

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO				CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) NA	
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): Environmental Services		DATE: 9/14/2016	
SUBJECT: Authorize a Purchase and Service Agreement with Current, powered by GE, a subsidiary of General Electric, and a Master Lease Agreement with GE Government Finance, Inc.					
PRIMARY CONTACT (NAME, PHONE): Jack Clark, 858-492-6001			SECONDARY CONTACT (NAME, PHONE): Lorie Cosio Azar, 858-627-3552		
COMPLETE FOR ACCOUNTING PURPOSES					
FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
COST SUMMARY (IF APPLICABLE): \$30,273,755 GE Government Finance Loan					
ROUTING AND APPROVALS					
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	
Environmental Analysis	Comptroller	ORIG DEPT.	Sierra, Mario	11/10/2016	
Liaison Office		CFO			
Debt Management		DEPUTY CHIEF	Gomez, Paz	11/10/2016	
Equal Opportunity Contracting		COO			
Financial Management		CITY ATTORNEY	Ortlieb, Fritz	11/18/2016	
		COUNCIL PRESIDENTS OFFICE	Jurado-Sainz, Diana	11/18/2016	
PREPARATION OF:		<input type="checkbox"/> RESOLUTIONS	<input checked="" type="checkbox"/> ORDINANCE(S)	<input type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)
1. Authorizing the Mayor, or his designee, to execute the \$30,273,755 GE Government Finance, Inc. (GEGF) California Master Lease Agreement. 2. Authorizing the Chief Financial Officer to accept GEGF master lease agreement funds up to \$30,273,755 in accordance with the terms and conditions of the GEGF Master Lease Agreement, and; 3. Declare the City's intent to use funds made available from the master lease agreement with GEGF to reimburse itself for eligible Project expenses advanced by the City, and;					

4. Authorizing the Chief Financial Officer to establish a special account for the GEGF Master Lease Agreement, and;	
5. Authorizing the Chief Financial Officer to appropriate and expend \$30,273,755 in GEGF Master Lease Agreement Fund, for the purpose of implementing the Intelligent Cities Lighting Project, contingent upon receipt of a fully executed master lease agreement and Comptroller certification that funds are, or will be on deposit with the City Treasurer, and;	
6. Authorizing the Mayor, or his designee, to execute an Intelligent City Purchase and Services Agreement, and;	
7. Determine that this action is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c) of the State CEQA Guidelines.	
STAFF RECOMMENDATIONS: Approve Requested Actions	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	City-wide
COMMUNITY AREA(S):	City-wide
ENVIRONMENTAL IMPACT:	This activity is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c) (replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity) of the State CEQA Guidelines.
CITY CLERK INSTRUCTIONS:	This item is subject to Charter Section 99 (10 day published notice, approval by Ordinance and 6 votes required)

**COUNCIL ACTION  
EXECUTIVE SUMMARY SHEET  
CITY OF SAN DIEGO**

DATE: 9/14/2016

ORIGINATING DEPARTMENT: Environmental Services

SUBJECT: Authorize a Purchase and Service Agreement with Current, powered by GE, a subsidiary of General Electric, and a Master Lease Agreement with GE Government Finance, Inc.

COUNCIL DISTRICT(S): City-wide

CONTACT/PHONE NUMBER: Jack Clark/858-492-6001

**DESCRIPTIVE SUMMARY OF ITEM:**

This action is to authorize a purchase and services agreement with Current, powered by GE, a subsidiary of General Electric, and a \$30,273,755 California master lease agreement with GE Government Finance, Inc. (GEGF). The master lease agreement funding will be used for this project, which involves the retrofit of approximately 14,000 City-wide outdoor lighting with more energy efficient technology.

**STAFF RECOMMENDATION:**

Approve Requested Actions

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:**

The Environmental Services Department (ESD) has identified a tax-exempt equipment lease-purchase mechanism for \$30,273,755 from GE Government Finance, Inc. which is for the purpose of funding the Intelligent Cities Lighting Project. This project will retrofit approximately 14,000 City-owned outdoor lighting to intelligent adaptive control LED systems. Benefits of this technology include better control options, longer lifespan of lamps and equipment, improved light and visual qualities, as well as a potential for improved remote asset management related to maintenance activities. The lighting retrofits will bring an estimated \$2.4M annual savings associated with an estimated 11,600 MWH annual energy savings. These retrofits directly support the implementation of the City's Climate Action Plan (CAP).

Project expenses are expected to occur at the time of acquisition of the design builder for the Project, as milestone payments to the design builder and City Project Staff Costs will be incurred on an on-going basis. The City is anticipating financing these payments as reimbursements to the City after the acceptance of milestone payments. In order to do that, the City must adopt a reimbursement resolution in accordance with section 1.150-2 of Treasury Regulations ("Regulations"). By adopting a reimbursement resolution the City will satisfy the Official intent Requirement under the Regulations and be able to reimburse project and staff costs using funds available from the lease-purchase agreement with GEGF. Adoption of the reimbursement resolution will not obligate the City to expend any funds; it merely enables the City to get reimbursed for all qualified project and staff costs that the City fronted in implementing the Project.

**CITY STRATEGIC PLAN GOALS/OBJECTIVES:**

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #3: Invest in infrastructure.

Goal #3: Create and sustain a resilient and economically prosperous City

Objective #1: Create dynamic neighborhoods that incorporate mobility, connectivity and sustainability.

Objective #4: Prepare and respond to climate change

#### FISCAL CONSIDERATIONS:

The Intelligent Cities Lighting Project is intended to reduce energy consumption to General Fund expenditures for energy outdoor lighting. The lighting project cost including, equipment, installation, and taxes is expected to be an estimated \$30.3 million, to be funded utilizing tax exempt master lease equipment financing agreement with GE Government Finance, Inc. The repayment term is 13 years on a fixed interest basis with principal and interest payments to be paid on a semi-annual basis. As of October 28, 2016, the interest rate for the 13 years is trending at 1.03%. This is subject to change and the rate will be set at the time of each funding installment is scheduled over a 18 month period as the project is implemented.

Based on current interest rate levels and assuming six funding installments beginning September 2017, the estimated lease payments for the City General Fund are as follows, FY 2018: \$0.5 million, FY 2019: \$2.3 million, FY 2020-FY 2030: \$2.5 million, FY 2031: \$2.0 million, FY 2032: \$0.2 million.

All the financing costs to fund the program are anticipated to be self-supported using a combination of rebates and energy savings. The energy savings for the Intelligent Cities Lighting Projects for approximately 14,000 lights is \$2.4 million annually, with an additional estimated 11,600 MWH saved annually. An anticipated rebate and incentive of \$300,000 from SDG&E has been budgeted in the Fiscal Year 2017 budget.

#### EQUAL OPPORTUNITY CONTRACTING INFORMATION:

This agreement is subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

#### PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Resolution No. R-305594 adopted February 24, 2010 authorized integration of adaptive technology with SDG&E smart grid technology to capture additional energy savings by utilizing dimming in selected areas.

#### COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

From July 2014 to October 2014 Environmental Services Department staff conducted a pilot study evaluation of the Intelligent Adaptive Control systems in downtown San Diego. Environmental Services Department Staff presented to the San Diego Downtown Partnership Clean and Safe Board of Directors on September 13, 2016.

#### KEY STAKEHOLDERS AND PROJECTED IMPACTS:

All sectors of San Diego will benefit from the gains in energy efficiency and conservation, as well as the associated reductions in greenhouse gas emissions.

Sierra, Mario  
Originating Department

Gomez, Paz  
Deputy Chief/Chief Operating Officer

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A GE INTELLIGENT LIGHTING MASTER LEASE AGREEMENT WITH GE GOVERNMENT FINANCE, INC., A SUBSIDIARY OF GENERAL ELECTRIC COMPANY, AND A PURCHASE AND SERVICE AGREEMENT WITH CURRENT, POWERED BY GE, A SUBSIDIARY OF GENERAL ELECTRIC COMPANY.

WHEREAS, the City of San Diego is committed to meeting the future needs of citizens on City streets through initiatives to deploy energy efficient lighting and modern adaptive control technologies which enhance interconnectivity; and

WHEREAS, the City has requirements for energy efficient adaptive controlled street lighting and for advanced technologies which will expand the practical uses of street light pole networks; and

WHEREAS, the City's Climate Action Plan manifests its commitment to the control and reduction of greenhouse gas emissions; and

WHEREAS, the City participated in a pilot of General Electric Company's (GE) Intelligent Cities Program where the benefits of adaptive controlled intelligent street lighting were demonstrated; and

WHEREAS, the City has already retrofitted over 30,000 street lights with GE energy efficient broad spectrum LED components and has an interest in maintaining uniformity of equipment type; and

WHEREAS, City desires to install approximately another 14,000 LED street lights and to have these retrofits provided with adaptive controls and intelligent systems; and

WHEREAS, GE Government Finance, Inc. (GEGF), a GE affiliate, offers terms for the finance of GE's energy efficient adaptive controlled LED street lighting with intelligent systems on light poles, which will allow for expanded uses of the poles including for purposes of traffic control, parking optimization, and public safety; and

WHEREAS, the energy efficient lighting retrofits will support the implementation of the City's Climate Action Plan by reducing greenhouse gas emissions by avoiding approximately 11,600 megawatt hours per year in electricity consumption, with an estimated annual avoided utilitycost of \$2.4 million; and

WHEREAS, the GE Intelligent Cities Program furthers the objectives of Resolution No. R-305594, adopted February 24, 2010, which authorized integration of adaptive control technology with SDG&E smart grid technology to capture additional energy savings by dimming at selected areas and times; and

WHEREAS, the terms offered by GEGF under a tax-exempt equipment lease-purchase mechanism are favorable in view of the savings on utilitycosts, reduced energy consumption, and greenhouse gas reductions; and

WHEREAS, under the San Diego Charter section 99, a two-thirds vote of the Council is required for passage of this ordinance. NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor or his designee, is authorized to execute the GE Government Finance, Inc. (GEGF) California Master Lease Agreement in amount not to exceed \$30,273,755 for the lease finance of the GE Intelligent Cities Project for energy efficient street lighting and adaptive controls, under the terms and conditions set forth in the Agreement on file in the Office of the City Clerk as Document No. OO-\_\_\_\_\_, together with any reasonably necessary

modifications or amendments thereto which do not increase project scope or cost and which the Mayor shall deem necessary from time to time in order to carry out the purposes and intent of this Project and Agreement.

Section 2. That the Chief Financial Officer is authorized to accept funds in an amount up to \$30,273,755 from GEGF California Master Lease Agreement funding in accordance with the terms of said document.

Section 3. That it is hereby intended by the Council of the City of San Diego that funds from said GEGF California Master Lease Agreement in an amount up to \$30,273,755 will be used to reimburse the City of San Diego for eligible GE Intelligent Cities Project expenses paid in advance by the City.

Section 4. That the chief Financial Officer is hereby authorized to establish a special account for the GEGF California Master Lease Agreement funding authorized by this ordinance.

Section 5. That subject to receipt of a fully executed GEGF California Master Lease Agreement and certification by the City Auditor and Comptroller that sufficient funds are or will be on deposit with the City Treasurer, and further subject to the letting of procurement and installation contracts under applicable laws, the City Auditor and Comptroller is hereby authorized to expend an amount not to exceed \$30,273,755 for the purpose of implementing the GE Intelligent Cities Project for energy efficient lighting and adaptive controls.

Section 6. That the Mayor, or his designee, is authorized to execute an Intelligent Cities Purchase and Services Agreement with Current, a subsidiary of the General Electric Company, under the terms and conditions set forth in the Agreement on file in the Office of the City Clerk as Document No. OO-\_\_\_\_\_, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor shall deem

necessary from time to time in order to carry out the purposes and intent of this Project and Agreement.

Section 7. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its final passage.

Section 8. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_  
Frederick M. Ortlieb  
Deputy City Attorney

FMO:mt  
November 18, 2016  
Or.Dept: Environmental Services  
Doc. No. 1391105

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO DETERMINING THAT THE AUTHORIZATION  
OF A MASTER LEASE AGREEMENT WITH GE  
GOVERNMENT FINANCE, INC. AND A PURCHASE AND  
SERVICE AGREEMENT WITH CURRENT, POWERED BY  
GE, FOR THE INTELLIGENT CITIES LIGHTING PROJECT  
ARE CATEGORICALLY EXEMPT FROM THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT  
PURSUANT TO CEQA GUIDELINES SECTION 15302.

WHEREAS, GE Government Finance, Inc.(GEGF) has offered the City of San Diego  
(City) a \$30,273,755 California Master Lease Agreement that makes funding available to  
reimburse eligible project expenses incurred by the City for the procurement and installation of  
energy efficient outdoor lighting with adaptive intelligent controls under the General Electric  
Company’s Intelligent Cities Program; and

WHEREAS, the City desires to enter into (a) the Master Lease Agreement with GEGF  
for the finance of efficient lighting with controls, and (b) an associated Purchase and Services  
Agreement with Current, Powered by GE, a subsidiary of General Electric Company, for  
procurement and services related to lighting and control systems and equipment in support of the  
City’s Climate Action Plan (the “Intelligent Cities Project”); and

WHEREAS, the California Environmental Quality Act (CEQA) (Public Resources Code  
section 21000 et seq.), section 21084, provides that the CEQA Guidelines thereto (California  
Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.) shall list those classes of  
projects which have been determined not to have a significant effect on the environment and  
which shall be exempt from CEQA; and

WHEREAS, pursuant to that authority, CEQA Guidelines sections 15300-15333 list the categorical exemptions promulgated by the California Office of Planning and Research and adopted by the Secretary of the California Natural Resources Agency for those classes of projects which have been determined not to have a significant effect on the environment; and

WHEREAS, the Development Services Department has established that the Intelligent Cities Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15302(c), and determined that no exception to the exemption, as set forth in CEQA Guidelines section 15300.2, applies to the Intelligent Cities Project; and

WHEREAS, the Council of the City of San Diego has considered the potential environmental effects of the Intelligent Cities Project, and

WHEREAS, the City Council held a duly noticed public meeting and considered the written record for the Intelligent Cities Project as well as public comment; and

WHEREAS, the Council of the City of San Diego, using its independent judgment, has determined that the Intelligent Cities Project will not have a significant effect on the environment as the Project constitutes replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity. NOW, THEREFORE,

BE IT RESOLVED, that the Council of the City of San Diego determines that the Intelligent Cities Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15302(c).

BE IT FURTHER RESOLVED, that the Council of the City of San Diego has determined that no exception as set forth in CEQA Guidelines section 15300.2 applies to the Intelligent Cities Project.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Exemption for the Project with the Clerk of the Board of Supervisors for the County of San Diego.

APPROVED: JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_  
Frederick M. Ortlieb  
Deputy City Attorney

FMO:mt  
November 18, 2016  
Or.Dept: Environmental Services  
DOC. NO. 1395006

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO  
**EQUAL OPPORTUNITY CONTRACTING EVALUATION**

DATE:

November 10, 2016

SUBJECT: Authorize a Purchase and Service Agreement with Current, powered by GE, a  
Subsidiary of General Electric, and a Master Lease Agreement with GE Government  
Finance, Inc.

**GENERAL CONSULTANT INFORMATION**

Recommended Consultant: GE Government Finance, Inc. (Not Certified, M Cauc)

**Amount of this Action:** \$30,273,755.00

Funding Source: California Master Lease Agreement

Goal: N/A

**SUBCONSULTANT PARTICIPATION**

There is no subconsultant participation associated with this action.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required.

Staff will be receiving a Work Force Report and an analysis will be conducted once received.

This agreement is subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**ADDITIONAL COMMENTS**

TC



## GE Public Finance

GE Government Finance, Inc.  
3 Capital Drive  
Eden Prairie, MN 55344  
USA

Samuel Clineff  
Senior Vice President  
Samuel.clineff@ge.com  
T +1 949 838 3010  
C +1 714 335 6042

November 04, 2016

City of San Diego  
1200 Third Ave  
Suite 200  
San Diego, CA 92101-4195

GE Public Finance, a division of GE Government Finance, Inc. is pleased to submit the following Tax-Exempt Financing Term Sheet for your consideration:

<b>Structure:</b>	Tax-exempt equipment lease-purchase financing.
<b>Lessee:</b>	City of San Diego
<b>Lessor:</b>	GE Government Finance, Inc. ("GEGF") and/or one or more of its affiliates and/or assigns.
<b>Documentation:</b>	Documentation shall include a Master Lease Agreement ("MLA"), one or more Equipment Schedules thereto (each such Equipment Schedule, together with the terms and conditions of the MLA incorporated by reference therein, a "Lease"), an opinion of Lessee's counsel and certificates as are reasonably necessary to evidence and carry out the transaction and, at Lessee's option, an Escrow Agreement. Lessor will prepare the documentation.
<b>Equipment:</b>	Intelligent Cities Lighting Project
<b>Funding Amount:</b>	\$30,273,755
<b>Estimated Closing Date:</b>	TBD.
<b>Lease Term:</b>	13 Years
<b>Fixed Interest Rate:</b>	<p>The Fixed Interest Rate reflects the 10-year Swap Rate<sup>1</sup> less 0.68% and Lessor will fix the Fixed Interest Rate Three (3) days prior to the funding date.</p> <p><sup>1</sup> "Swap Rate" means the interest rate for swaps that most closely approximates the average term of the Leases as published by the International Exchange (NYSE:ICE) in its Ice Benchmark Administration Report entitled "ICE Swap Rate Historical Rates" currently available online at <a href="https://www.theice.com/marketdata/reports/180">https://www.theice.com/marketdata/reports/180</a> (Series / Run USD Rates 1100) or such other nationally recognized reporting source or publication as Lessor may specify.</p>
<b>Payments:</b>	Lessee will be required to make 26 semi-annual payments, each in arrears, comprised of principal and interest. Based on the Funding Amount and the Fixed Interest Rate quoted above.

**Ownership for Tax  
Purposes and Grant of  
Security Interest:**

For federal income tax purposes, Lessee and Lessor agree that it is their mutual intention that Lessee shall be considered the owner of the Equipment.

A first priority security interest in all of the Equipment will be granted to Lessor and the Equipment may be subject to no other liens.

Lessee hereby irrevocably authorizes Lessor and its assigns at any time and from time to time to file in any jurisdiction any initial financing statements and amendments thereto that identify the Equipment described herein.

**Net Lease:**

All obligations, costs and responsibilities associated with ownership of the Equipment will be borne by Lessee, including insurance, maintenance, and applicable taxes. Lessee will be responsible for making payments in all circumstances (except in the event of abatement, if applicable).

**Escrow Structure:**

At Lessee's request, Lessor will deposit the Funding Amount into an escrow account with an escrow agent selected by Lessee and approved by Lessor. Lessee will be responsible for any escrow agent fees and any other expenses associated with the establishment of the escrow account. Lessor shall be granted a first priority security interest in the escrow account. Interest accrual under each Lease will commence upon deposit of the Funding Amount into escrow. Interest earnings on investments in the escrow account will inure to the benefit of Lessee.

**Legal Opinion:**

City Attorney's office shall provide an opinion as to the legality, enforceability, authority, title and execution and effect of all transaction documents in form and substance satisfactory to Lessor.

**Abatement:**

During any period in which, by reason of material damage or destruction or taking under the power of eminent domain (or sale to any entity threatening the use of such power) with respect to the Equipment, there is substantial interference with Lessee's use and possession of the Equipment, the Lease payments due under the Lease with respect to such Equipment shall be abated proportionately in whole or in part, in accordance with lease abatement provisions to be set forth in each Lease.

**Prepayment:**

Lessee shall have the right to prepay in full, but not in part, the entire principal balance due under a Lease, plus interest and any other additional charges due, and a premium equal to one percent (1%) of the unpaid principal balance.

**Assignment:**

Lessor may assign its rights to enter into a Lease and its rights as Lessor under a Lease without the consent of Lessee.

**Conditions:**

Any funding is further conditioned upon (i) the execution by Lessee and all other parties involved in the proposed transaction of all documentation required by Lessor in form and substance satisfactory to Lessor, each in its sole discretion; (ii) in cases where any or all Equipment has not been specifically identified herein, Lessor retains the right to, in its sole discretion, accept or reject any Equipment, once it is identified, for financing under the proposed Transaction; and (iii) the accuracy and completeness of all financial

and operating information delivered to Lessor regarding Lessee.

**Lessee Identifying Documents:**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who enters into a transaction with Lessor. What this means for the Lessee, any guarantor or other Lessee is that when a transaction contemplated hereunder is consummated, Lessor will ask for the name, address, and other information of the Lessee, any guarantor or such other Lessee that will allow Lessor to identify such parties. Lessor may also ask to see identifying documents.

