identified in Attachment A attached hereto and made a part hereof under the Escrow Agreement described therein for deposit in the Escrow Fund created thereby.

3. The Lease Payments with respect to this Agreement, the due dates thereof and the prepayment price of the Equipment purchased hereunder are as set forth in Attachment C hereto.

4. The County represents and covenants that as of the date hereof (a) all of its representations contained in the Capital Equipment Agreement were true and accurate as of the date made, remain true and accurate as of the date of this Schedule and are hereby reaffirmed; (b) the County reasonably has sufficient appropriations or other funds legally available to pay all of the Lease Payments and other amounts due under this Agreement for the fiscal period ending _____, 20__; (c) the County's use of the Equipment is essential for the County to perform its governmental functions; and (d) the opinion of Bond Counsel with respect to this Agreement is attached hereto as Attachment D.

5. For purposes of Section 11.01 of the Capital Equipment Agreement, the County's address is Howard County, Maryland, 3430 Court House Drive, Ellicott City, Maryland 21043 Attention: _____. The Lessor's address is _____.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties hereunto affixed their signatures as of the Dated Date shown above.

HOWARD COUNTY, MARYLAND

By: _____ (SEAL)

By: _____ (SEAL)

[Signature page of Schedule No. ____ to Capital Equipment Lease Agreement]

Attachment A to
Schedule No. ____ to
Capital Equipment Lease Agreement

EQUIPMENT AND PROCEEDS

ACCEPTANCE CERTIFICATE

SCHEDULE NO. ___
Dated Date: _____
between
Howard County, Maryland
and

to

CAPITAL EQUIPMENT LEASE AGREEMENT
adopted by
HOWARD COUNTY, MARYLAND

Dated as of _____, 2019
(collectively, the "Agreement")

Howard County, Maryland (the "County") hereby acknowledges that the equipment described herein (the "Equipment") has been delivered to the location indicated in the Agreement, installed, inspected and tested as the County deems necessary and accepted. The submission of this Acceptance Certificate shall not be deemed a waiver by the County of any claims that it may have against a Vendor (as defined in the Agreement) under Article 2 of the Uniform Commercial Code of any jurisdiction or otherwise.

The County further certifies that no Event of Default (as defined in the Agreement) or event that, with notice or lapse of time or both would constitute such an Event of Default, has occurred and is continuing.

Equipment Acceptance Date: _____, 20__

The Equipment identified above is as follows:

IN WITNESS WHEREOF, the County has caused its authorized officer to execute this Acceptance Certificate as of the date shown below.

Date: _____, 20__

HOWARD COUNTY, MARYLAND

By: _____
Name: _____
Title: _____

Attachment C to
Schedule No. ____ to
Capital Equipment Lease Agreement

PAYMENT SCHEDULE

FORM OF BOND COUNSEL OPINION

[closing date]

County Executive and County Council
of Howard County, Maryland
Ellicott City, Maryland

[Lessor]

Ladies and Gentlemen:

As Bond Counsel to Howard County, Maryland (the “County”) in connection with the execution and delivery by the County and _____ (the “Lessor”) of Schedule No. ___, dated _____, 20__ (the “Schedule”), to the Capital Equipment Lease Agreement dated as of _____, 20__, adopted by the County (the “Capital Equipment Agreement” and together with the Schedule, the “Agreement”), we have examined:

- (i) the Agreement;
- (ii) relevant provisions of the Constitution and laws of the State of Maryland;
- (iii) relevant provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and the applicable regulations thereunder; and
- (iv) other proofs submitted to us relative to the execution and delivery of the Schedule.

Pursuant to the Agreement, the County is leasing from the Lessor certain equipment (the “Equipment”), as more fully described in the Schedule. The Agreement provides for the payment by the County of certain amounts (the “Lease Payments”), consisting of a principal portion and an interest portion on the dates set forth in Attachment C to the Schedule. Payment of the Lease Payments and all other amounts payable under the Agreement are subject to annual appropriation by the County of money legally available for such purpose.