This term sheet is an expression by us of our interest in considering a transaction on the general terms and conditions outlined above (the "Transaction"). This Term Sheet does not create any binding legal obligation on the part of either party. **THIS TERM SHEET IS NOT, AND IS NOT TO BE CONSTRUED AS, A COMMITMENT BY US OR ANY OF OUR AFFILIATES, SUBSIDIARIES OR ASSIGNEES TO ENTER INTO THE PROPOSED TRANSACTION.** This Term Sheet is delivered at a time when we have not undertaken our full business, credit, investment and legal due diligence and analysis nor obtained the approval of our internal credit, pricing, financial, investment and other authorities. Accordingly, this Term Sheet is to be used only as the basis for continued discussion and, except for the provisions concerning confidentiality set forth herein, does not constitute a commitment of ours or our affiliates, subsidiaries or assignees, nor shall it be deemed to obligate us or our affiliates, subsidiaries or assignees in any manner whatsoever, it being understood that this Term Sheet may be modified, withdrawn, terminated, or made subject to additional terms and conditions not set forth in this Term Sheet as a result of our continuing due diligence, changes to the proposed Transaction, changes in market conditions, changes in applicable laws, changes to the business, operations, prospects or condition (financial or otherwise) of Lessee or any guarantor or any other lessee or otherwise. This Term Sheet supersedes all prior discussions, writings, indications of interest and term sheets previously delivered to you or your representatives with respect to the proposed Transaction. You acknowledge that should a commitment be issued by us for the proposed Transaction, it would be in a separate writing explicitly identified as a commitment (subject to the terms set forth therein), and without in any way limiting the foregoing, any subsequent communication of credit approval for the proposed Transaction, which is not explicitly identified as a commitment, shall not be construed as a commitment. **WE DO NOT COMMUNICATE COMMITMENTS ORALLY, AND YOU SHOULD NOT RELY ON ANY ORAL COMMUNICATION OF COMMITMENT.**

The information contained in this term sheet is confidential and proprietary and may not be distributed to any person or entity without our prior written consent (other than Lessee's employees, officers, directors or advisors who have a need to know such information for purposes of evaluating the Transaction proposed hereunder and are obligated to keep such information confidential).

**Neither Lessor nor its affiliates are acting as "municipal advisors" within the meaning of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules and regulations promulgated thereunder.** In this regard, Lessee hereby acknowledges and agrees that: (i) Lessor is proposing to provide financing, and any information or services related thereto, to Lessee solely as an **arm's length counterparty** and, as such, Lessor has interests that may differ from the interests of Lessee, including the amount or nature of interest rates, amortization schedules and covenants applicable to the proposed Transaction; (ii) if the proposed Transaction closes, Lessor will receive interest or other payments from Lessee, as outlined in the foregoing terms and conditions, as compensation for providing the proposed financing to Lessee; (iii) **neither Lessor nor any of its affiliates are an advisor or fiduciary** to Lessee with respect to the proposed Transaction; (iv) in connection with the provision of any services pursuant to the proposed Transaction, there is **no agreement**, direct or indirect, between Lessee (including the officials, management, employees or agents thereof) and Lessor or any of its affiliates for Lessor or any of its affiliates to provide advice to Lessee;

(v) **neither Lessor nor any of its affiliates is acting for direct or indirect compensation to solicit** Lessee on behalf of an unaffiliated broker, dealer, municipal securities dealer, municipal advisor, or investment adviser for the purpose of obtaining or retaining an engagement by Lessee for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of Lessee; and (vi) nothing herein is to be construed as constituting tax, accounting, financial or legal advice by Lessor or any of its affiliates to Lessee. Lessee should consult with its financial, accounting and legal advisors regarding any services proposed to be provided by Lessor or any of its affiliates, and, if not currently advised, Lessee is urged to seek independent advisors in connection with the proposed Transaction.

Thank you for your consideration of GE Government Finance, Inc. If you have any questions, please call me at 949-838-3010.

Sincerely yours,  
GE Government Finance, Inc.

By: *Samuel Clineff*

Name: Samuel Clineff  
Title: Senior Vice President

#### NOTICE

**The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.**

**ESTIMATED - Exhibit A - Term Sheet Dated 5-19-2016**

<b>Date</b>	<b>Beginning Balance</b>	<b>Payments</b>	<b>Principal</b>	<b>Interest @ 1.0%</b>	<b>Ending Balance</b>
6/1/2017	\$0.00	\$0.00	\$0.00	\$0.00	\$30,273,755.00
12/1/2017	\$30,273,755.00	\$1,244,603.38	\$1,093,234.61	\$151,368.77	\$29,180,520.39
6/1/2018	\$29,180,520.39	\$1,244,603.38	\$1,098,700.78	\$145,902.60	\$28,081,819.61
12/1/2018	\$28,081,819.61	\$1,244,603.38	\$1,104,194.29	\$140,409.09	\$26,977,625.32
6/1/2019	\$26,977,625.32	\$1,244,603.38	\$1,109,715.26	\$134,888.12	\$25,867,910.07
12/1/2019	\$25,867,910.07	\$1,244,603.38	\$1,115,263.83	\$129,339.55	\$24,752,646.23
6/1/2020	\$24,752,646.23	\$1,244,603.38	\$1,120,840.15	\$123,763.23	\$23,631,806.08
12/1/2020	\$23,631,806.08	\$1,244,603.38	\$1,126,444.35	\$118,159.03	\$22,505,361.73
6/1/2021	\$22,505,361.73	\$1,244,603.38	\$1,132,076.57	\$112,526.81	\$21,373,285.15
12/1/2021	\$21,373,285.15	\$1,244,603.38	\$1,137,736.96	\$106,866.42	\$20,235,548.20
6/1/2022	\$20,235,548.20	\$1,244,603.38	\$1,143,425.64	\$101,177.74	\$19,092,122.55
12/1/2022	\$19,092,122.55	\$1,244,603.38	\$1,149,142.77	\$95,460.61	\$17,942,979.78
6/1/2023	\$17,942,979.78	\$1,244,603.38	\$1,154,888.48	\$89,714.90	\$16,788,091.30
12/1/2023	\$16,788,091.30	\$1,244,603.38	\$1,160,662.93	\$83,940.45	\$15,627,428.38
6/1/2024	\$15,627,428.38	\$1,244,603.38	\$1,166,466.24	\$78,137.14	\$14,460,962.13
12/1/2024	\$14,460,962.13	\$1,244,603.38	\$1,172,298.57	\$72,304.81	\$13,288,663.56
6/1/2025	\$13,288,663.56	\$1,244,603.38	\$1,178,160.06	\$66,443.32	\$12,110,503.50
12/1/2025	\$12,110,503.50	\$1,244,603.38	\$1,184,050.86	\$60,552.52	\$10,926,452.64
6/1/2026	\$10,926,452.64	\$1,244,603.38	\$1,189,971.12	\$54,632.26	\$9,736,481.52
12/1/2026	\$9,736,481.52	\$1,244,603.38	\$1,195,920.97	\$48,682.41	\$8,540,560.54
6/1/2027	\$8,540,560.54	\$1,244,603.38	\$1,201,900.58	\$42,702.80	\$7,338,659.97
12/1/2027	\$7,338,659.97	\$1,244,603.38	\$1,207,910.08	\$36,693.30	\$6,130,749.88
6/1/2028	\$6,130,749.88	\$1,244,603.38	\$1,213,949.63	\$30,653.75	\$4,916,800.25
12/1/2028	\$4,916,800.25	\$1,244,603.38	\$1,220,019.38	\$24,584.00	\$3,696,780.87
6/1/2029	\$3,696,780.87	\$1,244,603.38	\$1,226,119.48	\$18,483.90	\$2,470,661.40
12/1/2029	\$2,470,661.40	\$1,244,603.38	\$1,232,250.07	\$12,353.31	\$1,238,411.32
6/1/2030	\$1,238,411.32	\$1,244,603.38	\$1,238,411.32	\$6,192.06	\$0.00
<b>Total</b>		<b>\$32,359,687.88</b>	<b>\$30,273,755.00</b>	<b>\$2,085,932.88</b>	

# Intelligent Cities Project San Diego, California

October 28, 2016

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**IMPORTANT NOTICE: THE ATTACHED SAMPLE FORMS ARE BEING PROVIDED BY GE FOR REVIEW BY THE CITY OF SAN DIEGO, CALIFORNIA AND ITS REPRESENTATIVES AND DO NOT CONSITTUTE AN OFFER TO PROVIDE PRODUCTS/SERVICES/FINANCING ON THE TERMS CONTAINED THEREIN.** Neither General Electric Company, GE Government Finance, Inc. nor any of their respective affiliates (individually and collectively, “GE”) are acting as “municipal advisors” within the meaning of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules and regulations promulgated thereunder. In this regard, please be advised that: (i) GE is proposing to provide financing, and any information or services related thereto, to the City of San Diego, California (“San Diego”) solely as an **arm’s length counterparty** and, as such, GE has interests that may differ from the interests of San Diego, including the amount or nature of interest rates, amortization schedules and covenants applicable to the proposed transaction; (ii) if the proposed transaction closes, GE will receive interest or other payments from San Diego as compensation for providing the proposed financing to San Diego; (iii) **GE is not an advisor or fiduciary** to San Diego with respect to the proposed transaction; (iv) in connection with the provision of any services pursuant to the proposed transaction, there is **no agreement**, direct or indirect, between San Diego (including the officials, management, employees or agents thereof) and GE for GE to provide advice to San Diego; (v) **GE is not acting for direct or indirect compensation to solicit** San Diego on behalf of an unaffiliated broker, dealer, municipal securities dealer, municipal advisor, or investment adviser for the purpose of obtaining or retaining an engagement by San Diego for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of San Diego; and (vi) nothing herein or in the attached sample documentation is to be construed as constituting tax, accounting, financial or legal advice by GE to San Diego. San Diego should consult with its financial, accounting and legal advisors regarding any services proposed to be provided by GE, and, if not currently advised, San Diego is urged to seek independent advisors in connection with the proposed transaction.

# I

## **INTELLIGENT SERVICES DOCUMENTATION**

**A. GE INTELLIGENT LIGHTING MASTER PURCHASE AGREEMENT,**  
between Current, powered by GE, a business unit of General Electric Company  
and the City of San Diego, California.

## Current

### INTELLIGENT CITY PURCHASE AND SERVICES AGREEMENT

This Intelligent City Purchase and Services Agreement (this “**Agreement**”) is made as of \_\_\_\_\_ (the “**Effective Date**”) between Current, powered by GE, a business unit of General Electric Company, a New York corporation, having principal offices at 1975 Noble Road, Nela Park, Cleveland, Ohio 44112 (“**GE**”) and the City of San Diego, a California municipality, having principal offices at 202 C Street, San Diego, CA 92101 (“**Customer**”). Each of GE and Customer may be referred to individually as a “**Party**” and collectively as the “**Parties**”.

#### 1. DEFINED TERMS.

1.1 “**Affiliate**,” with respect to GE, means any entity directly or indirectly controlling or controlled by, or under direct or indirect common control of General Electric Company, or where General Electric Company owns at least a greater than 50% equity interest in such entity whether now existing, or subsequently created or acquired during the Term of this Agreement (including, without limitation, joint ventures, subsidiaries, or other entities in which any such entity is a shareholder). With respect to any entity other than GE, including Customer, “**Affiliate**” means any entity, including without limitation, any individual, corporation, company, partnership, limited liability company or group, that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such party.

1.2 “**Aggregate Information**” means any information or data (other than payment card information) derived from Consumer Information or from Customer’s interaction with Products and Services, which is not specific to a person, does not refer to or identify any specific person, and cannot be used, alone or in conjunction with other information, to identify any specific person.

1.3 “**Ancillary Services**” has the meaning given in Section 5.1.

1.4 “**Appendix**” means a document attached to an Order Form or otherwise offered or made available by or on behalf of GE (whether tangibly or electronically) that contains mutually agreed upon terms varying or supplementing the terms of this Agreement as to certain Products or Services as documented in writing.

1.5 “**Applicable Law**” means any international, national, federal, state or local law (statutory, common, civil or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, judgment, order or similar requirement, now or hereafter in effect, enacted, adopted, promulgated, or applied by any governmental authority or entity that is binding upon or applicable to a given party unless expressly specified otherwise.

1.6 “**Authorized User**” means certain employees, agents, independent contractors or consultants of a Customer authorized pursuant to this Agreement. Customer’s customers or other members of the general public are not Authorized Users.

1.7 “**Claim**” means any actions, demands, proceedings and other claims or any third party, together with any and all related liabilities, losses, damages, costs and expenses (including without limitation, reasonably attorneys’ fees and costs).

1.8 “**Confidential Information**” of a Disclosing Party means all of the Disclosing Party’s information and documentation disclosed to or accessed by the Receiving Party in connection with this Agreement that is designated as “Confidential” or with a similar designation, including any information developed by reference to or use of the other Party’s Confidential Information. GE’s Confidential Information includes Processed Data “Confidential Information” does not include information that: (a) is independently developed by the Receiving Party, as demonstrated by the

## GE Intelligent Lighting Master Purchase Agreement

recipient's written records, without violating the Disclosing Party's proprietary rights; (b) is or becomes publicly known (other than through unauthorized disclosure); (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality; (d) is already known by the Receiving Party at the time of disclosure, as demonstrated by the Receiving Party's written records, and the Receiving Party has no obligation of confidentiality other than pursuant to this Agreement; (e) is rightfully received by the Receiving Party free of any obligation of confidentiality; or (f) is Feedback.

1.9 **"Consumer Information"** means name, mailing address, telephone number, e-mail address, credit card information, order and order processing information and any other non-public, identifying information available to GE as a result of use of Products and Services by consumers or by Customer. Consumer Information does not include (i) any information that either GE or the Customer has the right to use and which is obtained from consumers other than through transactions contemplated under this Agreement or (ii) Aggregate Information.

1.10 **"Feedback"** has the meaning given in Section 7.4.

1.11 **"GE Hardware"** means physical devices built by GE or a third party on behalf of GE for use with the Intelligent Lighting Solution.

1.12 **"GE Materials"** means the GE Trademarks, Documentation, and GE Technology.

1.13 **"GE Technology"** means: (a) all hardware, software, services, information, technology and materials used to provide the Services under this Agreement, an Order Form or a Statement of Work; (b) all software, technology or other works developed or created by or for Customer with respect to its use of the Services; (c) and any modifications, improvements to or derivative works of any of the foregoing.

1.14 **"GE Trademarks"** means any GE trademarks, service marks, trade dress, trade names, corporate names, proprietary logos or indicia and other source or business identifiers.

1.15 **"Intellectual Property Rights"** or **"IP Rights"** means all intellectual property or other proprietary rights throughout the world, whether existing under statute or at common law or equity, now or hereafter in force or recognized, including: (a) works of authorship, "moral rights," trade secrets, patents, trademarks, service marks, logos, trade dress, mask works, design rights, rights to inventions, publicity rights and privacy rights, and (b) all applications, rights to apply or registrations for any of the rights referred to in clause (a) and any all renewals, extensions, continuations, continuations-in-part, divisions, restorations, reexaminations or reissues thereof.

1.16 **"Intelligent Lighting Solution"** means GE's proprietary software-defined LED fixtures containing sensors, controls and wireless transmitters and related products and services. The Intelligent Lighting Solution includes, for clarity, Products and Services.

1.17 **"Order Form"** has the meaning set forth in Section 2.2.

1.18 **"Platform Services"** means all of the "Software-as-a-Service" offerings and any other software applications created or provided by GE and made available to Customer and Authorized Users from GE through the Intelligent Lighting Solution, as well as any additions, updates or bug fixes to the foregoing released generally by GE for similarly situated users.

1.19 **"Price List"** means the list of Products and Services delivered from GE to Customer, as GE may revise or supplement it from time to time. As of the Effective Date, the current Price List is attached hereto as Exhibit B.

1.20 **"Processed Data"** means data derived and/or aggregated by or on behalf of GE that may result from GE's collection, aggregation, storage, analysis or processing of Source Data. For clarity, Source Data itself is not Processed Data.

## GE Intelligent Lighting Master Purchase Agreement

1.21 “**Products**” means any GE Hardware or Third Party Products that are offered by GE under this Agreement or an Order Form for use with the Intelligent Lighting Solution.

1.22 “**Services**” means services offered by GE to Customer under this Agreement pursuant to an Order Form. “Services” includes Platform Services and Support Services, but does not include Ancillary Services.

1.23 “**Statement of Work**” means an agreement, executed by GE and Customer, pursuant to which GE agrees to perform Ancillary Services.

1.24 “**Source Data**” means data that is sensed, observed, or gathered from the individual or collective outputs of the Products, from the Services, and if for the purpose of providing the Services, from any other technology or services licensed from GE or any other Customer equipment or services. For clarity, Processed Data itself is not Source Data.

1.25 “**Support Services**” means the product support services set forth in the Customer Support and Service Levels document attached hereto as Exhibit C (the “**Support Description**”), as such Support Description may be updated from time to time by GE.

1.26 “**Third Party Products**” and “**Third Party Services**” mean, respectively, products and services offered by third party providers, some of which may be listed on pages within GE’s website, related to the Intelligent Lighting Solution. Third Party Products and Services may include implementation, customization and other products and/or services related to Customer’s use of Products and Services and applications that work in conjunction with or extend Products and Services.

1.27 “**Work Product**” means the materials, including documentation and customized software, completed by GE under a Statement of Work and any modifications or improvements to the GE Technology, excluding any Confidential Information that may be included in such materials.

## 2. STRUCTURE OF AGREEMENT; ORDERING PRODUCTS AND SERVICES.

2.1 Generally. This Agreement provides the general terms under which Customer may order, deploy and use Products and Services. Certain Products and Services are subject to additional terms, which are provided in an applicable Appendix. In the event of any conflict between an Appendix or Exhibit and this Agreement, the terms of the Appendix or Exhibit will control as they pertain to the Products and Services covered by such Appendix or Exhibit, and the remainder of this Agreement will control in all other respects. Any breach of an obligation contained in an Appendix or Exhibit constitutes a breach of this Agreement. This Agreement does not amend or supersede any prior agreement between GE or any Affiliate of GE and Customer. This Agreement alone, without a valid Order Form accepted pursuant to Section 2.2, does not sell, license or otherwise permit Customer to receive or use any Products or Services.

2.2 Pricing and Terms. Customer may purchase licenses or subscriptions, as applicable, to any Products or Services in the Price List according to the pricing and terms set forth in the Price List by submitting an order to GE. Pricing and terms for such Products and Services shall be as set forth in the Price List. Orders submitted by Customer nevertheless remain subject to GE’s approval. If GE provides a quote (which may include final pricing, payment terms, and delivery terms), it shall expire thirty (30) days from the date of issuance and may be modified or withdrawn at any time prior to the date of execution of such order based on such quote, in each case unless otherwise specified in writing by GE.

2.3 Order Forms. An agreement to order the Intelligent Lighting Solution or other Products or Services may be executed as an agreement (upon execution, an “**Order Form**”) by and between the Parties. An Order Form may represent the initial subscriptions and purchased for Products and

## GE Intelligent Lighting Master Purchase Agreement

Services specified in the Price List, and any subsequent subscriptions and purchases for Products and Services specified in the Price List, that specify among other things, the number, type and subscription term of Services subscriptions ordered, Products purchased, and the applicable fees. The initial Order Form is attached hereto as Exhibit A. In addition, the Parties may execute Statements of Work as provided in Section 5.1. Order Forms and Statements of Work are not binding on the Parties until fully executed by authorized representatives of each Party. Unless and to the extent an Order Form or Statement of Work expressly provides otherwise, each Order Form and Statement of Work shall incorporate by reference the terms and conditions of this Agreement and shall not be construed as altering or superseding the rights and obligations of the Parties under this Agreement. Each Order Form and Statement of Work: (i) is deemed to be a separate contract between the GE entity (whether GE or a GE Affiliate) that directly entered into the Order Form or Statement of Work and the Customer entity (whether Customer or a Customer Affiliate), and (ii) subject to Section 2.2, is an independent contractual obligation from any other Order Form or Statement of Work.

### 2.4 Affiliate Purchases; Affiliate Sales.

(a) Subject to the terms of this Section, any Affiliate of Customer may purchase Products and Services directly under this Agreement by entering into an Order Form (and may purchase Ancillary Services by entering into a Statement of Work as provided in Section 5.1), and GE may elect to sell or perform any Products or Services through any Affiliate of GE. Each such Order Form or Statement of Work must incorporate the terms of this Agreement by reference, and must provide that references in this Agreement to "GE" shall refer instead to the GE Affiliate (if applicable) and references to "Customer" in this Agreement shall refer instead to the Customer Affiliate (if applicable). Where necessary to accommodate Applicable Law or local business requirements of GE or Customer in a particular country outside the United States, the Parties may provide that such Order Form or Statement of Work supersedes the terms contained in this Agreement, solely as they relate to the Products, Services or Ancillary Services delivered thereunder. Notwithstanding anything to the contrary in any Order Form or Statement of Work, any and all disputes arising under or relating to any Order Form or Statement of Work shall be subject to the provisions of Sections 14.1 and 14.2, and under no circumstances shall GE or GE's Affiliate, or Customer or Customer's Affiliate, bring or attempt to bring any claim or other action arising under or relating to any Order Form or Statement of Work in any jurisdiction except as provided in Sections 14.1 and 14.2.

(b) Each Party (the "**Responsible Party**") shall be fully responsible for all obligations of itself or any Affiliate of such Party to the same extent as if such failure to perform or comply was committed by such Party, and the other Party will have the same rights under this Agreement if an event or circumstance occurs with respect to such Affiliate that is a party to an Order Form or Statement of Work, that it would have if such party were the Responsible Party. In addition, each Party shall have the right to enforce this Agreement and the terms of all Order Forms and Statements of Work on behalf of each of such Party's Affiliates that enter into an Order Form or Statement of Work, and to assert all rights and exercise and receive the benefits of all remedies (including monetary damages) of each such Affiliates, to the same extent as if such Party were such Affiliate, subject to the limitations of liability applicable under this Agreement.

## 3. **PRODUCTS; SHIPMENT.**

3.1 Shipment of Products. Unless otherwise agreed in writing between the Parties with respect to a particular Order Form, delivery dates communicated by GE are approximate and are based upon prompt receipt of all necessary information from Customer. Except as otherwise specified by GE in its quotation, pro rata payments shall become due as shipments are made. If GE agrees to delay shipments after completion of any product, payment shall become due on the date

## GE Intelligent Lighting Master Purchase Agreement

when GE is prepared to make shipment. In the event of any such delay, title shall pass and products shall be held at Customer's risk and expense.

3.2 Title; Risk of Loss. Title and risk of loss or damage for the Products (and any other tangible goods shipped by or on behalf of GE hereunder) shall pass from GE to Customer upon installation by GE or, with respect to any Products that are not to be installed by GE, upon delivery to the carrier at GE's dock. Customer bears the entire risk of loss, theft, condemnation, damage, or destruction of any of the Products ("**Loss of Products**"), in whole or in part from any reason whatsoever, following such installation or delivery as applicable. Notwithstanding any Loss of Products, the obligations of this Agreement, including Customer's obligations to make the payments hereunder, shall continue. GE may, at its option, replace such Products and charge Customer a market price for such replacement Product and for the cost of installation according to the Price List. If GE chooses not to exercise such option, Customer shall be responsible for repairing or replacing any such Products at its cost.

### 4. SERVICES; TERMS OF USE.

4.1 Provision. GE will make the Services available to Customer pursuant to the terms and conditions set forth in this Agreement, including for clarity any and all applicable Order Forms and applicable Appendices.

4.2 Development. GE reserves the right to modify the Products and Services from time to time. If such modifications materially and adversely affect the functionality of Products and Services, Customer's sole remedy is to terminate its subscription for any applicable Services pursuant to Section 13.2(a).

4.3 GE Obligations. GE will use commercially reasonable efforts to make the Services generally available throughout the term of this Agreement, as more fully described in Section 9 and provide Support Services to Authorized Users in accordance with this Agreement, the applicable Order Form and the Support Description. GE will not be responsible or liable for any failure to meet the foregoing responsibilities caused, in whole or in part, by the performance, adequacy, accuracy, concurrency or other matters related to Customer's systems or data.

4.4 Customer Obligations. Customer is responsible for all activities that occur under Customer's Authorized User accounts. Without limiting the foregoing, Customer will: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Source Data (to the extent provided by Customer) and Consumer Information; (ii) use commercially reasonable efforts to prevent unauthorized control or tampering or any other unauthorized access to, or use of, Products and Services or the systems operated by or on behalf of Customer that capture, store or transmit Source Data and Consumer Information, and notify GE immediately of any unauthorized use or security breach; (iii) comply with all Applicable Law (including laws regarding privacy and protection of Consumer Information) in using Products and Services; (iv) provide notice and obtain any consents reasonably required or necessary for the use, storage, transferring and obtaining of Consumer Information; and (v) obtain and maintain all computer hardware, software and communications equipment needed to access Products and Services and pay all access charges (e.g., ISP fees) incurred while using Products and Services.

4.5 Restrictions on Use. Customer will use Products and Services solely for the purposes as permitted by this Agreement and will not: (i) exceed the scope of its purchased licenses; (ii) multiplex, pool, bundle or otherwise attempt to artificially reduce the type or number of licenses necessary for Customer's implementation of the Intelligent Lighting Solution; (iii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit Products and Services or make Products or Services available to any third party, other than as expressly permitted by this Agreement; (iv) interfere with or disrupt the integrity or performance

of Products or Services or the data contained therein; (v) download, compile, recreate, transfer or otherwise access Processed Data other than using the Products and Services (or attempt to do any of the foregoing); (vi) attempt to gain unauthorized access to Products or Services or their related systems or networks; (vii) remove, alter or obscure any proprietary notices associated with Products or Services; (viii) disassemble, reverse engineer, decompile, or otherwise attempt to learn any source code or underlying functionality of Products or Services; (ix) make, publish, distribute or otherwise create derivative works based upon Products or Services; (x) share with or make available to any unauthorized party any credentials used in connection with an Authorized User account; or (xi) utilize Products or Services in order to (a) send spam or otherwise duplicative or unsolicited messages in violation of Applicable Law; (b) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; or (c) send or store infringing, obscene, threatening, libelous, or otherwise unlawful, unsafe, malicious, abusive or tortious material, including material harmful to children or that violates third party privacy rights.

4.6 Third Party Products and Services. Except to the extent an applicable Appendix provides otherwise as to specific Third Party Products or Third Party Services, GE does not provide any warranties, guaranties or indemnification regarding any Third Party Products or Third Party Services, whether or not such products or services are designated by GE as “certified,” “validated” or otherwise. Any purchase, license, exchange of data or other interaction between Customer and any Third Party Products and Third Party Services is solely between Customer and the providers of such Third Party Products and Services.

4.7 Security; Privacy Policy. If GE receives access to Source Data in connection with its performance of the Services, GE shall take commercially reasonable precautions to prevent security breaches or accidental disclosures of such Source Data. GE shall also comply with all Applicable Law governing the protection of such Source Data. Without limiting the foregoing, GE shall comply with its Privacy and Cybersecurity policy (available at <http://www.gesustainability.com/how-ge-works/integrity-compliance/privacy-cyber-security/>, as GE may update it from time to time) in performing its obligations under this Agreement. GE shall not be liable for any claims associated with security breaches that may impact such Source Data, including, but not limited to, costs associated with forensic audits or fraud monitoring. With respect to Source Data, the Parties agree that Customer is the data controller and GE is the data processor. Customer shall comply with all Applicable Law in providing GE access to Source Data.

## 5. ANCILLARY SERVICES.

5.1 Statements of Work. GE may provide Services not listed in the Price List (“**Ancillary Services**”) under the terms and conditions hereof, as specified in one or more Statements of Work, as may be entered into from time to time. Ancillary Services may include, without limitation, installation services, consulting services, or professional engineering services.

5.2 Modifications to Ancillary Services. If Customer wishes to change the Ancillary Services covered by a Statement of Work, Customer will notify GE and GE may agree to the requested change at its discretion. Upon GE’s receipt of Customer’s request for the change in Ancillary Services, the Customer and GE will mutually agree in writing on the scope and price of the change in Ancillary Services.

5.3 Performance Timelines. Customer acknowledges and agrees that the timely performance by GE of the Ancillary Services is dependent upon Customer performing its obligations under this Agreement, any Statement of Work and in any associated Order Form, and that any delay or failure to perform by Customer will extend the time for GE to perform on a day-for-day basis.

## GE Intelligent Lighting Master Purchase Agreement

### 5.4 Conditions Affecting the Services or Ancillary Services.

(a) Customer shall advise GE of the location and nature of any known unusual conditions which would affect the Services or Ancillary Services, including but not limited to underground obstructions, unstable soil conditions and the suspected presence of hazardous materials that could not otherwise be discerned by GE during a visual inspection of the site.

(b) GE is entitled to assume that any site data furnished by Customer is accurate and complete. GE shall promptly notify Customer upon learning of (1) any conditions at the site that materially differ from those indicated in the information furnished by Customer, (2) any previously unknown physical conditions at the site of an unusual nature, not revealed by previous investigations and differing from those ordinarily encountered in the type of services provided for in this Agreement, (3) the suspected presence of any toxic substances, hazardous substances, or hazardous wastes (as such terms may be defined in any federal, state or local statute, ordinance or regulations) which require special handling and/or disposal, or (4) the presence of archaeological remains. If such conditions cause an increase in GE's cost or time for performance of any part of this agreement, GE shall be entitled to an equitable adjustment in the contract price and an extension in the time for performance.

(c) If suspected toxic substances, hazardous substances, or hazardous wastes are present at the site, GE shall not be obligated to commence or continue services until Customer causes such substances to be removed or remediated. GE shall be entitled to an appropriate equitable adjustment to the contract price and/or extension of the time for performance to the extent GE's performance is adversely impacted by the presence of such substances.

5.5 Site Access. Customer shall not request or require (i) waivers or releases of any rights or (ii) execution of documents which conflict with the terms of this Agreement, from GE's employees, representatives or subcontractors in connection with visits to its sites necessary for the conduct of the Services or Ancillary Services. Customer shall not plead, and shall not assist any third party to plead, any such release, waiver or document in any action or proceeding.

## 6. PAYMENT.

6.1 Invoicing and Payment. Customer will pay all fees and other charges set forth in all Order Forms and Statements of Work. Except as otherwise provided in an Order Form or Statement of Work, all fees and other charges are in United States dollars. All amounts payable hereunder are non-refundable. Unless otherwise stated in an Order Form or Statement of Work, all fees and charges are due within 30 days from the invoice date. All payments shall be made without set-off for claims arising out of other sales by GE. Unless otherwise agreed, payments shall be made by wire transfer upon receipt of invoice.

6.2 Late Payments. Any payment not received from Customer by the due date will accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. If Customer's account is overdue, in addition to any of its other rights or remedies available to GE hereunder or at law or equity, GE may suspend the Services, without liability to Customer, until such undisputed amounts are paid in full. In any event, the costs incurred by GE as a result of Customer's non-fulfillment shall be payable by Customer upon submission of GE's invoices therefor. GE shall be entitled to an extension of time for performance of its obligations equaling the period of Customer's non-fulfillment whether or not GE elects to suspend performance. If Customer does not rectify such non-fulfillment promptly upon notice, GE may cancel the agreement and Customer shall pay GE cancellation charges upon submission of GE's invoices therefore.



## GE Intelligent Lighting Master Purchase Agreement

6.3 Taxes. Unless otherwise stated in an Order Form or Statement of Work, GE's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on GE's income. If GE has the legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount will be invoiced to and paid by Customer to GE unless Customer provides GE with a valid tax exemption certificate authorized by the appropriate taxing authority.

6.4 Solvency. Any order for products by Customer shall constitute a representation that Customer is solvent. In addition, upon GE's request, Customer will furnish a written representation concerning its solvency at any time prior to shipment or performance. If Customer's financial condition at any time does not, in the judgment of GE, justify continuance of the work to be performed by GE hereunder on the agreed terms of payment, GE may require full or partial payment in advance or shall be entitled to terminate the contract and receive termination charges. In the event of Customer's bankruptcy or insolvency or in the event any proceeding is brought against Customer, voluntarily or involuntarily, under bankruptcy or insolvency laws, GE shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges. GE's rights under this Section 6.4 are in addition to all rights available at law or in equity.

## 7. INTELLECTUAL PROPERTY.

7.1 GE Rights. As between Customer and GE, GE owns and shall own all Intellectual Property rights, title and interest in and to all Products and Services, Ancillary Services, Work Product, GE Trademarks, GE Technology, GE's IP Rights, and all rights of GE or GE's suppliers in the underlying code, tools or other materials used to provide any of the foregoing. Customer hereby grants and will grant and will cause each of its Authorized Users to grant to GE a non-exclusive, irrevocable, perpetual, worldwide, royalty-free license to use, make, have made, sell, offer to sell, reproduce, modify, copy, create derivative works based on, display, perform and otherwise exploit any and all rights it may have in or to GE Technology created, developed or reduced to practice by or on behalf of Customer or any of its Authorized Users. As between the Parties, (a) Customer owns all right, title and interest in the Source Data, and (b) GE owns all right, title and interest in the Processed Data. To the extent that exclusive title to any part of the Processed Data does not automatically vest in GE, Customer hereby assigns and agrees to assign to GE all right, title and interest in and to the Processed Data that Customer may have, including all Intellectual Property Rights relating thereto. Other than as expressly set forth in this Agreement, no license or other rights in or to Products, Services, Ancillary Services, Work Product, GE Technology or GE's IP Rights are granted to Customer, and all such licenses and rights are hereby expressly reserved. For the avoidance of doubt, GE also has the right to use (or allow its Affiliates to use) analytics to identify statistical patterns and evaluate the performance of Products and Services using Aggregate Information. GE and its Affiliates may extract information from Aggregate Information and use this information with any other data in connection with research and development or creation of data and analytics tools and products in accordance with Applicable Law. As between GE and Customer, GE will own all right, title and interest in or to any information, products, services or Intellectual Property Rights arising from the data and analytics research and development activities.

### 7.2

- a. GE License Grant. Subject to the terms and conditions of this Agreement and any applicable Order Form or applicable Appendix, GE grants Customer and its Authorized Users a limited, worldwide, revocable, non-exclusive, non-transferable, non-sublicenseable right during the Term to (a) access and use Products for which Customer has delivered, and GE has accepted, a valid Order Form; (b) access and use Services for which Customer has delivered, and GE has accepted, a valid Order

## GE Intelligent Lighting Master Purchase Agreement

Form and for which Customer has a subscription in effect; and (c) access and use GE Technology, excluding any GE Trademarks, in connection with Customer's rights under clauses (a) and (b), solely in accordance with the terms of this Agreement. For each of the Products and Services, the license in this Section 7.2 is granted only to the number of Authorized Users for each of such Products and/or Services, for which Customer has purchased a valid license. If a license to a given Product or Service is designated in the Price List or an applicable Order Form as applying to a specific individual (e.g. a "named user") or to specific hardware (e.g. a "device license,"), Customer may not use such license with a different individual or hardware, as applicable, except in the case of a permanent transfer to which GE has consented in writing. At any time during which Products or Services are utilized, GE shall have the right upon reasonable advance notice to audit and inspect Customer's utilization of such Products or Services, in order to verify compliance with the terms of this Section 7.2. Upon GE's reasonable request, Customer shall deliver to GE a report, as defined by GE, evidencing Customer's compliance with the license granted herein.

- b. Software License. GE will grant Customer a nonexclusive, non-transferable, royalty-free license for the duration of the Agreement, without a right to sublicense, to use the GE software provided pursuant to this Agreement and subject to any third-party license restrictions provided to Customer.
- c. Customer License Grant. Customer hereby grants to GE a nonexclusive, perpetual, irrevocable, sublicenseable right and license to collect, use, reproduce, make available, aggregate, modify, display, perform, store (digitally or otherwise), transmit, make derivative works of and otherwise process the Source Data, in each case as permitted by Applicable Law.

7.3 Customer Rights. As between GE and Customer, Customer owns all right, title and interest in and to any trademarks, trade names, service marks, or logos of Customer.

7.4 Feedback. Customer may voluntarily, from time to time, provide suggestions, techniques, know-how, comments, feedback or other input to GE with respect to Products, Services or other aspects of Intelligent Lighting Solution (collectively, "**Feedback**"). Except as otherwise set forth in a separate, subsequent written agreement between the Parties, GE will be free to use, disclose, reproduce, license or otherwise distribute and exploit all Feedback as it sees fit, without obligation or restriction based on intellectual property rights, confidentiality, or otherwise. Customer will not give any Feedback that is Customer Confidential Information or is subject to license terms or restrictions that purport to require any GE technology, service, product or documentation incorporating or derived from such Feedback, or any GE intellectual property, to be licensed or otherwise shared with Customer or any third party. For the avoidance of doubt, this paragraph does not grant to GE any intellectual property rights in Customer's preexisting technology.

## 8. CONFIDENTIAL INFORMATION.

8.1 Non-Disclosure and Non-Use. A Party receiving Confidential Information (the "**Receiving Party**") will not directly or indirectly, at any time, without the prior written consent of the Party disclosing such Confidential Information (the "**Disclosing Party**"), use or disclose the Confidential Information or any part thereof for any use other than necessary for the performance of the Receiving Party's obligations under this Agreement.

8.2 Compelled Disclosure. If Receiving Party is requested by a governmental authority to disclose any Confidential Information (or is subject to a lawful request to compel disclosure of any Confidential Information), it will, to the extent it is legally permissible, promptly notify Disclosing Party to permit Disclosing Party to seek a protective order or take other appropriate action, and will assist in such activities. Receiving Party will only disclose that part of the Confidential Information as Receiving Party determines to be required by law to be disclosed and Receiving Party will use

## GE Intelligent Lighting Master Purchase Agreement

commercially reasonable efforts to obtain confidential treatment therefor. If Receiving Party determines that Confidential Information is required by law to be disclosed but Disclosing Party disagrees and believes that lawful grounds exist for Receiving Party to withhold the information from disclosure, Disclosing Party shall bear the cost, expense, and risk of any legal action brought against Receiving Party to compel disclosure, including attorney fees.

8.3 Ownership of Information. Except as may be otherwise provided in this Agreement, Receiving Party acknowledges that the Confidential Information is the exclusive property of and belongs solely to the Disclosing Party and will not claim otherwise for any purpose.

8.4 Injunctive Relief. In addition to any other rights and remedies under this Agreement or at law, Receiving Party acknowledges and agrees that, due to the nature of the Confidential Information, its confidentiality obligations to Disclosing Party under this Agreement are of a unique character and agrees that any breach of such obligations may result in irreparable and continuing damage to Disclosing Party for which there may be no adequate remedy in damages and accordingly Disclosing Party will be authorized and entitled to seek injunctive or other equitable relief, without the necessity of posting a bond or other security, even if otherwise normally required.

## 9. MAINTENANCE AND SUPPORT.

9.1 Products Maintenance. Except as specifically agreed in a separate agreement for hardware maintenance services, Customer shall be responsible for maintaining GE Hardware.

9.2 Products and Services Support. Support Services will be provided in accordance with the Support Description, as such Support Description may be updated from time to time by GE.

## 10. WARRANTIES AND DISCLAIMERS.

10.1 Products Warranty. Products provided by GE to Customer hereunder shall be warranted according to the warranty documentation attached hereto as Exhibit D.

10.2 Services Warranty. GE warrants that the Support Services it provides hereunder will materially conform to Exhibit C and any other documentation as updated by GE from time to time, and that the Services will conform to the Service Level Agreement in Exhibit C. GE may update Exhibit C from time to time upon notice to Customer.

10.3 Ancillary Services Warranty. GE warrants that the Ancillary Services it provides hereunder will conform to the specific industry standards specified in the applicable Order Form or Statement of Work. If Customer discovers a deficiency in the Ancillary Services, then Customer will, within 30 days after completion of the deficient Ancillary Services, submit to GE a written report describing the deficiency in reasonable detail, and GE will (as Customer's sole remedy for any breach of this Section 10.3) re-perform the deficient Ancillary Services. Any such Services for which Customer does not submit a deficiency report will be deemed accepted at the conclusion of such 30 day period.

10.4 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 10, GE MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. GE HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. GE DOES NOT REPRESENT OR WARRANT THAT: (I) THE PRODUCTS OR SERVICES WILL MEET CUSTOMER'S BUSINESS REQUIREMENTS; (II) THE PRODUCTS OR SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT THE RESULTS OBTAINED FROM ITS

## GE Intelligent Lighting Master Purchase Agreement

USE WILL BE ACCURATE OR RELIABLE; OR (III) ALL DEFICIENCIES IN THE PRODUCTS OR SERVICES CAN BE FOUND OR CORRECTED. GE WILL NOT BE RESPONSIBLE FOR: (A) ANY FAILURE TO MEET THE WARRANTY OF THIS SECTION 10 CAUSED BY CUSTOMER'S OR ANY AUTHORIZED USER'S ACTS OR OMISSIONS OR INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS OR EQUIPMENT WITH THE PRODUCTS OR SERVICES; (B) LOSS OF DATA THAT IS NOT DUE TO A BREACH OF THIS AGREEMENT BY GE; (C) THE INABILITY OF CUSTOMER TO ACCESS OR INTERACT WITH ANY OTHER SERVICE PROVIDER THROUGH THE INTERNET, OTHER NETWORKS OR USERS THAT COMPRISE THE INTERNET OR THE INFORMATIONAL OR COMPUTING RESOURCES AVAILABLE THROUGH THE INTERNET; OR (D) SERVICE PROVIDED BY OTHER SERVICE PROVIDERS.

### 11. INDEMNIFICATION.

11.1 Each party will indemnify, defend and hold harmless the other party and all of its direct and indirect officers, directors, employees, agents, successors and permitted assigns from any and all actual Claims brought by third parties, due to or arising from the indemnifying party's breach of this Agreement.

11.2 If a third party institutes a Claim that the Products or Services infringe its valid United States patent, GE will (i) defend Customer against any such Claim at GE's expense and (ii) pay all damages and costs finally awarded or any settlements entered into by GE. GE's obligations under the preceding sentence are subject to Customer promptly notifying GE in writing of such third party Claim and giving GE sole control of all cooperation requested by GE in the defense or any related negotiations. If any such Claim is made or is likely to be made (in GE's sole judgment), GE may, in its sole discretion, either (a) obtain the right for Customer to continue to use the affected Product or Services or (b) modify or replace the affected Services; provided, that if the alternatives described in clauses (a) and (b) are not commercially reasonable, then GE may terminate Customer's right to use the affected Service and refund to Customer a pro-rated portion of the purchase price for such Product or any pre-paid fees for such Service. GE will have no obligation to indemnify Customer under this Section with respect to third-party Claims based on (v) any act or omission by Customer with respect to the Product or Service that is prohibited by this Agreement or the applicable Order Form; (w) a version of the applicable Product or Service other than the most recent version made available to Customer; (x) Source Data; (y) any modification of the affected Product or Service made by a party other than GE; or (z) its combination, operation or use with any product, data or system not specified in the applicable documentation supplied by GE or otherwise approved in writing by GE. This Section states GE's entire obligation to Customer and Customer's exclusive remedy with respect to any Claim of infringement.

11.3 If (a) a third party institutes a Claim that any required or necessary consent was not obtained prior to Customer's collection or use of Source Data or Consumer Information, or (b) if GE suffers any damages or costs arising out of the acts or omissions of any Authorized User, or (c) if GE suffers any damages or losses arising out of Customer's breach of Section 4.4 (Customer Obligations), 4.6 (Restrictions on Use), or 8.1 (Non-Disclosure and Non-Use), Customer will (i) defend GE against any such Claim at Customer's expense (ii) pay all such damages and costs finally and any settlements entered into by Customer.

11.4 Any Party seeking indemnity under this Agreement shall notify the other Party promptly in writing of the Claim for which indemnity is sought, and give the indemnifying Party full authority, information and assistance (at the indemnifying Party's expense) for the defense of same.