In rendering this opinion, we have relied upon the County’s Tax and Section 148 Certificate executed in connection with the Agreement and made on behalf of the County by officers thereof with respect to certain material facts within the knowledge of the County relevant to the tax-exempt status of the interest portion of the Lease Payments. In our

examination of the Agreement and Schedule we have assumed the genuineness of all signatures, legal capacity of all natural persons, and the accuracy and completeness of the Agreement and Schedule.

Based upon the foregoing and under existing statutes, regulations, and decisions, it is our opinion that:

(a) The County is a body corporate and politic and a political subdivision of the State of Maryland (the "State"), legally existing under the laws of the State.

(b) The County has duly adopted the Capital Equipment Agreement and duly authorized, executed and delivered the Schedule, and assuming due authorization, execution and delivery of the Schedule by the other parties thereto, the Agreement constitutes a valid, binding and enforceable agreement of the County in accordance with its terms.

(c) The Agreement is subject to applicable bankruptcy, insolvency, moratorium, reorganization and other state and federal laws affecting the enforcement of creditors' rights and to general principles of equity. Enforceability of the Agreement may also be limited by applicable securities laws and public policy.

(d) The execution of the Schedule does not result in the violation of any constitutional or statutory limitation relating to the amount of indebtedness which may be incurred by the County.

(e) The County shall not be obligated to pay the Lease Payments and all other amounts payable under the Agreement except from money appropriated by the County that is legally available for such purpose. Neither the faith and credit nor the taxing power of the County is pledged to the payment of the Lease Payments or any other amounts payable under the Agreement. The execution and delivery of the Schedule does not directly or indirectly or contingently obligate, morally or otherwise, the County to levy or to pledge any form of taxation whatever therefor or to make any appropriation for its payment.

(f) Assuming compliance with the covenants referred to herein, the interest portion of the Lease Payments to be received by the Lessor is excludable from gross income for federal income tax purposes. It is noted that under the provisions of the Code, there are certain restrictions that must be met subsequent to the delivery of the Agreement in order for the interest portion of the Lease Payments to remain excludable from gross income for federal income tax purposes, including restrictions that must be complied with throughout the term of the Agreement. These include the following: (i) a requirement that certain earnings received from the investment of the proceeds of the Agreement be rebated to the United States of America under certain circumstances (or that certain payments in lieu of rebate be made); (ii) other requirements applicable to the investment of the proceeds of the Agreement; and (iii) other requirements applicable to the use of the proceeds of the Agreement and the Equipment financed or refinanced with the proceeds of the Agreement. Failure to comply with one or more of these requirements could result in the inclusion of the interest portion of the Lease Payments in gross income for federal income tax purposes. The County has made certain covenants regarding

actions required to maintain the excludability from gross income for federal income tax purposes of the interest portion of the Lease Payments.

(g) The interest portion of the Lease Payments will not be includable in the alternative minimum taxable income of individuals as an enumerated item of tax preference or other specific adjustment. The interest portion of the Lease Payments will be includable in the applicable taxable base for the purpose of determining the branch profits tax imposed by the Code on certain foreign corporations engaged in a trade or business in the United States of America.

The opinions expressed herein are solely for the use of the addressees in connection with the execution and delivery of the Agreement and, without our prior written consent, may not be quoted in whole or in part or otherwise referred to in any legal opinion, document or other report, provided that this opinion letter may be included in the transcript of supporting documents in connection with the execution and delivery of the Agreement. This opinion may be relied upon only by the addressees hereof and any assignee of the Lessor's interest in the Agreement. We are expressing no opinion regarding the effect of any such assignment on the treatment for federal income tax purposes of the interest portion of the Lease Payments received by any assignee under any such assignment. No opinion is expressed with respect to any supplemental interest, fees, costs, charges or any other amount payable under or with respect to the Agreement that does not constitute interest for federal income tax purposes.

No attorney-client relationship has existed or exists between our firm and any addressee other than the County in connection with the transaction contemplated by the Agreement or by virtue of this opinion.

We assume no obligation to supplement this opinion if any applicable laws or interpretations thereof change after the date hereof or if we become aware of any facts or circumstances that might change the opinions expressed herein after the date hereof. The opinions expressed above are limited to the matters set forth above, and no other opinions should be inferred beyond the matters expressly stated.

Very truly yours,