## 12. LIMITATION OF LIABILITY.

12.1 NOTWITHSTANDING ANY OF THE FOREGOING, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, OR FOR ANY LOSS OF PROFITS, BUSINESS, REVENUE, DATA OR GOODWILL, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

12.2 GE WILL NOT BE LIABLE TO CUSTOMER FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT IN EXCESS OF THE PRODUCT COST OR LICENSE FEES, AS APPLICABLE, PAID BY CUSTOMER TO GE WITH RESPECT TO THE CLAIM GIVING RISE TO SUCH DAMAGES WITHIN THE TWELVE (12) MONTHS PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH DAMAGES.

12.3 THIS SECTION 12 APPLIES REGARDLESS OF HOW THE LIABILITY AROSE OR THE THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY, NEGLIGENCE AND MISREPRESENTATION).

## 13. TERM AND TERMINATION.

13.1 Term. This Agreement commences on the Effective Date and continues until all Order Forms (for the avoidance of doubt, including any applicable Services subscriptions) and Statements of Work entered into under this Agreement have terminated and expired, unless earlier terminated as provided below (the “**Term**”).

13.2 Termination. This Agreement may be terminated:

(a) by Customer in accordance with Section 4.2 60 days after providing written notice to GE of any material and adverse change in the functionality of Intelligent Lighting Solution, such notice to be provided to GE within 30 days of Customer becoming aware of the material and adverse change;

(b) by GE if Customer fails to timely make any payment due hereunder and fails to cure such default within 30 days of notice in writing from GE of such failure (whether or not GE suspends Services pursuant to Section 6.2 hereof); or

(c) either party (the “**Non-defaulting Party**”) may terminate the Agreement if it reasonably determines in good faith that the other party has materially failed to comply with any of the terms and conditions of the Agreement (other than non-payment) and has failed to cure such failure within sixty (60) days after written notice from the Non-defaulting Party describing such failure in reasonable detail.

13.3 Early Termination. Notwithstanding the terms of any Order Form to the contrary, Customer may terminate any Service (but for the avoidance of doubt, not Third Party Services) at any time following the first full year of such subscription on 30 days’ written notice to GE, provided that (a) Customer is not then in breach of this Agreement or the applicable Order Form and (b) Customer pays to GE no later than the effective date of such termination an early termination fee equal to (i) any amounts then due for such Services already performed or any Products purchased for use with such Service (“**Relevant Products**”), plus (ii) the difference between the undiscounted price of the Relevant Products as shown in the Price List in effect at the time of Customer’s purchase, and the price actually paid by Customer for the Relevant Products.

13.4 Effects of Termination. If the Term is terminated pursuant to and in accordance with Section 13.2(a), then, unless otherwise specifically provided for in writing by the Parties, the

## GE Intelligent Lighting Master Purchase Agreement

following will apply: (a) the Parties will cooperate to effect an orderly, efficient, effective and expeditious termination of the Party's respective activities under this Agreement; (b) the rights granted to Customer with respect to the Products, Services, and the GE Materials will terminate effective as of the effective date of the termination; (c) Customer will return to GE any and all Confidential Information of GE in the possession or control of Customer; (d) GE will return to Customer any and all tangible Confidential Information of Customer in its possession or control (but for the avoidance of doubt will not be required to remove any Source Data or Processed Data from its systems); (e) unless otherwise agreed upon by the Parties, GE will have no obligation to provide Services to Customer or Authorized Users after the effective date of the termination; (f) Customer will pay to GE or the applicable Authorized Reseller any amounts payable for Customer's and Authorized User's use of the Products, Services, and GE Materials prior to the effective date of the termination; (g) any and all liabilities accrued prior to the effective date of the termination will survive; and (h) the Parties' respective rights and obligations under Sections 1, 2 (solely as to Order Forms already executed), 3.2, 4.6, 4.7, 5.4, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of this Agreement will survive according to their terms.

### 14. MISCELLANEOUS.

14.1 Governing Law. This Agreement will be governed by and construed and enforced in accordance with the laws of the State of California, excluding its principles of conflicts of laws. The Parties hereby submit to the exclusive venue and jurisdiction in state and federal courts having jurisdiction over San Diego, California. GE AND CUSTOMER EACH HEREBY IRREVOCABLY WAIVE A TRIAL BY JURY ON ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING UNDER OR CONNECTED WITH THIS AGREEMENT. Each Party irrevocably waives any immunity to jurisdiction or enforcement of the terms of this Agreement to which it may be entitled or become entitled (including without limitation sovereign immunity, immunity to pre-award attachment, post-award attachment or otherwise) in any proceedings to which the other Party is a party that arise out of or are based on this Agreement. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted will not apply to this Agreement.

14.2 Dispute Resolution. If the Parties disagree as to any matter arising under this Agreement or the relationship and dealings of the Parties hereto, then any such issue or dispute shall initially be referred to each Party's management level personnel, as designated by each Party respectively, for attempted resolution by good faith negotiations, upon written notice by any Party to the other of such issue or dispute. Upon such referral of an issue or dispute for resolution, such designated personnel shall meet promptly thereafter and use good faith efforts to attempt to resolve such dispute or issue. If the designated personnel are not able to resolve such issue or dispute within thirty (30) days of such referral, then either Party may at any time thereafter, subject to Section 14.1 herein, pursue other remedies available at law.

14.3 Injunctive Relief. Remedies at law may be inadequate to provide full compensation if Customer materially breaches its obligations with respect to Confidential Information or GE's intellectual property (without limitation), and in that event GE will be entitled to seek injunctive relief for (or to prevent) any such material breach.

14.4 Assignment. Customer may not assign, sublicense or otherwise transfer this Agreement or the license granted to Customer herein, or any of its rights or obligations under this Agreement, to any third party without the prior written consent of GE, in its sole discretion. This Agreement will be binding upon and inure to the benefit of the Parties, their legal representatives, permitted transferees, successors and assigns, as permitted by this Agreement.

## GE Intelligent Lighting Master Purchase Agreement

14.5 No Waiver. No delay or failure in exercising any right hereunder and no partial or single exercise thereof will be deemed to constitute a waiver of such right or any other rights hereunder. No consent to a breach of any express or implied term of this Agreement will constitute consent to any prior or subsequent breach.

14.6 Subcontracting. GE reserves the right to subcontract any of its obligations (including without limitation the performance of any of the Services or Ancillary Services) to one or more subcontractors; it being understood that no such subcontract will release GE from its liability to Customer for the performance of such obligations.

14.7 Force Majeure. Neither GE nor Customer shall be liable to the other party for any delay or failure to perform (except for the failure to pay any monies owed) arising out of causes beyond its reasonable control, including riots, vendor nonperformance, epidemics, unusually severe weather, fire, flood, power outages, war, acts of the enemy or terrorists, embargoes or work stoppages, labor disputes or strikes. GE and Customer shall notify each other forthwith upon hearing of any event which may result in any delay or failure to perform. There shall be no termination of the Agreement, and the time of delivery or of performance shall be extended for a period equal to the time lost by GE by reason of the delay or failure.

14.8 Federal Government Use. If Customer is procuring Products or Services on behalf of the U.S. Government, or the end customer is the U.S. Government, Customer agrees that all Products and Services provided by GE meet the definition of a "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in FAR 2.101. Customer agrees the subparagraph terms of FAR 52.212-5(e) or 52.244-6 (whichever is applicable) apply only to the extent applicable to COTS or commercial items and only as appropriate for the dollar value of this order; the version of the clauses shall be the version in effect as of the Effective Date of the order. With regard to any terms related to Buy American Act or Trade Agreements that may be applicable to the order, the country of origin of Products is unknown unless otherwise specifically stated by GE in a writing prepared in connection with the order. Customer agrees any Services offered by GE are exempt from the Service Contract Act of 1965 (FAR52.222-41). Customer further agrees the order is not funded, in whole or part, by American Recovery and Reinvestment Act funds unless Customer notifies GE in writing and such notice is acknowledged in writing by GE's Region Manager or General Manager.

14.9 Nuclear Use. The Services are not intended for use in connection with any ultra-hazardous activity, including a nuclear facility or activity, without the written consent of GE. Customer warrants that it shall not use or permit others to use GE Technology or Services for such purposes, unless GE agrees to the use in writing. If, in breach of this Section, any such use occurs, GE disclaims all liability for any nuclear or other damages, injury or contamination, and in addition to any other legal or equitable rights of GE, Customer shall indemnify and hold GE harmless against any such liability. If GE agrees in writing to any such use, the Parties shall agree upon special terms and conditions that provide GE protections against liability, including nuclear liability, and which are acceptable to GE under the then current laws that apply.

14.10 Third-Party Beneficiary. Nothing herein shall be construed or interpreted to give any person other than GE and Customer any legal or equitable right, remedy or claim under or in respect of this Agreement. GE and Customer agree that there are no third-party beneficiaries of this Agreement.

14.11 Changes and Modifications. The terms and conditions of this Agreement may not be amended, waived or modified, except in writing signed by both Parties.

## GE Intelligent Lighting Master Purchase Agreement

14.12 Severability. If any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

14.13 Notice. In any case where any notice, approval, agreement or other communication is required or permitted to be given hereunder, such notice, approval, agreement or communication will be in writing and deemed to have been duly given and delivered: (a) if delivered in person, on the date of such delivery; or (b) if sent by overnight express or registered or certified mail (with return receipt requested), on the date of receipt of such mail. Such notice or other communication will be sent to the following addresses (which may be updated by the Parties from time to time in writing):

If to GE:

Current, powered by GE  
745 Atlantic Avenue  
DC, MA 02111  
Attn: Office of the General Counsel

If to Customer:

City of San Diego  
202 C Street  
San Diego, CA 92101  
Attn: City Clerk

14.14 Counterparts; Effect of Electronic Acceptance. This Agreement may be executed in counterparts, all of which when taken together constitute a single agreement. Order Forms, Statements of Work and Appendices to which Customer (or its personnel) have signaled its electronically shall be conclusively presumed authorized by Customer for all purposes of this Agreement.

14.15 Negotiated Terms. The language, terms, conditions, and provisions of this Agreement are the result of negotiations between the Parties and this Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement or based on a Party's undertaking of an obligation under this Agreement.

14.16 Entire Agreement. This Agreement, including all Exhibits, Appendices, Order Forms, Statements of Work and any other documents referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other communications, including all prior agreements, between the Parties with respect to such subject matter.

14.17 Publicity. Customer grants GE a limited, nonexclusive right to place Customer's trademarks and logos on GE's website, advertisements and marketing materials for the purpose of identifying Customer as a client of GE. In addition, Customer grants GE the right to issue press releases regarding the Parties' relationship.

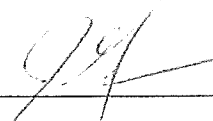
*Signature page follows*

**GE Intelligent Lighting Master Purchase Agreement**

The Parties, whose names appear below, have executed this Master Purchase Agreement as of the Effective Date:

**Current, powered by GE, a business unit of  
General Electric Company**

**City of San Diego, a California Municipal  
Corporation**

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

Name: John Gordon

Title: Chief Digital Officer, Current

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

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

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

**GE Intelligent Lighting Master Purchase Agreement**

**Exhibit A**

**[Initial Order Form]**

## GE Intelligent Lighting Master Purchase Agreement

### Exhibit B

#### **Schedule of Products and Services with pricing**

#### **DATA: APIs, CIO DASHBOARD, OWNERSHIP**

The core feature of this platform is the ability to collect data from a ubiquitous network of sensors embedded in the intelligent nodes. The metadata from the sensors is collected from the edge and securely transmitted to the Predix cloud. Once in the cloud, the data is available via API. The APIs are constructed with the RESTful architecture and can be utilized to return the data streams of interest into a broad set of applications. The city will receive notification and instant access to new APIs as they continue to be launched. Here is a list of the first available APIs, all of which are available today with simulated data on [www.predix.io](http://www.predix.io).

##### **Traffic Planning API**

The Traffic Planning service provides vehicle metadata collected from intelligent lighting sensors along public roadways. As vehicles pass by these sensors, information such as speed, direction, lane use, and volume (counts) are collected at the edge and stored with a time-stamp in the Predix cloud. The data can be viewed from any number of intelligent street lights in a specific region, and can provide both historical and near real-time information. The density, range, and flexibility of this sensor data offer insights into traffic patterns and reveal opportunities to optimize traffic flow today as well as enhance traffic safety and convenience in the future

##### **Parking Planning API**

The Parking Planning service provides parking metadata collected from intelligent lighting sensors along public roadways and in parking lots. As a vehicle enters or leaves a parking space, a time-stamped event is created on the edge and stored in the cloud. Predix cloud analytics also provide individual parking space/zone locations in addition to near real-time occupancy status. This data can be obtained from a single intelligent light or a group of them to provide valuable insights about the parking activity in a specific region. The data can also be used to improve safety and convenience, such as guidance to parking locations.

##### **Pedestrian Planning API**

The Pedestrian Planning service provides pedestrian metadata collected from intelligent lighting sensors along public roadways and in parking lots. As pedestrians enter or leave a specific region, a time-stamped event and volume counts are created on the edge and stored in the cloud. This data can be obtained from a single intelligent light or a group of them to provide valuable insights for city officials and local businesses about pedestrian usage in a specific region, thereby helping enhance pedestrian safety for Vision Zero and convenience.

##### **Situational Awareness API**

The Situational Awareness service provides access to media such as photos and video collected from intelligent lighting sensors along public roadways and in parking lots. The media may be requested in any available date range starting near real-time and ending at the media elapse time. This data can be obtained from a single intelligent light or a group of them to provide valuable insights for city officials and local businesses to enhance their awareness of the environments. This service can be combined with other Intelligent Environments services for custom uses. Data is stored for 7 days only and then storage is reused/rewritten over.

##### **Environmental**

The environmental service returns real-time and historical data from the environmental sensors embedded in an intelligent node. Data such as temperature, pressure, humidity, vibration, and decibel levels are

## GE Intelligent Lighting Master Purchase Agreement

made available from a single intelligent node or a group of them to provide valuable insights that enhance their awareness of the cities dynamic micro-climate and broader environment.

### 3<sup>rd</sup> Party Sensors Data

This service returns data from approved non-GE sensors connected to the either the GE intelligent node's wireless network or its PoE auxiliary sensor port. With each node available to collect and distribute data from a multitude of other sensors types, such as radiation, air quality, soil quality, etc., this data stream can enable a broad set of data types that provide valuable insights from.

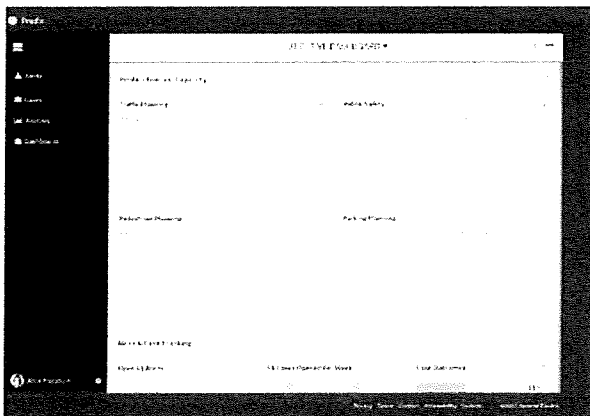
### Future APIs

Current powered by GE is investing heavily in the intelligent cities space and will be releasing new valuable APIs with new data sets on a regular basis. The edge analytics coupled with the camera sensors within each node, provide a "future proof" edge platform that will allow over the air updates of analytics to be activated to bring in new data streams. A notification will be sent through the CIO dashboard when new API data streams become available.

### CIO Dashboard

San Diego will own the source data from the intelligent cities infrastructure. In order to ensure fast, safe, secure, reliable access to data GE provides a CIO dashboard which allows:

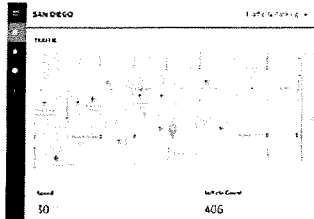
- View & control API and microservice use across your organization, partners and 3<sup>rd</sup> parties for both push and pull scenarios
- Drill into detailed views about usage by API, microservice, user and organization, including cost correlations
- Monitor for data usage patterns & receive alerts when thresholds are exceeded
- Sophisticated Role-Based Access and Control and administration per user/org



## GE Intelligent Lighting Master Purchase Agreement

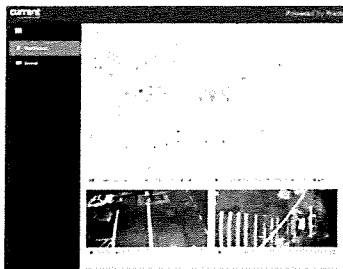
### GE INTELLIGENT CITIES SEED APPLICATIONS

GE offers a base of starter applications utilizing nodes installed in the field to gain visibility to the data and demonstrate one of the many application possibilities of utilizing the data to address challenges in the city.



**Traffic Study Buddy** - The Traffic study buddy reference app gives its users the ability to see data collected from any Intelligent street light in the city. By being able to see both historical and near real-time data, the user is able to see data such as sensor location, vehicle speed, count, lane use, and direction of travel. Simply click on any intelligent street light to get details of traffic from that area of interest.

**City Sight** - The city sight seed app utilizes the situational awareness API and gives its users the ability to view images and short videos on demand from a node of choice from a responsive web application. The data is limited to the amount of local storage on the node (approx. 7 days).



**ParkingView** - The parking view seed app utilizes the parking planning API and gives users the ability to identify on street parking spaces by availability in real time. As parking spaces become occupied or unoccupied, an indicator where that parking space is changes from green (available) to red (unavailable). In addition to real time updates of parking space status, the user can search for a location of interest through the search bar. This application will be available on the apple and android store for free download.



San Diego will be entitled to other Seed App's that GE makes available throughout the contract term.

## GE Intelligent Lighting Master Purchase Agreement

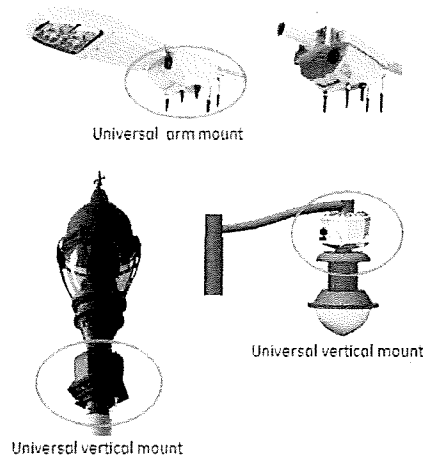
### Listings of Currently Available Data Services and Pricing (USD)

Data, Services		Initial
		\$ 1,842,432
	Predix Platform: security, connectivity (edge-to-cloud), storage, access	\$ 25,000
12GB (41MM events)/mo	Parking - API	\$ 207,360
6GB (123K events)/mo	Car Image on Demand - API	\$ -
31GB (77MM events)/mo	Traffic - API	\$ 20,736
55GB (14K events)/mo	Public Safety - API	\$ -
124GB (311MM events)/mo	Pedestrian Planning - API	\$ 20,736
4GB (10MM events) /mo	Environment Data - API	\$ -
Civic Smart	Civic Smart (note: does <u>not</u> included existing contract values)	\$ 128,600
hosting, network, etc.	Lightgrid Controls	\$ -
	Commissioning	\$ 1,440,000

The City of San Diego will be provided the access to these services listed above for 12 months at no charge. The City has agreed to work with GE's representatives and introduce them into the individual City departments to help the City gain sponsorship and budget for continued use of these and any future services which the City will be entitled to as they are made available. The start date of the 12 month no charge access shall begin on the day the first Intelligent Fixture is shipped to the City.

Exhibit C

**IC NODE GRAPHIC WITH TEXT BOX DESCRIPTIONS OF COMPONENTS AND  
FUNCTIONALITY**



**INTELLIGENT NODE HARDWARE SPECIFICATIONS AND TECHNOLOGY**

**GE Intelligent Node in Integral or Stand Alone Configurations**

GE's Intelligent Node, connected to LED fixtures, can see, hear and feel, providing a connected hub of data collection for endless applications. The can be integrated Node into the fixture (Cobrahead) or can be standalone (Area, Post Top/Decorative). The GE Intelligent Cities 2.0 node specifications include the following. Items marked by "\*" will be available with the Intelligent Cities 2.1 node:

**1. Electrical**

- Input Voltage: 120-277V and 480V
- Input Frequency: 50 or 60 Hz
- Input Surge Rating: 20KV
- Maximum Input Wattage: 30W

**2. Mechanical**

- Maximum weight: 25 lbs.
- Ingress Protection: IP65+
- No visible wiring for Power or Controls
- No externally visible cameras
- Cameras with field of view protection under cold temperature conditions
- Motorized camera adjustment for remote calibration

**3. Environment**

- Operating Temperature: -20C to +40C

## GE Intelligent Lighting Master Purchase Agreement

- Humidity: 0-85%

### **4. Metering\***

- Utility grade meter with a 0.5% accuracy
- Ability to store Energy consumption data every 15 minutes to support Time of use tariffs

### **5. On-Board Storage**

- 512GB Solid State Drive
- Ability to store and forward to manage intermittent connectivity

### **6. Edge Analytics**

- Ability to do analytics at the edge to minimize cost of data transfer and latency
- Analytics includes
  - Vehicle Detection and Counting
  - Parking Occupancy Detection
  - Object Velocity Measurement
  - Pedestrian Detection and Counting
  - Occupancy Change Detection
- Ability to integrate 3<sup>rd</sup> Party Video Analytic and perform multiple analytics concurrently
- 50 micro second accuracy time stamp

### **7. Edge Security**

- Support device unique certificate based authentication and enrollment
- Supports secure protocols for data streaming
- Has a secure Boot Loader
- Has capability to store and forward with encryption at rest and in transit
- Has a Trusted Platform Module or equivalent protection

### **8. Backhaul Communication**

- Supports high bandwidth (>5 Mbps) communications using LTE and Wi-Fi /Fiber
- Supports RTSP Protocol for Interface with Video Management systems such as Genetec\*

### **9. Edge Sensors**

- Video: up to 2x1080p for human consumption, 2xQVGA for machine vision
- Audio: Microphones
- Environmental Sensors: Temperature, Pressure, Humidity, Vibration
- Public Wi-Fi Access Point (ordered separately)

### **10. External Sensor Communication**

- Supports communication with other external sensors (such as Air Quality) via Wi-Fi or BLE or Bluetooth

## GE Intelligent Lighting Master Purchase Agreement

### Exhibit D

#### **Customer Support and Service Levels**

##### **Customer Support Services**

GE shall provide support services for Products and Services in accordance with the following terms.

##### **Service Levels Agreement**

This policy ("SLA") governs the use of certain Services under the terms of the Master Purchase Agreement between GE and Customer. This SLA applies only to Services provided by GE that have been specified in the Master Purchase Agreement, or in a valid Order Form accepted pursuant to Section 2.2, as being governed by this SLA. This SLA applies separately to each account using the Services. Unless otherwise provided herein, this SLA is subject to the terms of the Master Purchase Agreement and capitalized terms will have the meaning specified in the Master Purchase Agreement. GE reserves the right to change the terms of this SLA in accordance with the Master Purchase Agreement.

##### ***Service Commitment***

GE will use commercially reasonable efforts to make the Services available with a Monthly Uptime Percentage (defined below) of at least [99.9%] during any monthly billing cycle (the "**Service Commitment**"). In the event the Services do not meet the Service Commitment, you will be eligible to receive a Service Credit as described below.

##### ***Definitions***

- "**Error Rate**" means: (i) the total number of internal server errors returned by the Services divided by (ii) the total number of requests during that five minute period. GE will calculate the Error Rate for each account as a percentage for each five minute period in the monthly billing cycle. The calculation of the number of internal server errors will not include errors that arise directly or indirectly as a result of any of the SLA Exclusions (as defined below).
- "**Monthly Uptime Percentage**" is calculated by subtracting from 100% the average of the Error Rates from each five minute period in the monthly billing cycle.
- A "**Service Credit**" is a dollar credit, calculated as set forth below, that GE may credit back to an eligible account.

##### ***Service Credits***

Service Credits are calculated as a percentage of the total charges paid by Customer for the Service Offerings for the billing cycle in which the error occurred in accordance with the schedule below.

<b>Monthly Uptime Percentage</b>	<b>Service Credit Percentage</b>
Equal to or greater than 99% but less than 99.9%	[10]%
less than 99%	[25]%

GE will apply any Service Credits only against future Services payments otherwise due from Customer. At GE's discretion, GE may issue the Service Credit to the credit card or bank account used to pay for the billing cycle in which the error occurred. Service Credits will not entitle Customer to any refund or other payment from GE. A Service Credit will be applicable and issued only if the credit

## GE Intelligent Lighting Master Purchase Agreement

amount for the applicable monthly billing cycle is greater than one dollar (\$1 USD). Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Master Purchase Agreement, Customer's sole and exclusive remedy for any unavailability, non-performance, or other failure by GE to provide the Services is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.

### *Credit Request and Payment Procedures*

To receive a Service Credit, Customer must submit a claim by opening a case in GE's Support Center. To be eligible, the credit request must be received by GE by the end of the second billing cycle after which the incident occurred and must include:

- i. the words "SLA Credit Request" in the subject line;
- ii. the dates and times of each incident of non-zero Error Rates that Customer is claiming; and
- iii. Customer's request logs that document the errors and corroborate Customer's claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

If the Monthly Uptime Percentage applicable to the month of such request is confirmed by GE and is less than 99.9%, then GE will issue the Service Credit to Customer within one billing cycle following the month in which such request is confirmed by GE. Customer's failure to provide the request and other information as required above will disqualify Customer from receiving a Service Credit.

### *SLA Exclusions*

The Service Commitment does not apply to any unavailability, suspension or termination of the Services, or any other Services performance issues: (i) that result from a suspension pursuant to the Master Purchase Agreement; (ii) caused by factors outside of GE's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of the Services; (iii) that result from any actions or inactions of Customer or any third party; (iv) that result from Customer's equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within GE's direct control); (v) arising from GE's suspension and termination of Customer's license to use the Services in accordance with the Master Purchase Agreement; or (vi) that result from exceeding usage limits stated in the Services documentation (collectively, the "**SLA Exclusions**"). If availability is impacted by factors other than those used in GE's calculation of the Error Rate, then GE may issue a Service Credit considering such factors at GE's discretion.

## GE Intelligent Lighting Master Purchase Agreement

### Exhibit E

#### Warranty Information

##### Current, Powered by GE Intelligent Fixture Five-Year Limited Warranty

**WARRANTY:** Subject to the terms and conditions specified in this Limited Warranty, Current, powered by GE, a business unit of General Electric Company ("GE") warrants that GE Intelligent Fixtures/Intelligent Node ("Product") purchased directly from GE will be free from defects in material and workmanship for a period of five (5) years from the date of manufacture. The warranty for licensed software is governed by the Software License and Maintenance and Support Services Agreement.

**REMEDY:** If a Product fails to meet the warranty set forth above, then GE will, at its option, either (i) repair the defective Product, (ii) provide a free replacement Product or replacement parts, F.O.B. GE's warehouse, or (iii) refund the purchase price paid to GE for the Product or replacement parts. Any replacement Product or part will be comparable in function, but may not be identical to the original. The replacement or repaired Product is warranted for the remainder of the original warranty period. GE is not responsible for labor and other costs associated with removal or reinstallation.

**TERMS AND CONDITIONS:** This Limited Warranty is VOID if Purchaser or the user fails to comply with any applicable instructions and recommendations of GE; if any components are replaced with components of other manufacturers; or if the Product is operated outside the specified electrical values or is subject to abnormal use or stress, including under/over voltage conditions, excessive switching cycles, and operation in environmental conditions (e.g., ambient temperature) outside normal specified operating range.

GE shall not be responsible for any failure of Products that result from external causes, including, but not limited to, acts of God; power surges that exceed product specification; improper power supply; fault or negligence of the Purchaser or user; improper or unauthorized use, installation, handling, storage, maintenance, alteration or service; any abuse, misuse, abnormal use or use in violation of any applicable standard, code or instructions for use in installations including those contained in the latest National Electrical Code (NEC), the Standards for Safety of Underwriters Laboratory, Inc. (UL), Standards for the American National Standards Institute (ANSI), in Canada, the Canadian Standards Association (CSA), Europe (CE), Australia (C-Tick); or any cause other than a defect in the material or workmanship of the Product itself.

This limited warranty extends only to Purchaser, but GE will honor, under the terms of this Limited Warranty, valid warranty claims by Purchaser arising from a failure to meet the above warranty when the Product has been resold in new condition and used only by the original end user.

**HOW TO MAKE A WARRANTY CLAIM:** GE must issue a Return Material Authorization (RMA#) for all requests for warranty review. To make a warranty claim, retain the failed Products and notify your GE sales or customer service representative in writing within thirty (30) days of the failure. After contacting GE and receiving an RMA number, Purchaser shall promptly return the Product after receiving instructions regarding if, when, and where to ship the Product. The Product must be returned within 10 days of receiving RMA number, and the shipping box must be clearly marked with RMA number. Failure to follow this procedure shall void this Limited Warranty. *GE reserves the right to examine all failed Product to determine the cause of failure and patterns of usage* and shall be the sole judge as to whether any Product is defective and covered under this Limited Warranty.

## **GE Intelligent Lighting Master Purchase Agreement**

**LIMITS OF LIABILITY:** THE FOREGOING LIMITED WARRANTY CONSTITUTES THE SOLE AND EXCLUSIVE WARRANTY AND REMEDY OF THE PURCHASER AND THE SOLE LIABILITY OF GE FOR THE SPECIFIED LED LUMINAIRES AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS MADE OR IS TO BE IMPLIED. IN NO EVENT SHALL GE BE LIABLE FOR ANY OTHER COSTS OR DAMAGES INCLUDING LOST PROFITS, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.

# II

## FINANCING DOCUMENTATION

**A. CALIFORNIA MASTER LEASE AGREEMENT**, between GE Government Finance, Inc. and the City of San Diego, California.

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CALIFORNIA MASTER LEASE AGREEMENT

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THIS CALIFORNIA MASTER LEASE AGREEMENT ("Agreement"), dated as of the Agreement Date, is made and entered into by and between GE Government Finance, Inc., a corporation duly organized and existing under the laws of the state of Delaware, as lessor ("Lessor"), whose principal business address is as shown on the execution page hereof; and the lessee identified on the execution page hereof ("Lessee"), a California governmental entity whose address is as shown on the execution page hereof.

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

**ARTICLE I: DEFINITIONS AND EXHIBITS**

**Section 1.1. Definitions.** The following terms have the meanings specified below unless the context clearly requires otherwise.

Agreement Date: The date so designated on the execution page hereof.

Contractor: Each of the manufacturers or vendors from whom Lessee has ordered or with whom Lessee has contracted for the manufacture, delivery and/or installation of the Equipment.

Contracts: This Agreement, each Equipment Schedule and each Escrow Agreement (if applicable).

Counsel: An attorney duly admitted to the practice of law before the highest court of the State.

Date of Issue: With respect to each Lease, the date Interest starts to accrue as indicated in the related Equipment Schedule.

Determination of Taxability: Any determination, decision, decree or advisement by the Commissioner of Internal Revenue, or any District Director of Internal Revenue or any court of competent jurisdiction, or an opinion obtained by Lessor or counsel nationally recognized on the subject of municipal bonds, that an Event of Taxability shall have occurred. A Determination of Taxability also shall be deemed to have occurred on the first to occur of the following:

- (a) the date when Lessee files any statement, supplemental statement, or other tax schedule, return or document, which discloses that an Event of Taxability shall have occurred;
- (b) the effective date of any federal legislation enacted or federal rule or regulation promulgated after the date of this Agreement that causes an Event of Taxability; or
- (c) if upon sale, lease or other deliberate action within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an unqualified opinion of counsel nationally recognized on the subject of municipal bonds to the effect that such action will not cause interest on the related Lease to become includable in the gross income of the recipient.

Equipment: All items of property described in Equipment Schedules.

Equipment Group: The Equipment listed in a single Equipment Schedule.

Equipment Schedule: A schedule consisting of the separate but like numbered pages of an Exhibit A that was completed with respect to an Equipment Group and executed by Lessor and Lessee.

Escrow Agent: The escrow agent under an Escrow Agreement, and its successors and assigns permitted pursuant to the terms of such Escrow Agreement.

Escrow Agreement: If applicable, an Escrow Agreement among Lessor, Lessee and Escrow Agent relating to the disbursement of the Lease Proceeds under a Lease.

Events of Default: With respect to each Lease, those events described in Section 12.1.

Event of Taxability: With respect to any Lease: (i) the application of the Lease Proceeds in such manner that such Lease becomes an "arbitrage bond" within the meaning of Code Sections 103(b)(2) and 148, with the result that interest on such Lease is or becomes includable in a holder's gross income (as defined in Code Section 61); or (ii) if as the result of any act, failure to act or use of the Lease Proceeds or change in use of the Equipment or any misrepresentation or inaccuracy in any of the representations, warranties or covenants contained in this Agreement or the related Equipment Schedule by Lessee or the enactment of any federal legislation or the promulgation of any federal rule or regulation after the date of this Agreement, the interest on such Lease is or becomes includable in a holder's gross income (as defined in Code Section 61).

Fiscal Year: The 12-month fiscal period of Lessee which commences in every year and ends in every year on the dates shown on the execution page hereof.

Final Termination Date: With respect to any Equipment Group, the date specified in the related Equipment Schedule, which date corresponds to the end of the useful life of such Equipment Group.

Funding Date: With respect to each Lease, the earlier of the date Lessor makes payment to the Contractor(s) for the purchase price of the related Equipment Group or the date Lessor deposits funds with an Escrow Agent.

Gross-Up Rate: With respect to any Lease, an interest rate equal to the interest stated for such Lease plus a rate sufficient such that the total interest to be paid on any Payment Date would, after such interest was reduced by the amount of any federal, state or local income tax (including any interest or penalties) actually imposed thereon, equal the amount of interest due with respect to such Lease.

Interest: The portion of any Rental Payment designated as and comprising interest as shown in the related Equipment Schedule.

Lease: With respect to each Equipment Group, this Agreement and the related Equipment Schedule, which shall constitute a separate contract relating to such Equipment Group. This Agreement contains the general terms and conditions with respect to each Lease. Lessor may assign its rights under various Leases to different assignees. Each such assignee has the rights only in the Lease it owns; a Non-Appropriation or Event of Default under a Lease owned by Lessor or an assignee does not affect any of the Leases not owned by Lessor or by such assignee.

Lease Date: The date so designated in an Equipment Schedule.

Lease Proceeds: The proceeds of a Lease as shown on the related Equipment Schedule.

Lease Term: The period during which a Lease is in effect as specified in Section 4.1.

Lessor: GE Government Finance, Inc. and, for purposes of determining the ownership of a Lease, shall include Lessor, GE Capital US Holdings, Inc. and their affiliates.

Lien: Any mortgage, security interest, lease, lien, pledge, charge, encumbrance or claim of any kind.

Net Proceeds: Any insurance proceeds or condemnation awards paid with respect to any Equipment remaining after payment therefrom of all expenses incurred in the collection thereof.

Payment Date: The date upon which any Rental Payment is due and payable as provided in the related Equipment Schedule.

Principal: The portion of any Rental Payment designated as principal in the related Equipment Schedule.

Prepayment Price: With respect to any Lease and as of any Payment Date the amount so designated and set forth opposite each such date in the related Equipment Schedule.

Prior Interest Payment: Payment of Interest on a Lease made on or prior to the date of any Determination of Taxability.

Rental Payment: With respect to any Lease, the payment due from Lessee to Lessor on each Payment Date during the Lease Term as shown in the related Equipment Schedule.

Specifications: The bid specifications and/or purchase order pursuant to which Lessee has ordered any Equipment from a Contractor.

State: The State in which Lessee is located.

State and Federal Law or Law: The Constitution and any law of the State and any charter, ordinance, rule or regulation of any agency or political subdivision of the State; and any law of the United States, and any rule or regulation of any federal agency.

## **Section 1.2. Exhibits.**

Exhibit A: Form of equipment schedule executed by Lessor and Lessee describing an Equipment Group, and setting forth the Rental Payments and Prepayment Prices.

Exhibit B: Form of opinion of Counsel to Lessee.

## **ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 2.1. Representations, Warranties and Covenants of Lessee.** Lessee represents and warrants and covenants as follows:

(a) Lessee is the State or a political subdivision of the State, duly organized and existing under the Constitution and laws of the State, and Lessee's exact legal name is as set forth on the execution page hereof. Lessee is authorized under the Constitution and laws of the State to enter into the Contracts and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Agreement and each Lease.

(b) The execution and delivery of the Contracts by the officer of Lessee executing such documents has been duly authorized by appropriate official action, and such action is in compliance with all public bidding and other State and Federal Laws applicable to the Contracts and the acquisition and financing of the Equipment by Lessee. No bid protest or other challenge to the award of the Lease to Lessor has been made or is threatened. All requirements have been met and procedures have occurred in order to ensure the enforceability of the Contracts against Lessee and the Contracts and any related documents constitute the legal, valid and binding obligations of Lessee, enforceable in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

(c) None of the execution and delivery of the Contracts or any related document, the consummation of the transactions contemplated by the Contracts or the fulfillment of or compliance with the terms therein violates any law, rule, regulation or order, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessee is now a party or by which it is bound, or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited Lien or encumbrance of any nature whatsoever upon any of the property or assets of Lessee under the terms of any instrument or agreement.

(d) 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 Lease or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or any Lease hereunder or any other transaction of the Lessee which is similar hereto, or the exclusion of the Interest

from gross income for federal tax purposes under the Code, or would materially and adversely affect any of the transactions contemplated by this Agreement or any Lease, including, but not limited to, Lessee's acquisition of Equipment.

(e) Unless otherwise specified in an Equipment Schedule (solely with respect to the Equipment leased pursuant to such schedule), Lessee owns the real estate and facilities where the Equipment will be located and, during the Lease Term, will continue to own such property.

(f) Lessee has or will have good and absolute title to all Equipment and all proceeds thereof, free and clear of all Liens except for the security interest created pursuant to this Agreement and each Equipment Schedule.

(g) Each Lease is a "state or local bond" within the meaning of Section 103 of the Code.

(h) Lessee will take no action that would cause the Interest portion of the Rental Payments to become includable in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations promulgated thereunder (the "Regulations"), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest portion of the Rental Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations; all as amended from time to time (including, without limitation, the calculation and payment of any rebate required to preserve such exclusion). Lessee will submit to the Secretary of the Treasury information reporting statements and other information relating to each Lease at the times and in the forms required by the Code and the Regulations.

(i) Lessee reasonably expects that it will not sell or otherwise dispose of all or part of an Equipment Group during the related Lease Term.

(j) Lessee has not and will not create or establish any sinking fund, reserve fund or other similar fund to pay Lease Payments.

(k) Lessee acknowledges that in determining whether all or a portion of the Lease Proceeds of each Lease is used, directly or indirectly, for a private use, use by an entity other than Lessee pursuant to a management contract or other service contract must be examined. Lessee covenants that all agreements between Lessee and such private entities shall meet the requirements of Section 1.141-3(b)(4) of the Regulations and Internal Revenue Service Procedure 97-13.

(l) Lessee will have the sole use and possession of the Equipment. Lessee will use the Equipment only to perform essential governmental or proprietary functions of Lessee within the scope of Lessee's authority. Lessee will not permit the Equipment to be used in, for or by any private commercial activity.

(m) No portion of any Lease Proceeds will be used directly or indirectly to replace funds of Lessee or used directly or indirectly to acquire securities or obligations which may be reasonably expected, on the date of execution of each Equipment Schedule, to produce a yield materially higher than the yield of the Lease. All of the Lease Proceeds for each Lease will be expended on Equipment with due diligence and in no event later than three (3) years from the related Funding Date.

(n) No Lease is or will be part of a transaction or series of transactions that (i) attempts to circumvent the provisions of Section 148 of the Code or the Regulations which enables Lessee to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage; or (ii) increases the burden on the market for tax-exempt obligations in any manner, including without limitation by selling obligations, or issuing them sooner, or allowing them to remain outstanding longer, than would otherwise be necessary.

(o) Lessee acknowledges that the continued exclusion of Interest on the Leases from gross income of the recipients thereof for purposes of federal income taxation depends, in part, upon compliance with the arbitrage limitations imposed by Section 148 of the Code, including the rebate requirement described below. Lessee hereby agrees and covenants that it will not permit at any time or times any of the proceeds of any Lease or other funds of Lessee to be used, directly or indirectly, to acquire any asset or obligation the acquisition of which would cause any Lease to be "arbitrage bonds" for purposes of Section 148 of the Code. Lessee further agrees and covenants that it shall do and perform all acts and things necessary in order to ensure that the requirements of Section 148 of the Code are met, including the rebate requirements of Section 148(f) of the Code. Section 148(f) of the Code requires

the payment to the United States of the excess of the amount earned on the investment of proceeds over the amount that would have been earned on such investments had the amount so invested been invested at a rate equal to the yield on the Lease, together with any income attributable to such excess. In connection with the rebate requirement, Lessee shall maintain (or cause to be maintained) records of all amounts paid to the United States pursuant to this Section and records of the rebate calculations pertaining to the investment of the proceeds of the Leases until six years after the final retirement of each Lease.

(p) Lessee has not and will not create or establish any sinking fund, reserve fund or other similar fund to pay Rental Payments.

(q) Payment of Rental Payments and other amounts due under each Lease is not directly or indirectly guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof and Lessee is not using any funds provided by the United States Government whether by loan, grant or other program or pursuant to the American Recovery and Reinvestment Act of 2009 to pay a portion of the purchase price of the Equipment or any part of the Rental Payments.

(r) Upon execution of this Agreement and each Equipment Schedule, Lessee will provide to Lessor an opinion of its Counsel in the form attached hereto as Exhibit B and a certified copy of the resolution adopted by its governing body with respect to this Agreement and each Lease or evidence of other official action authorizing this Agreement and each Lease.

(s) Lessee acknowledges that it received no legal, financial, tax or accounting advice from Lessor.

(t) Lessee acknowledges that under Article XII of this Agreement, upon an Event of Default, Lessor or the assignee, if any, of the related Lease may elect to terminate the related Lease and each other Lease that is owned by Lessor or such respective assignee and, if Lessor so elects, Lessee is required to deliver all Equipment subject to the affected Leases as instructed by Lessor or such respective assignee under Section 12.3 hereof.

(u) Lessee finds and determines that the amount of the Rental Payments set forth in each Equipment Schedule is equal to the fair rental value of the related Equipment Group during the respective Fiscal Year of Lessee in which such Rental Payments are made.

(v) The Equipment will have a useful life that is substantially in excess of the related Lease Term.

### ARTICLE III: LEASE OF EQUIPMENT

**Section 3.1. Acquisition of Equipment.** Lessee shall advise Lessor of its desire to finance equipment, the equipment cost, the Contractor of the equipment, expected delivery date and the desired lease terms for such equipment. By execution hereof, Lessor has made no commitment to finance any equipment for Lessee. Nothing herein shall obligate Lessor to finance any equipment for Lessee until Lessor has executed a related Equipment Schedule. If Lessor, in its sole discretion, determines the proposed equipment may be subject to a Lease hereunder, Lessor shall furnish to Lessee a proposed Equipment Schedule relating to the Equipment Group completed insofar as possible. Lessee shall order the Equipment Group from the appropriate Contractor or Contractors. In no event shall Lessee enter into any contract with any Contractor or issue a purchase order which references Lessor. Lessor shall have no obligation to make any payment to a Contractor or reimburse Lessee for any payment it made to a Contractor for an Equipment Group (or, if the alternative procedure described in Section 3.3 hereof is utilized, consent to a disbursement by the Escrow Agent) until five (5) business days after Lessor has received all of the following in form and substance satisfactory to Lessor: (a) an Equipment Schedule executed by Lessor and Lessee; (b) a resolution or evidence of official action taken by or on behalf of the Lessee to authorize the acquisition of the Equipment Group on the terms provided in the related Equipment Schedule; (c) evidence of insurance with respect to the Equipment Group in compliance with Article VI of this Agreement; (d) Contractor invoice(s) and/or bill of sale relating to the Equipment Group and if such invoices have been paid by Lessee, evidence of payment thereof and, if applicable, evidence of official intent to reimburse such payment as required by the Regulations; (e) if applicable, the original certificate of title or manufacturer's certificate of origin and title application if any of the Equipment Group is subject to certificate of title laws; (f) a completed and executed Form 8038-G or -GC or evidence of filing thereof with the Secretary of Treasury; (g) an opinion of Counsel and (h) any other documents or items required by Lessor.

**Section 3.2. Lease; Enjoyment; Inspection.** Lessor hereby leases to Lessee each Equipment Group made subject to an Equipment Schedule, and Lessee hereby leases from Lessor such Equipment Group, upon the terms and conditions set forth in this Agreement and in the related Equipment Schedule. During the Lease Term, Lessee shall peaceably and quietly have and hold and enjoy the Equipment Group, except as expressly set forth in this Agreement. Lessee agrees that Lessor and its agents shall have the right at all reasonable times to examine and inspect the Equipment, and Lessor and its agents shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Lessee to perform its obligations hereunder. Notwithstanding the designation of GE Government Finance, Inc. as Lessor, GE Government Finance, Inc. does not own the Equipment and by this Agreement and each Lease is merely financing the acquisition thereof for Lessee. Lessor has not been in the chain of title of the Equipment, does not operate, control or have possession of the Equipment and has no control over the Lessee or the Lessee's operation, use, storage or maintenance of the Equipment. Lessee is solely responsible for the selection of the Equipment, and the manufacturer and vendor thereof, and is solely responsible for the use, maintenance, operation and storage of the Equipment.

**Section 3.3. Alternative Procedure; Escrow Agreement.** Notwithstanding the provisions of Section 3.1, if, upon agreement by Lessor and Lessee as to any Equipment Group to be acquired and leased by Lessee under this Agreement, Lessor and Lessee enter into an Escrow Agreement with an Escrow Agent establishing an Escrow Fund from which the Equipment Group cost is to be paid (a) Lessor and Lessee shall immediately complete and execute an Equipment Schedule relating to the Equipment Group; (b) the amount deposited by Lessor into the Escrow Fund shall be repaid by the Rental Payments due under the related Lease; and (c) the Rental Payments relating to the Equipment Group shall have an aggregate Principal component equal to the amount of Lessor's deposit into the Escrow Fund and shall be due and payable as provided in the related Equipment Schedule commencing upon the deposit of funds by Lessor into the Escrow Fund. Lessee acknowledges and agrees that no disbursements shall be made from an Escrow Fund except for portions of the Equipment Group which are operationally complete and functionally independent and which may be utilized by Lessee without regard to whether the balance of the Equipment Group is delivered and accepted.

#### **ARTICLE IV: TERM**

**Section 4.1. Term.** This Agreement shall be in effect from the Agreement Date and is incorporated by reference into each Equipment Schedule executed hereunder; provided, however, no Equipment Schedules shall be executed after any Event of Default. Each Lease with respect to an Equipment Group shall be in effect for a Lease Term commencing upon the Lease Date and ending as provided in Section 4.2. If on the last day of a Lease Term with respect to any Equipment Group the Rental Payments shall not be fully paid, or provision therefor made, or if such Rental Payments shall have been abated at any time and for any reason, such Lease Term shall be extended until the date upon which all such Rental Payments shall be fully paid, except that such Lease Term shall in no event extend beyond the Final Termination Date.

**Section 4.2. Termination of Lease Term.** The Lease Term with respect to any Lease will terminate upon the occurrence of the first of the following events: (a) the payment of the Prepayment Price by Lessee pursuant to Article X; (b) an Event of Default by Lessee and Lessor's or the related assignee's election to terminate such Lease pursuant to Article XII; or (c) the payment by Lessee of all Rental Payments and all other amounts authorized or required to be paid by Lessee pursuant to such Lease.

#### **ARTICLE V: RENTAL PAYMENTS**

**Section 5.1. Rental Payments.** Subject to Section 5.3, Lessee agrees to pay Rental Payments due under each Lease with to an Equipment Group during the related Lease Term as rental for the use and possession of such Equipment Group in the amounts and on the dates specified in the related Equipment Schedule. A portion of each Rental Payment is paid as and represents the payment of Interest as set forth in the related Equipment Schedule, and the first Rental Payment will include Interest accruing from the Date of Issue. Lessor is authorized to insert the due date of the first Rental Payment on the related Equipment Schedule. All Rental Payments shall be paid to Lessor, or to such assignee(s) to which Lessor has assigned such Rental Payments as specified in Article XI, at such place as Lessor or such assignee(s) may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments exclusively from moneys legally available therefor, in lawful money of the United States of America.

**Section 5.2. Gross-Up Rate.** Upon the occurrence of an Event of Taxability, Lessee shall make future Rental Payments calculated at the Gross-Up Rate. Also, Lessee shall make immediately, upon demand of Lessor or its assignee, a payment sufficient to supplement the Prior Interest Payments at the Gross-Up Rate and such obligation shall survive the termination of this Agreement and the Lease Terms.

**Section 5.3. Abatement.** During any period in which, by reason of material damage or destruction or taking under the power of eminent domain (or sale to any entity threatening the use of such power) or material title defect with respect to any Equipment Group, there is substantial interference with the use and possession by Lessee of any part of such Equipment Group, the Rental Payments due under the related Lease with respect to such Equipment Group shall be abated proportionately in whole or in part. Lessee shall immediately notify Lessor upon the occurrence of any event causing substantial interference with Lessee's use and possession of any Equipment, and such notice shall be provided prior to the abatement of any Rental Payments. The amount of abatement shall be such that the remaining rental obligation for a given rental period represents fair consideration for the use and possession of the portions of such Equipment Group that are not affected by such interference. Such abatement shall commence on the date that Lessee's use and possession of all or a portion of such Equipment Group is restricted because of such interference and end on the earlier of the date on which the use and possession thereof are restored to Lessee or the date on which Lessee uses the Net Proceeds of insurance or a condemnation awards to pay the Rental Payments or the applicable Prepayment Price. In the event of any such interference, this Agreement and the related Lease shall continue in full force and effect. Lessee waives the benefits of Civil Code Section 1932 and any and all other rights to terminate this Agreement and the related Lease by virtue of any interference with the use and possession of any Equipment.

**Section 5.4. Appropriations.** The person or entity in charge of preparing Lessee's budget will include in the budget request for each Fiscal Year the Rental Payments to become due in such Fiscal Year with respect to each Lease and the related Equipment Group, and will use all reasonable and lawful means available to secure the appropriation of money for such Fiscal Year sufficient to pay all such Rental Payments coming due therein. The covenants on the part of Lessee contained in this Agreement as incorporated into each Lease, including the covenant to budget and appropriate amounts necessary to make Rental Payments, shall be deemed to be duties imposed by law, and it shall be the duty of each and every public official of Lessee to take such action and do such things as are required by law in the performance of the official duty of such officials to enable Lessee to carry out and perform the covenants and agreements in this Agreement and each Lease agreed to be carried out and performed by Lessee. Each Lease represents a firm lease and not a non-appropriation lease.

**Section 5.5. Legally Available Funds.** The obligations of Lessee, including its obligation to pay the Rental Payments due in any Fiscal Year shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State. Rental Payments shall be made from any funds legally available therefor, but nothing herein shall constitute a pledge by Lessee of any taxes or other moneys (other than moneys lawfully appropriated from time to time by or for the benefit of Lessee for this Agreement and the Net Proceeds of the Equipment) to the payment of any Rental Payment or other amount coming due hereunder.

**Section 5.6. Rental Payments To Be Unconditional.** Except as provided in Section 5.3, the obligation of Lessee to make Rental Payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between Lessee and Lessor or between Lessee and Contractor or any other person, Lessee shall make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make Rental Payments or other payments required hereunder. Lessee's obligation to make Rental Payments or other payments shall not be abated on account of failure of the Equipment to perform as desired or obsolescence of the Equipment and shall not be abated through accident or unforeseen circumstances except as provided in Section 5.3.

## **ARTICLE VI: INSURANCE AND RISK OF LOSS**

**Section 6.1. Liability and Property Insurance.** Lessee shall, at its own expense, procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for personal injuries, death or damage to or loss of property arising out of or in any way relating to the Equipment sufficient to protect Lessor from liability in all events, with a coverage limit of not less than \$1,000,000 per occurrence unless a different coverage minimum with respect to particular Equipment is required by Lessor and specified in the related Equipment Schedule, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance and flood insurance, in an amount equal to the greater of the full replacement

cost of the Equipment with new equipment having substantially similar Specifications or the applicable Prepayment Price of each Equipment Group.

**Section 6.2. Workers' Compensation Insurance.** If required by State Law, Lessee shall carry workers' compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

**Section 6.3. Rental Interruption and Loss of Use and Occupancy Insurance.** Lessee shall maintain or cause to be maintained at its expense, throughout each Lease Term, rental interruption insurance against loss of use of the related Equipment Group or portions thereof, with coverage equal to the maximum total Rental Payments payable under the related Lease by Lessee for any consecutive 24-month period. The policy shall insure against abatement of Rental Payments payable by Lessee resulting from Lessee's loss of use of the Equipment or any substantial portion thereof and caused by any and all perils, either insured or uninsured, including acts of God. The Net Proceeds of such insurance shall be payable to Lessor in amounts proportionate to Lessee's loss of use of the Equipment and the corresponding rental abatement, if any, and shall supplement Rental Payments made by Lessee, if any, during the period in which Lessee's use and occupancy of the Equipment is being restored in sufficient amounts to make Lessor whole.

**Section 6.4. Requirements for All Insurance.** All insurance policies required by this Article shall be taken out and maintained with insurance companies acceptable to Lessor; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties and loss payees at least thirty (30) days before the cancellation or revision becomes effective. No insurance shall be subject to any co-insurance clause. Each insurance policy required by this Article shall name Lessor as an additional insured party and loss payee without regard to any breach of warranty or other act or omission of Lessee and shall include a lender's loss payable endorsement for the benefit of Lessor. Prior to the delivery of Equipment, Lessee shall deposit with Lessor evidence satisfactory to Lessor of such insurance and, prior to the expiration thereof, shall provide Lessor evidence of all renewals or replacements thereof.

**Section 6.5. Risk of Loss.** As between Lessor and Lessee, Lessee assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, for loss or damage to any Equipment and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or the property of others. Whether or not covered by insurance, Lessee hereby assumes responsibility for and agrees to reimburse Lessor and its assignees for and, to the extent permitted by law, will indemnify and hold Lessor and its assignees harmless from and against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of this Agreement, the transactions contemplated hereby and the Equipment, including but not limited to, (a) the selection, manufacture, purchase, acceptance or rejection of Equipment or the ownership of the Equipment, (b) failure of Equipment to be delivered, 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) a breach of Lessee of any of its covenants or obligations hereunder and (f) 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. This provision shall survive the termination of this Agreement.

**Section 6.6. Damage to or Destruction of Equipment.** Lessee shall provide a complete written report to Lessor immediately upon any loss, theft, damage or destruction of any Equipment and of any accident involving any Equipment. If all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair ("Damaged Equipment"), Lessee shall as soon as practicable after such event either: (a) replace the same at Lessee's sole cost and expense with equipment having substantially similar Specifications and of equal or greater value to the Damaged Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's approval, whereupon such replacement equipment shall be substituted in the applicable Lease and the other related documents by appropriate endorsement or amendment; or (b) pay the applicable Prepayment Price of the Damaged Equipment. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If, within forty-five (45) days of the loss occurrence, (a) Lessee fails to notify Lessor; (b) Lessee and Lessor fail to execute an amendment to the applicable Equipment Schedule to delete the Damaged Equipment and add the replacement equipment or (c) Lessee has failed to pay the applicable Prepayment Price, then Lessor may, at its sole discretion, declare the applicable Prepayment Price

of the Damaged Equipment, to be immediately due and payable, and Lessee is required to pay the same. The Net Proceeds of insurance with respect to the Damaged Equipment shall be made available by Lessor to be applied to discharge Lessee's obligation under this Section. The payment of the Prepayment Price and the termination of Lessor's interest in the Damaged Equipment is subject to the terms of Section 10.3 hereof.

#### **ARTICLE VII: OTHER OBLIGATIONS OF LESSEE**

**Section 7.1. Use; Permits.** Lessee shall exercise due care in the installation, use, operation and maintenance of the Equipment, and shall not install, use, operate or maintain the Equipment illegally, improperly, carelessly or for a purpose or in a manner contrary to that contemplated by this Agreement. Lessee shall obtain all permits and licenses necessary for the installation, operation, possession and use of the Equipment. Lessee shall comply with all State and Federal Laws applicable to the installation, use, possession and operation of the Equipment, and if compliance with any such State and Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at its expense. Lessee shall comply with all license and copyright requirements of any software license used in connection with the Equipment. Lessee shall not use any item of Equipment to haul, convey, store, treat, transport or dispose of any "hazardous substances" or "hazardous waste" as such terms are defined in any federal, state or local law, rule or regulation pertaining to the protection of the environment (together, "Environmental Laws"). Lessee agrees that if Lessee is required to deliver any item of Equipment to Lessor or Lessor's agent, the Equipment shall be delivered free of all substances which are regulated by or form a basis for liability under any Environmental Law. Lessee shall comply with all license and copyright requirements of any software used in connection with the Equipment.

**Section 7.2. Maintenance of Equipment by Lessee.** Lessee shall keep the Equipment at the address specified in the related Equipment Schedule and shall notify Lessor in writing prior to moving the Equipment to another address. Lessee shall, at its own expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Equipment in such condition, and in compliance with State and Federal Laws, ordinary wear and tear excepted. Lessee shall maintain Equipment in a condition suitable for certification by the manufacturer thereof (if certification is available) in accordance with any insurance policy provision, applicable prevailing industry standards and, if applicable, the manufacturer's specifications therefor. In the event that any parts or accessories forming part of any item or items of Equipment become worn out, lost, destroyed, damaged beyond repair or otherwise rendered unfit for use, Lessee, at its own expense and expeditiously, will replace or cause the replacement of such parts or accessories by replacement parts or accessories free and clear of all liens and encumbrances and with a value and utility at least equal to that of the parts or accessories being replaced (assuming that such replaced parts and accessories were otherwise in good working order and repair). All such replacement parts and accessories shall be deemed to be incorporated immediately into and to constitute an integral portion of the Equipment and, as such, shall be subject to the terms of this Agreement.

**Section 7.3. Taxes, Other Governmental Charges and Utility Charges.** Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind which are at any time lawfully assessed or levied against or with respect to the Equipment, the Rental Payments or any part thereof, or which become due during the Lease Term, whether assessed against Lessee or Lessor. Lessee shall also pay when due all utilities and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body that may be secured by a lien on the Equipment. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

**Section 7.4. Advances.** If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary 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 18% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

## ARTICLE VIII: TITLE; SECURITY INTEREST; LIENS

**Section 8.1. Title.** During the Lease Term, legal title to and ownership of all Equipment and any and all repairs, replacements, substitutions and modifications thereto shall be in Lessee and Lessee shall take all actions necessary to vest such title and ownership in Lessee.

**Section 8.2. Security Interest.** Lessee grants to Lessor a continuing, first priority security interest in and to the Equipment, all repairs, replacements, substitutions and modifications thereto or thereof and in investments and funds held under the Escrow Agreement (if applicable) and all proceeds of the foregoing in order to secure Lessee's payment of all Rental Payments and the performance of all other obligations to be performed by Lessee. Each Equipment Group constitutes security and collateral for Lessee's obligations under all Leases that are owned by the same entity. Lessee shall deliver or cause to be delivered to Lessor the original certificates of title relating to all vehicular Equipment. If requested by Lessor, Lessee shall obtain a landlord and/or mortgagee's consent and waiver with respect to the Equipment. Upon termination of a Lease with respect to any Equipment Group through exercise of Lessee's option to prepay pursuant to Article X or through payment by Lessee of all Rental Payments and other amounts relating thereto, Lessor's security interest in such Equipment Group shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the termination of Lessor's security interest in such Equipment Group. Lessee authorizes Lessor to file financing statements and amendments thereto describing the Equipment and containing any other information required by the applicable Uniform Commercial Code and all proper terminations of the filings of other secured parties with respect to the Equipment, in such form and substance as Lessor, in its sole discretion, may determine. Lessee ratifies its prior authorization for Lessor to file financing statements and amendments thereto describing the Equipment and containing any other information required by the Uniform Commercial Code if filed prior to the date hereof.

**Section 8.3. Liens.** During the Lease Term, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any Lien on or with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such Lien. Lessee shall reimburse Lessor for any expenses incurred by Lessor to discharge or remove any Lien.

**Section 8.4. Modification of Equipment.** 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 functions, value or use of the Equipment.

**Section 8.5. Personal Property.** The Equipment is and shall at all times be and remain personal property and not fixtures.

## ARTICLE IX: WARRANTIES

**Section 9.1. Selection of Equipment.** The Equipment and the Contractor have been selected by Lessee, and 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 the Contractor or its sales representative of the order submitted, or any delay or failure by the Contractor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee.

**Section 9.2. Contractor's Warranties.** Lessor hereby assigns to Lessee for and during the related Lease Term, all of its interest, if any, in all Contractor's warranties, guarantees and patent indemnity protection, express or implied, issued on or applicable to an Equipment Group, and Lessee may obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense. Lessor has no obligation to enforce any Contractor's warranties or obligations on behalf of itself or Lessee.

**Section 9.3. Disclaimer of Warranties.** LESSEE ACKNOWLEDGES THAT IT SELECTED THE EQUIPMENT WITHOUT ASSISTANCE OF LESSOR, ITS AGENTS OR EMPLOYEES. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, 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.

#### **ARTICLE X: OPTION TO PREPAY**

**Section 10.1. When Available.** Provided there has been no Event of Default, Lessee shall have the option to prepay its obligations in whole but not in part under any Lease on any Payment Date for the then applicable Prepayment Price.

**Section 10.2. Exercise of Option.** Lessee shall give notice to Lessor of its intention to exercise its option with respect to any Lease not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall deposit with Lessor on the date of exercise an amount equal to all Rental Payments and any other amounts then due or past due under the related Lease (including the Rental Payment due on the Payment Date on which the option is exercised) and the applicable Prepayment Price.

**Section 10.3. Release of Lessor's Interest.** On receipt of the Prepayment Price in good funds with respect to any Lease, such Lease shall terminate and Lessee shall become entitled to the related Equipment Group AS IS, WHERE IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE, except that such Equipment Group shall not be subject to any lien or encumbrance created by or arising through Lessor.

#### **ARTICLE XI: ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

**Section 11.1. Assignment by Lessor.** All of Lessor's right, title and/or interest in and to this Agreement or any Lease hereunder, including, but not limited to, the Rental Payments and other amounts payable by Lessee and Lessor's interest in the Equipment, its rights upon Events of Default and its rights to provide consents under a Lease may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. Upon assignment of a Lease by Lessor, Lessor's assignee shall have all rights of Lessor in and to the assigned Lease. No such assignment (except an assignment to an affiliate of Lessor or to an entity whose common stock is directly or indirectly one hundred percent (100%) owned by Lessor's parent or indirect parent if Lessor continues to bill and collect Rental Payments) shall be effective as against Lessee unless and until written notice of the assignment is provided to Lessee. If requested, Lessee will acknowledge in writing receipt of such notice. Lessee shall keep a complete and accurate record of all such assignments; provided, however, in the event Lessor assigns its interest in this Agreement or in a Lease to an affiliate or to another entity related to Lessor, Lessor shall maintain a record of such assignment for the benefit of Lessee.

**Section 11.2. Assignment and Subleasing by Lessee.** Neither this Agreement nor any Lease hereunder or any Equipment may be sold, assigned, subleased, transferred, pledged or mortgaged by Lessee.

#### **ARTICLE XII: EVENTS OF DEFAULT AND REMEDIES**

**Section 12.1. Events of Default Defined.** The following are Events of Default under each Lease:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid when due and the continuation of said failure for a period of ten (10) days (other than by reason of abatement as set forth in Section 5.3).

(b) Failure by Lessee to maintain insurance as required by Article VI.

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

(d) The determination by Lessor that any representation or warranty made by Lessee in this Agreement was untrue in any material respect upon execution of this Agreement or any Equipment Schedule.

(e) Lessee's improper filing of an amendment or termination statement relating to a filed financing statement describing any of the Equipment.

**Section 12.2. Remedies on Default.** Whenever any Event of Default shall have occurred, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(a) Lessor, with or without terminating any Lease, may collect each installment of Rental Payments as it becomes due and payable with respect to each and every Equipment Group in accordance with each in the Equipment Schedule.

(b) Lessor and its assignees, with or without terminating any Lease, may enter the premises where the Equipment is kept and disable the Equipment subject to all Leases owned by it or the same assignee to prevent further use thereof by Lessee and/or may repossess any or all of the Equipment by giving Lessee written notice to deliver the Equipment in the manner provided in Section 12.3; 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 the Equipment is kept and take possession of such Equipment and charge Lessee for costs incurred in repossessing the Equipment, including reasonable attorneys' fees. Lessee hereby expressly waives any damages occasioned by such repossession. If the Equipment or any portion of it has been destroyed or damaged beyond repair, Lessee shall pay to Lessor the applicable Prepayment Price of the damaged or destroyed Equipment as set forth in the Equipment Schedule relating thereto. Notwithstanding the fact that Lessor has taken possession of the Equipment, Lessee shall continue to be responsible for the Rental Payments with respect thereto as and when such Rental Payments become or would have become due and payable.

(c) If Lessor or its assignees, in its discretion, takes possession and disposes of the Equipment or any portion thereof, the proceeds of any such disposition shall be applied to pay the following items in the following order: (i) all costs (including, but not limited to, attorneys' fees) incurred in securing possession of the Equipment; (ii) all expenses incurred in completing the disposition; (iii) any sales or transfer taxes; and (iv) the balance of any Rental Payments with respect thereto as and when such Rental Payments would become due and payable. Any disposition proceeds remaining after the requirements of Clauses (i), (ii), (iii), and (iv) have been met shall be paid to Lessee.

(d) By action pursuant to the California Code of Civil Procedure, or as otherwise provided by law, obtain the issuance of a writ of mandamus enforcing, for the entire balance of each Lease Term, the duty of Lessee to appropriate and take all other administrative steps necessary for the making of Rental Payments.

(e) Lessor may take any other remedy available, at law or in equity, with respect to such Event of Default, including those requiring Lessee to perform any of its obligations or to pay any moneys due and payable to Lessor, provided Lessor shall have no right to accelerate Rental Payments or otherwise declare any Rental Payments not then in default to be immediately due and payable. Lessee shall pay the reasonable attorneys' fees and expenses incurred by Lessor in enforcing any remedy hereunder.

**Section 12.3. Delivery of Equipment; Release of Lessee's Interest.** Upon termination of any Lease hereunder prior to the payment of all Rental Payments or the applicable Prepayment Price in accordance with the related Equipment Schedule: (i) Lessor may enter upon Lessee's premises where the Equipment is kept and disable the Equipment to prevent its further use by Lessee and (ii) Lessee shall promptly, but in any event within ten (10) days after such termination, at its own cost and expense: (a) perform any testing and repairs required to place the Equipment in the condition required by Article VII; (b) if deinstallation, disassembly or crating is required, cause the Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to Lessor; and (c) deliver the Equipment to a location specified by Lessor, freight and insurance prepaid by Lessee. If Lessee refuses to deliver the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession. Upon termination of a Lease in accordance with Article XII, at the election of Lessor and upon Lessor's written notice to Lessee, full and unencumbered legal title and ownership of the Equipment subject thereto shall pass to Lessor, Lessee shall have no further interest therein and Lessee shall execute and deliver to Lessor such documents as

Lessor may request to evidence the passage of legal title and ownership to Lessor and termination of Lessee's interest in the Equipment.

**Section 12.4. No Remedy Exclusive.** No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by Lessor.

**Section 12.5. Late Charge.** Whenever any Event of Default under Section 12.1, Clause (a) shall have happened and be continuing, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge accruing from the tenth day after the Payment Date until the payment is made equal to the lesser of five cents (\$.05) per dollar of the delinquent amount or the lawful maximum, and Lessee shall be obligated to pay the same immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section shall not be applicable if or to the extent that the application thereof would affect the validity of this Agreement.

### **ARTICLE XIII: ADMINISTRATIVE PROVISIONS**

**Section 13.1. Notices.** All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified on the execution page hereof; provided that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates, or other communications will be sent.

**Section 13.2. Financial Information.** Lessee will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Lessee to continue this Agreement and any Lease as may be requested by Lessor.

**Section 13.3. Binding Effect.** This Agreement and each Lease hereunder shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

**Section 13.4. Severability.** In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 13.5. Entire Agreement, Amendments, Changes and Modifications.** THE CONTRACTS REPRESENT AND (i) CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, (ii) SUPERSEDE ALL OTHER WRITINGS, COMMUNICATIONS, UNDERSTANDINGS, AGREEMENTS, PURCHASE ORDERS, SOLICITATION DOCUMENTS (INCLUDING, WITHOUT LIMITATION, ANY REQUEST FOR PROPOSAL AND RESPONSES THERETO AND OTHER RELATED DOCUMENTS (TOGETHER, THE "BID DOCUMENTS")) AND ANY REPRESENTATIONS, EXPRESS OR IMPLIED ("PRIOR UNDERSTANDINGS"), AND MAY NOT BE CONTRADICTED OR AMENDED BY PRIOR UNDERSTANDINGS, AND (iii) MAY BE AMENDED OR MODIFIED ONLY BY WRITTEN DOCUMENTS DULY AUTHORIZED, EXECUTED AND DELIVERED BY THE PARTIES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY BID DOCUMENT, LESSOR IS NOT BOUND BY ANY PROVISION OF ANY BID DOCUMENT.

Lessee hereby expressly acknowledges and agrees that (i) no Contractor or any of its representatives is an agent of Lessor or authorized to waive or alter any Contract, and (ii) Lessor shall not be chargeable with or assume any of the obligations or liabilities of any Contractor under any agreement between Lessee and Contractor or any Bid Document.

**Section 13.6. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or Clauses hereof.

**Section 13.7. Further Assurances and Corrective Instruments.** Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Agreement.

**Section 13.8. Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument, provided that only the original of this Agreement and each Equipment Schedule marked "Original - Chattel Paper" on the execution page thereof shall constitute chattel paper under the Uniform Commercial Code.

**Section 13.9. Applicable Law.** This Agreement and each Lease shall be governed by and construed in accordance with the laws of the State.

**Section 13.10. 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 or in the related Equipment Schedule, in no event shall this Agreement or any Lease hereunder 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 applicable Lease Term so that the Interest is uniform through such term.

**Section 13.11. Lessee's Performance.** Time is of the essence. Lessor's failure at any time to require strict performance by Lessee of any of Lessee's obligations shall not waive or diminish Lessor's rights thereafter to demand strict compliance by Lessee.

**Section 13.12. Third Party Beneficiaries.** Nothing herein shall be construed or interpreted to give any person other than Lessee and Lessor any legal or equitable right, remedy or claim under or in respect of this Agreement or any Lease. Lessor and Lessee agree that no Contractor is a third party beneficiary of this Agreement and there are no third party beneficiaries of this Agreement.

**Section 13.13. Waiver of Jury Trial.** 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 or any Lease.

[REMAINDER OF PAGE INTENTIONALLY BLANK; EXECUTION PAGE FOLLOWS]

GE GOVERNMENT FINANCE, INC.

EXECUTION PAGE OF CALIFORNIA MASTER LEASE AGREEMENT

Agreement Date: November 1, 2016

Fiscal Year Commencement Date: 7/1

Fiscal Year End Date: 6/30

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.

CITY OF SAN DIEGO,  
Lessee

GE GOVERNMENT FINANCE, INC.,  
Lessor

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

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

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

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

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

By: 

Name: Thomas Murphy

Title: Authorized Signatory

Date: 11/1/16

Address: 7760 France Ave. S.  
Suite 250  
Minneapolis, MN 55435

Attention: Risk Management

Telephone: 800-346-3164

Facsimile: 952-828-2420

## ESTIMATE

## EQUIPMENT SCHEDULE NO. 001

## EXHIBIT A

## Schedule of Equipment, Rental Payments, Etc.

The following Equipment comprises an Equipment Group which is the subject of the California Master Lease Agreement dated as of November 1, 2016 (the "Agreement"), between the undersigned Lessor and Lessee. The Agreement is incorporated herein in its entirety, and Lessee hereby reaffirms all of its representations and warranties contained in the Agreement. Lessee warrants that no Event of Default or any event which, with the passage of time or the giving of notice, would constitute a default has occurred under any Lease subject to the Agreement. In accordance with the requirements of applicable State Law, Lessee has appropriated or obtained sufficient appropriations to pay the Rental Payments due under this Lease in the current Fiscal Year and such funds have not been expended for any other purpose.

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

Lease Proceeds: \$ \_\_\_\_\_

Final Termination Date: \_\_\_\_\_, \_\_\_\_\_

EQUIPMENT GROUP

1. Location. The Equipment Group is located at the following address. If requested by Lessor, Lessee will provide the complete legal descriptions of the property where the Equipment Group is located.  
\_\_\_\_\_
2. Use. Lessee will use the Equipment Group to perform the following essential governmental or proprietary functions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Description. The following description of the Equipment Group is supplemented by the description of items of Equipment in the Contractor's invoices delivered by Lessee to Lessor and/or by the description of Equipment in Payment Request Forms executed by Lessor to authorize disbursements from an Escrow Account.

## City of San Diego Lighting / Intelligent City Project Equipment List

Quantity	Description	Amount
3220	GE Intelligent City Nodes	\$8,491,047.26
3600	GE Light Grid Nodes (Replace old existing node to new)	\$359,676.00
13979	GE Lightgrid Controls included w/ fixtures)	
1	Commissioning Intelligent City Devices	\$1,842,432.00
1	lot Contingency	\$1,000,000.00

LED Fixtures (13,979)

3158	Cobra Head LED w/GE Lt Grid Node (Replace Shoe/Box Parks 400w Met Hal)	\$3,217,964.39
2871	Sports LED Fixture (Including GE Lt Grid Node)	\$6,721,541.48
3000	Post Top LED Fixture w GE Lt Grid Node	\$5,718,390.19
600	Post Tops Fitters (non GE part)	\$100,699.20
4950	Cobra Head LED w/GE Lt Grid Node (Replace Resi street 100w)	\$2,792,015.29

<b>Total</b>	<b>\$ 30,243,766</b>
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\*If serial numbers are not available at the date of signing this Equipment Schedule, Lessee hereby authorizes Lessor to insert the serial numbers when available and Lessor shall provide Lessee with a copy of the completed Equipment Schedule.

4. Partial Prepayment Option.

a. Notwithstanding anything contained in Article X of Agreement to the contrary, provided there has been no Event of Default, not more than once per each full Fiscal Year during the Lease Term, Lessee shall have the option to partially prepay its obligations under this Lease on any Payment Date, provided that the amount of such prepayment will not exceed 10% of the aggregate Principal Component (as shown in the Payment Schedule) of all Rental Payments then remaining under this Lease.

b. Lessee shall give notice to Lessor of its intention to exercise its option to partially prepay its obligations under this Lease not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall identify the amount of the partial prepayment (the "Partial Prepayment Amount") and then deposit with Lessor on the date of exercise such amount (along with the Rental Payment due on the Payment Date on which the option is exercised).

c. Lessor shall be entitled to retain two percent of the Partial Prepayment Amount as a prepayment fee (or such lesser amount as is the maximum permitted under applicable law) and the balance of the Partial Prepayment Amount shall be applied to the Principal Component of the then remaining Rental Payments (after application of the Rental Payment due on the Payment Date on which the option is exercised) in inverse order of Rental Payments. The portion of Principal Component of Rental Payments remaining unpaid after application of the Partial Prepayment Amount, plus accrued interest thereon, shall remain payable in accordance with the terms of this Lease. Upon Lessor's request, Lessee shall execute an amendment to the Payment Schedule reflecting the change to Rental Payments as a result of any such partial prepayment.

5 Self-Insurance. Notwithstanding anything contained in Article VI of the Agreement to the contrary, solely with respect to this Lease and the Equipment leased under this Lease, Lessee may self-insure against the risks described in clauses 6.1, 6.2, 6.3, 6.4. and 6.5 of Article VI of the Agreement, subject to the following conditions (the "**Self-Insurance Conditions**"): a) Lessee shall provide Lessor with a self-insurance letter in form and substance reasonably satisfactory to Lessor evidencing such self-insurance; b) such self-insurance shall be otherwise permitted under State Law and be consistent with prudent business practices for insuring such risks; and c) no Event of Default shall have occurred and be continuing under this Lease. If any of the foregoing Self-Insurance Conditions are not or no longer satisfied, or if Lessee shall cease to be self-insured against any such risks, then Lessee will inform Lessor promptly and promptly obtain (at Lessee's sole expense) all such insurance coverage otherwise required under Article VI of the Agreement.

**DISBURSEMENT OF LEASE PROCEEDS**

Lessee hereby instructs Lessor to disburse the Lease Proceeds as follows:

Payee	Amount
_____	_____
_____	_____
_____	_____

If the Lease Proceeds are not disbursed to an Escrow Agent, Lessee certifies that the entire Equipment Group described herein has been delivered and installed in accordance with Lessee's Specifications, is in good working order and is fully operational and, for purposes of this Lease, is fully and finally accepted by Lessee on or before the date below Lessee's signature.

**RENTAL PAYMENTS**

Lessee will make Rental Payments consisting of Principal and Interest at the annual rate as set forth in the attached Payment Schedule. The attached Payment Schedule takes account of the special financing promotion payment in the amount set forth in the Payment Schedule, which payment will be made by \_\_\_\_\_ to Lessor and is shown as the first payment on the Payment Schedule. The annual interest rate set forth in the Payment Schedule is the effective rate after giving effect to the special financing promotion payment.

**CITY OF SAN DIEGO,**  
Lessee

**GE GOVERNMENT FINANCE, INC.,**  
Lessor

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

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

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

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

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

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

Attachment: Payment Schedule

**Original - Chattel Paper**

ESTIMATE

PAYMENT SCHEDULE RELATING TO EQUIPMENT SCHEDULE NO. 001

Date of Issue: \_\_\_\_\_ Funding Date: \_\_\_\_\_

Coupon Rate/Effective Interest Rate: \_\_\_\_\_%

Special Financing Program Payment: \$\_\_\_\_\_.

<u>Payment Number</u>	<u>Payment Date</u>	<u>Rental Payment</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Prepayment Price*</u>
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\*After payment of Rental Payment due on such date.

CITY OF SAN DIEGO,  
Lessee

GE GOVERNMENT FINANCE, INC.,  
Lessor

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

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

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

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

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

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

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**EXHIBIT B**  
**Opinion of Counsel**  
(to be typed on letterhead of counsel)

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[insert date which is date on or after date of Lessee's execution of documents]

GE Government Finance, Inc.  
7760 France Ave. S.  
Suite 250  
Minneapolis, MN 55435

City of San Diego  
\_\_\_\_\_  
\_\_\_\_\_

Re: California Master Lease Agreement dated as of November 1, 2016 by and between GE Government Finance, Inc. ("Lessor") and City of San Diego ("Lessee")

**[Counsel to expand opinion to include executed Addenda to Lease, if applicable,  
and delete reference to Escrow Agreement, if not applicable]**

Ladies and Gentlemen:

I have acted as counsel to Lessee with respect to the California Master Lease Agreement described above and various related matters, and in this capacity have reviewed a duplicate original or certified copy thereof, Equipment Schedule No. 001 attached thereto and executed pursuant thereto (together, the "Lease") and the Escrow Agreement dated as of \_\_\_\_\_ (the "Escrow Agreement") among Lessor, Lessee and \_\_\_\_\_, as escrow agent. Capitalized terms used but not defined herein have the meanings ascribed to them in the Lease. Based upon the examination of these and such other documents as I deem relevant, it is my opinion that:

1. Lessee is [the state of California [a political subdivision of the State of California] (the "State"), duly organized, existing and operating under the Constitution and laws of the State.

2. Lessee is authorized and has power under applicable law to enter into the Lease and the Escrow Agreement, and to carry out its obligations thereunder and the transactions contemplated thereby.

3. The Lease and the Escrow Agreement have been duly authorized, approved, executed and delivered by and on behalf of Lessee, and are legal, valid and binding contracts of Lessee enforceable in accordance with their terms, except to the extent limited by State and Federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

4. The authorization, approval and execution of the Lease and the Escrow Agreement and all other proceedings of Lessee relating to the transactions contemplated thereby and the acquisition of the Equipment have been performed in accordance with all applicable open meeting, public records, public bidding and all other laws, rules and regulations of the State.

5. The execution of the Lease and the Escrow Agreement and the appropriation of moneys to pay the Rental Payments coming due thereunder do not and will not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

6. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body that challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the Lease or the Escrow Agreement; the proper authorization, approval and/or execution of the Lease, the Escrow Agreement and other documents contemplated thereby; the appropriation of moneys to make Rental Payments under the Lease for the current fiscal year of Lessee; or the ability of Lessee otherwise to perform its obligations under the Lease, the Escrow Agreement and the transactions contemplated thereby and, to the best of my knowledge, no such litigation or actions are threatened.

7. The equipment financed by the Lease is personal property, and when used by the Lessee will not be or become fixtures under the laws of the State.

8. The execution and delivery of the Lease and the Escrow Agreement and the performance by Lessee of its obligations thereunder will not violate or constitute a default under existing law or regulations or any court order or any agreement, bond, note, indenture or other obligation or instrument to which Lessee is a party or by which any of its properties are bound.

9. Payment of Rental Payments and other amounts due under each Lease is not directly or indirectly guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof and Lessee is not using any funds provided by the United States Government whether by loan, grant or other program or pursuant to the American Recovery and Reinvestment Act of 2009 to pay a portion of the purchase price of the Equipment or any part of the Rental Payments.

10. Resolution No. \_\_\_\_\_ of the governing body of Lessee was duly and validly adopted by such governing body on \_\_\_\_\_, 20\_\_, and such resolution has not been amended, modified, supplemented or repealed and remains in full force and effect.

11. This opinion may be relied upon by any assignee of the Lease.

Very truly yours,

\_\_\_\_\_  
(type name and title under signature)

**IMPORTANT! Optimize YOUR BILLING OPTIONS!!!**  
Please complete and return with your signed deal documents

**Customer Information**

Account Schedule : \_\_\_\_\_

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

Billing Address: \_\_\_\_\_

Attention: \_\_\_\_\_

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

Billing e-mail Address: \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Please provide updated billing information (if different from above)

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

Billing Address: \_\_\_\_\_

Attention: \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

Billing e-mail address: \_\_\_\_\_

Phone #: \_\_\_\_\_

1. Indicate which options you would like to see on your invoice, please select either information for *first* asset only or *all* assets

**Information on First Asset ONLY** Select from the options below      **Information Listed for All Assets**      Select from the options below

☐ Description of first asset only

☐ List locations of all assets?

☐ Breakdown of payment by asset

☐ Location of first asset only?

☐ List descriptions of all assets

☐ Breakdown of tax by asset

2. Would you like to see all of your accounts in one invoice?

☐ Yes    ☐ No

This is only an option if your accounts have the same Due Date and Billing Address

3. If you would like to see either your PO # or Reference # on the invoice, please write the number below

\_\_\_\_\_

\*If you choose to see the description and/or location of all assets, please be aware that a large number of assets will produce a multi-page invoice.

# II

## FINANCING DOCUMENTATION

**B. ESCROW AGREEMENT**, between GE Government Finance, Inc., the City of San Diego, California and Escrow Agent.

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## ESCROW AGREEMENT

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THIS ESCROW AGREEMENT is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and among \_\_\_\_\_ (the "Escrow Agent"), GE Government Finance, Inc., a corporation duly organized and existing under the laws of Delaware ("Lessor"), and the City of San Diego ("Lessee"), a California governmental entity.

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

### ARTICLE 1: RECITALS

**Section 1.01.** Lessor and Lessee have entered into a Master Lease Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ and Equipment Schedule thereto (together, the "Master Lease Agreement") and Lessee has delivered its Equipment Schedule dated \_\_\_\_\_, 20\_\_ in the sum of \$\_\_\_\_\_ (the "Schedule") to Lessor. The Master Lease Agreement and Schedule are herein together referred to as the "Lease". Pursuant to the Lease, Lessor has agreed to finance for Lessee the acquisition of certain personal property described therein (the "Equipment") on the terms and conditions set forth in the Lease. This Agreement is not intended to alter or change the rights and obligations of Lessor and Lessee under the Lease, but is entirely supplemental thereto.

**Section 1.02.** The terms capitalized in this Agreement but not defined herein shall have the meanings given to them in the Lease.

**Section 1.03.** Upon the execution of the Lease and this Agreement and the delivery to Lessor by Lessee of all documents required to be delivered upon execution of the Lease, Lessor will deposit or cause to be deposited with the Escrow Agent the sum of \$\_\_\_\_\_ ("Escrow Funds") which is required to be credited to the Equipment Acquisition Account established in Article 2 hereof and which will be used to pay the acquisition costs of the items of Equipment (the "Equipment Cost"), and, to the extent not needed for this purpose, to pay or prepay amounts outstanding under the Lease; all as hereinafter provided.

**Section 1.04.** Under the Lease, Lessee will cause each item of Equipment to be ordered from the Contractor therefor. The Equipment Cost to be paid to the Contractor supplying the item of Equipment shall be paid solely from the amount deposited with the Escrow Agent as described in Section 1.03 and Section 3.04 hereof, in accordance with this Agreement.

**Section 1.05.** Lessor and Lessee agree to employ the Escrow Agent to receive, hold, invest and disburse the moneys to be paid to the Escrow Agent by Lessor as described in Section 1.03 and, if applicable, by Lessee pursuant to Section 3.04 hereof, all as hereinafter provided; however, the Escrow Agent shall not be obligated to assume or perform any obligation of Lessee or Lessor or any Contractor with respect thereto or under the Lease by reason of anything contained in this Agreement.

**Section 1.06.** Each of the parties has authority to enter into this Agreement, and has taken all actions necessary to authorize the execution of this Agreement by the officers whose signatures are affixed hereto.

### ARTICLE 2: EQUIPMENT ACQUISITION ACCOUNT

**Section 2.01.** The Escrow Agent shall establish a special escrow account designated as the "GE Government Finance, Inc. Equipment Acquisition Account" (the "Equipment Acquisition Account"), shall keep such Escrow Funds separate and apart from all other funds and moneys held by it and shall administer such Equipment Acquisition Account as provided in this Agreement.

**Section 2.02.** All moneys paid to the Escrow Agent by Lessor pursuant to Section 1.03 and, if applicable, by Lessee pursuant to Section 3.04 hereof, shall be credited to the Equipment Acquisition Account. The period from the date of deposit with the Escrow Agent to the date specified in Section 2.03 is herein referred to as the "Acquisition Period". The Escrow Agent shall disburse the moneys in the Equipment Acquisition Account to pay the Equipment Cost of each item of Equipment upon receipt with respect thereto of a Payment Request Form in the

form attached hereto as Exhibit A, executed by Lessor and Lessee, fully completed and with all supporting documents described therein attached thereto. Upon receipt of a Payment Request Form with respect to any item of Equipment, Escrow Agent shall disburse an amount equal to the Equipment Cost as shown therein directly to the person or entity entitled to payment as specified therein. Lessee agrees that it will submit Payment Request Forms only with respect to operationally complete and functionally independent portions of the Equipment which may be utilized by Lessee without regard to whether the balance of the Equipment is delivered and accepted (hereinafter, "Complete Portions of Equipment"). Lessee acknowledges and agrees that Lessor shall not approve any Payment Request Form which does not describe a Complete Portion of Equipment. Lessor and Lessee authorize Escrow Agent to make such disbursements in accordance with this Section without the duty of any independent investigation with respect to the Equipment or the delivery or availability thereof.

**Section 2.03.** (a) On \_\_\_\_\_, 20\_\_, the Escrow Agent shall pay to Lessor the entire remaining balance in the Equipment Acquisition Account less an amount thereof equal to the Equipment Cost of all items of Equipment for which the Escrow Agent has received a Payment Request Form and which has not been paid (the "Escrow Balance"). The Escrow Balance paid to Lessor shall first be applied to any fee payable by Lessee to Lessor pursuant to the provisions of Section 2.03(b) hereof and any balance thereof, at Lessor's election, shall be applied to pay the principal portion of the next Periodic Installment thereafter coming due under the Lease or to pay and prepay a proportionate amount of the principal portion of all Periodic Installments thereafter coming due under the Lease. Within 15 days after receiving the Escrow Balance, Lessor shall notify Lessee as to how it will be applied, and shall furnish to Lessee a new Payment Schedule reflecting any changes in Periodic Installments due to any prepayment.

(b) If, on the date of disbursement of the balance of funds in the Equipment Acquisition Account pursuant to Sections 2.03(a) and 2.04 hereof, less than 85% of the amount of the initial deposit made by Lessor pursuant to Section 1.03 hereof was used to pay the Equipment Cost of the Equipment then Lessee shall pay a fee to Lessor equal to the amount disbursed times the prepayment fee, if any, which would be payable by Lessee under the Lease had it elected to prepay the Lease on the date of the disbursement from the Equipment Acquisition Account.

**Section 2.04.** Upon Escrow Agent's receipt of (a) written notice from Lessor that Lessee is in default under the Lease or Lessee has terminated the Lease due to non-appropriation or Lessee has not renewed the Lease and/or (b) an instruction from Lessor to disburse the Escrow Balance to it because a Disagreement (as defined in Section 4.03) has occurred and is continuing, then the Escrow Agent shall liquidate all investments held in the Equipment Acquisition Account and transfer the proceeds thereof and all other moneys held in the Equipment Acquisition Account to Lessor, which amounts shall be applied by Lessor to amounts outstanding, due and owing by Lessee under the Lease as, and in such order, as Lessor shall determine in its sole discretion.

**Section 2.05.** The Escrow Agent shall only be responsible for the safekeeping and investment of the moneys held in the Equipment Acquisition Account, and the disbursement thereof in accordance with this Article, and shall not be responsible for the authenticity or accuracy of such certifications or documents, the application of amounts paid pursuant to such certifications by the persons or entities to which they are paid, or the sufficiency of the moneys credited to the Equipment Acquisition Account to make the payments herein required.

### **ARTICLE 3: MONEYS IN EQUIPMENT ACQUISITION ACCOUNT; INVESTMENT**

**Section 3.01.** The moneys and investments held by the Escrow Agent under this Agreement, together with any income or interest earned thereon, are irrevocably held for the sole purpose of funding the Equipment Cost or refunding to Lessor and application by Lessor as provided in Sections 2.03(a) and 2.04 hereof, and such moneys, shall be expended only as provided in this Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of Lessee. Lessor, Lessee and Escrow Agent intend that the Equipment Acquisition Account constitutes an escrow account in which Lessee has no legal or equitable right, title or interest other than the right to have such Escrow Funds used to fund the Equipment Cost in accordance with the terms of this Agreement and the Lease. However, if the parties' intention that Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in full is not respected in any legal proceeding, the parties hereto intend that Lessor have a security interest in the Equipment Acquisition Account, and such security interest is hereby granted by Lessee to secure payment of all sums due to Lessor under the Lease. For such purpose, the Escrow Agent hereby agrees to act as agent for Lessor in connection with the perfection of such security interest and agrees to Schedule, or cause to be noted, on all books and records relating to the Equipment Acquisition Account, Lessor's interest therein. Escrow Agent hereby accepts appointment as agent and agrees to establish and maintain the Equipment Acquisition Account and the monies and securities therein as a financial intermediary or securities intermediary, as the case may be, for Lessor, as entitlement holder. Lessor, Lessee and Escrow Agent agree that (i) the Equipment Acquisition Account is a "securities account" as such term is defined in Section 8-501 of the

applicable Uniform Commercial Code ("UCC"); (ii) Escrow Agent shall, subject to the terms of this Agreement, treat Lessor as entitled to exercise the rights that comprise any financial asset credited to the Equipment Acquisition Account; (iii) all property delivered to Escrow Agent for deposit into the Equipment Acquisition Account will be promptly credited to the Equipment Acquisition Account; and (iv) all securities and other property underlying any financial assets credited to the Equipment Acquisition Account shall be registered in the name of the Escrow Agent, endorsed to Escrow Agent or in blank or credited to another securities account maintained in the name of Escrow Agent, and in no case will any financial asset credited to the Equipment Acquisition Account be registered in the name of Lessee, payable to the order of Lessee or specially endorsed to Lessee. Escrow Agent agrees that each item of property (whether investment property, financial asset, security, instrument or cash) credited to the Equipment Acquisition Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC. If at any time Escrow Agent shall receive an "entitlement order" (within the meaning of Section 8-102(a)(8) of the UCC) issued by Lessor and relating to the Equipment Acquisition Account, Escrow Agent shall comply with such entitlement order without further consent by Lessee or any other person.

**Section 3.02.** Moneys held by the Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent upon order of Lessee only in Qualified Investments, as defined in Section 3.05. Such investments shall be registered in the name of the Escrow Agent and held by the Escrow Agent for the benefit of Lessor. With the approval of Lessee, the Escrow Agent may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Article. Such investments and reinvestments shall be made giving full consideration for the time at which funds are required to be available. In the absence of written direction from Lessee, the amounts in the Equipment Acquisition Account shall be invested in a \_\_\_\_\_, as more fully described in the attached Exhibit B.

**Section 3.03.** The Escrow Agent shall, without further direction from Lessee, sell such investments as and when required to make any payment from the Equipment Acquisition Account. Any income received on such investments shall be credited to the Equipment Acquisition Account.

**Section 3.04.** The Escrow Agent shall furnish to Lessee and Lessor statements accounting for all investments and interest and income therefrom. Such accounting shall be furnished monthly and shall also include a report of the balance in the Equipment Acquisition Account, the amounts disbursed therefrom and the date of final disbursement pursuant to Section 2.03 hereof. Neither Lessor nor Escrow Agent shall be responsible or liable for any loss suffered in connection with any investment of moneys made by it in accordance with this Article (other than Escrow Agent in its capacity as obligor under any Qualified Investment). In the event funds in the Equipment Acquisition Account are insufficient to pay the Equipment Cost, Lessee shall deposit additional funds into the Equipment Acquisition Account in an amount sufficient to pay the balance of the Equipment Cost.

**Section 3.05.** As used in this Agreement, the term "Qualified Investments" means (a) securities which are general obligations of or are guaranteed as to the payment of principal and interest by the United States of America; (b) obligations, debentures, notes or other evidence of indebtedness issued or guaranteed by the Federal Home Loan Bank System; (c) commercial paper issued by corporations or banking institutions (including Escrow Agent) organized under the federal laws or laws of a state of the United States which is rated in the highest rating category by Standard & Poor's Ratings Services, a division of the McGraw Hill Companies, Inc. ("S&P") or Moody's Investors Service, Inc.; or (d) certificates of deposit issued by or other forms of deposit in any national or state bank to extent that such deposits are insured up to applicable limits by the Federal Deposit Insurance Corporation or any successor agency which is backed by the full faith and credit of the United States. By execution of this Agreement, Lessee also consents to the investment and reinvestment by the Escrow Agent of any moneys held as part of the Equipment Acquisition Account in shares of a money market fund (including a money market fund for which Escrow Agent and its affiliates provides advisory, custodial, administrative or similar services and receives fees), provided the (a) money market fund is registered under the Investment Company Act of 1940 and Investment Securities Act of 1933; (b) the money market fund has been rated by a nationally recognized statistical rating organization in one of that organization's three highest mutual fund rating categories; and (c) the money market fund's investments are limited to those "Qualified Investments" (a), (b) or (c) above. Derivative products are not "Qualified Investments."

#### **ARTICLE 4: ESCROW AGENT'S AUTHORITY; INDEMNIFICATION**

**Section 4.01.** The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument

deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder shall be limited to those specifically provided herein.

**Section 4.02.** Lessee hereby agrees to indemnify the Escrow Agent, its officers, directors, employees, and affiliates (collectively, the "Indemnified Parties") and hold each harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature (each, a "Liability"), which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Agreement; and in connection therewith, to indemnify the Indemnified Parties against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim, whether brought by Lessor, Lessee or any other person and the cost of enforcing the Lessee's indemnity obligations; provided, however, that no Indemnified Party shall have a right to indemnity hereunder to the extent that any such Liability arose as a result of its gross negligence or willful misconduct. The obligations of Lessee under this Section shall survive any termination of this Agreement and the resignation or removal of Escrow Agent.

**Section 4.03.** If (a) Lessee or Lessor shall be in disagreement about the interpretation of this Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, (any of the foregoing, a "Disagreement") and Lender has not exercised its rights under Section 2.04, (b) Escrow Agent is unable to determine, to Escrow Agent's sole and reasonable satisfaction, the proper disposition of all or any portion of the Equipment Acquisition Account or Escrow Agent's proper actions with respect to its obligations hereunder or (c) Lessee and Lessor have not, within 30 calendar days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 6.02 hereof, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

1. suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Agreement until such dispute or uncertainty shall be resolved to the sole and reasonable satisfaction of Escrow Agent or until a successor Escrow Agent shall have been appointed; or
2. petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, the entire Equipment Acquisition Account; provided, however, that, in the case of clauses (a) and (b) above, Escrow Agent shall provide to Lessee and Lessor not less than 20 days written notice prior to instituting any proceedings described in this clause (2).

Escrow Agent shall have no liability to Lessee or Lessor, or their respective owners, shareholders or members or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the sums in the Equipment Acquisition Account or any delay in or with respect to any other action required or requested of Escrow Agent. The Escrow Agent shall be indemnified by Lessee, to the extent permitted by law, for all costs, including reasonable attorneys' fees, in connection with such civil action unless such court concludes the Escrow Agent was guilty of gross negligence or willful misconduct. The obligations of Lessee and Lessor under this Section shall survive any termination of this Agreement and the resignation or removal of Escrow Agent.

**Section 4.04.** The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Agreement, including without limitation any other agreement between any or all of the parties hereto or any other persons even though reference thereto may be made herein. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of facts or errors of judgment, or for any acts or omissions of any kind except to the extent that such mistakes, errors, acts or omissions were caused by Escrow Agent's negligence or misconduct. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters.

The Escrow Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Escrow Funds, without determination by the Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

#### **ARTICLE 5: ESCROW AGENT'S COMPENSATION**

Escrow Agent compensation for the services to be rendered hereunder is payable by Lessee and is set forth in the Escrow Fee Schedule attached as Exhibit B hereto. Escrow Agent's initial Administration Fee shall be paid by wire by Lessor. Lessee will reimburse Lessor for such initial Administration Fee upon receipt of invoice from Lessor. Lessee agrees to pay/or reimburse Escrow Agent upon request for all expenses, disbursement and advances, ongoing annual administration or other charges, including reasonable attorney's fees, incurred or made by it in connection with carrying out its duties hereunder and Lessee and Lessor agree such fees and charges may be deducted from the investment earnings on the Equipment Acquisition Account. If and to the extent that any such fees, expenses or charges are withdrawn from, or set off against amounts in the Equipment Acquisition Account by Escrow Agent, Lessee shall immediately pay such amounts to Lender.

#### **ARTICLE 6: CHANGE OF ESCROW AGENT**

**Section 6.01.** A national banking association located in the United States or a state bank or trust company organized under the laws of a state of the United States, qualified as a depository of public funds, may be substituted to act as Escrow Agent under this Agreement upon agreement of the parties hereto. Such substitution shall not be deemed to affect the rights or obligations of the parties. Upon any such substitution, the Escrow Agent agrees to assign to such substitute Escrow Agent its rights under this Agreement, provided, however, that the Escrow Agent shall be entitled to continue to receive the benefits of any provision of this Agreement that by its terms survives the termination of this Agreement.

**Section 6.02.** The Escrow Agent or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation, which shall be a date not less than 30 days after such notice is deposited in the United States mail with postage fully prepaid, unless an earlier resignation date and the appointment of a successor Escrow Agent shall have been or are approved by Lessee and Lessor.

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

#### **ARTICLE 7: ADMINISTRATIVE PROVISIONS**

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

**Section 7.02.** All notices, certificates, requests, demands and other communications provided for hereunder shall be in writing and shall be (a) personally delivered, (b) sent by first class United States mail, (c) sent by overnight courier of national reputation, or (d) transmitted by telecopy, in each case addressed to Lessor, Lessee and Escrow Agent at their respective 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. All such notices, requests, demands and other communications shall be deemed to have been given on (a) the date received if personally delivered, (b) when deposited in the mail if delivered by mail, (c) the date sent if sent by overnight courier, or (d) the date of transmission if delivered by telecopy.

**Section 7.03.** This Agreement shall be construed and governed in accordance with the laws of the State of \_\_\_\_\_.

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

**Section 7.05.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Specifically, as used herein the term "Lessor" means any person or entity to whom Lessor has assigned its right to receive Periodic Installments under the Lease and any payments due to Lessor hereunder from and after the date when notice of such assignment is filed with the Escrow Agent; provided, however, no notice of assignment to an affiliate or related entity by Lessor is required and when GE Government Finance, Inc. executes Payment Request Forms after such an assignment, it does so as servicer on behalf of its affiliated or related assignee.

**Section 7.06.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement. The parties agree that Payment Request Forms may be submitted electronically to Lessor and may be executed by Lessor and Lessee electronically. The parties agree not to deny the legal effect or enforceability of any Payment Request Form solely because it is in electronic form or because an electronic record was used in its formation. Lessor, Lessee and Escrow Agent agree not to object to the admissibility of Payment Request forms in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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

**Section 7.08.** This Agreement (and, with respect to Lessor and Lessee, together with the Lease) constitutes the entire agreement of the parties relating to the subject matter hereof. This Agreement may not be modified, supplemented or amended without the written agreement of all parties hereto. The parties may agree to amend the date specified in the second sentence of Section 2.03(a) hereof to a date such that the Acquisition Period will not exceed three (3) years pursuant to a written agreement executed by Lessor, Lessee and Escrow Agent. Such amendment shall be effected by written agreement in the form of Exhibit C hereto.

**Section 7.09.** Lessor, Lessee and Escrow Agent 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.

**Section 7.10.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Escrow Agent requires documentation to verify its formation and existence as a legal entity. Escrow Agent may ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. A portion of the identifying information set forth herein is being requested by the Escrow Agent in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and Lessor and Lessee agree to provide any additional information requested by Escrow Agent in connection with the Act or any similar legislation or regulation to which Escrow Agent is subject, in a timely manner.

#### **ARTICLE 8: LESSEE'S TAX AND ARBITRAGE CERTIFICATE**

**Section 8.01.** Lessee has executed a contract or purchase order providing for the acquisition and delivery of the Equipment with the Contractor(s) thereof. The Equipment will be acquired and installed with due diligence and, based upon the provisions of the contract or purchase order with the Contractor(s), the Equipment will be acquired and installed on or before \_\_\_\_\_. All of the spendable proceeds of the Lease will be expended on the Equipment and related expenses no later than three years from the date of execution of the Lease and this Agreement.

**Section 8.02.** The original proceeds of the Lease, and the interest to be earned thereon, do not exceed the amount necessary for the purpose for which the Lease is issued.

**Section 8.03.** The interest of Lessee in the Equipment has not been and is not expected during the term of the Lease to be sold or disposed of by Lessee.

**Section 8.04.** No sinking fund, reserve fund or any similar fund is expected to be created by Lessee with respect to the Lease and the Rental Payments.

**Section 8.05.** Lessee hereby covenants to comply with all requirements of the Code and Regulations relating to the rebate of arbitrage profit to the United States of America. It is expected that all gross proceeds of the Lease will be expended on the Equipment no later than the day which is \_\_\_\_\_ months after the date of issuance of the Lease.

**Section 8.06.** To the best of the knowledge and belief of the undersigned, the expectations of Lessee as set forth in this Article 8, are reasonable and there are no present facts, estimates and circumstances which would change the foregoing expectations.

**Section 8.07.** Lessee has not been notified of the listing or proposed listing of it by the Internal Revenue Service as an issuer whose arbitrage certificates may not be relied upon.

**[REMAINDER OF PAGE INTENTIONALLY BLANK; EXECUTION PAGE FOLLOWS]**

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

\_\_\_\_\_  
Escrow Agent

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

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

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

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**GE GOVERNMENT FINANCE, INC. ,**  
Lessor

**SAMPLE**

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

Title: Authorized Signatory \_\_\_\_\_

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

Address: 7760 France Ave. S. #250  
Minneapolis, MN 55435

Attention: \_\_\_\_\_

Telephone: 800-346-3164

Facsimile: 952-828-2420

**CITY OF SAN DIEGO**  
Lessee

**SAMPLE**

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

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

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

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

The following are authorized to execute Payment  
Request Forms on behalf of Lessee:

Typed Name

Signature

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**  
**Payment Request Form No. \_\_\_\_\_**  
**Relating to Equipment Schedule No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_**  
**to Master Lease Agreement dated \_\_\_\_\_, 20\_\_ (the "Agreement")**

\_\_\_\_\_, Escrow Agent under an Escrow Agreement dated as of \_\_\_\_\_, 20\_\_ and among the said Escrow Agent, GE Government Finance, Inc. ("Lessor") and \_\_\_\_\_ ("Lessee"), is hereby requested to pay, from the Equipment Acquisition Account held under said Escrow Agreement, to the persons, firms or corporations designated below as payee, the amount set forth opposite each such name, in payment of the Equipment Cost of the Equipment designated opposite such payee's name and account and described on the attached page(s). The Equipment comprises a portion of the Equipment described in the Agreement. Upon execution of this Payment Request Form by Lessor and Lessee, the description of the Equipment Group subject to the Agreement is amended to include the equipment described below and in the attached invoices and/or bills of sale.

Payee

Amount

Equipment

The undersigned Lessee hereby certifies that:

1. The Equipment described above comprises a portion of the Equipment described in the Agreement, and has been delivered to, tested and inspected by, and accepted by Lessee. The Equipment described herein is operationally complete and functionally independent and may be utilized by Lessee without regard to whether the balance of the Equipment Group under the Agreement is delivered and accepted.
2. If the Payment Request Form relates to a progress payment, the amounts remaining in the Equipment Acquisition Account are sufficient to acquire and complete the Equipment Group to which the Agreement relates. The amounts requested to be paid as set forth above have not been the basis of a prior request.
3. The representations and warranties of Lessee contained in the Lease are true and correct as of the date hereof.
4. No Non-Appropriation, Lease Termination, Event of Default, or event which with the giving of notice or passage of time or both would constitute an Event of Default, has occurred under the Lease.

5. Attached hereto are the following documents:

- ☐ Equipment Invoice(s) with detailed description of Equipment (i.e., serial numbers);
- ☐ Proof of payment if Payee is Lessee (i.e., copy of cancelled checks);
- ☐ If vehicle, title application and MSO with GE Government Finance, Inc. listed as first and only lienholder; and
- ☐ Insurance Certificate.

6. Check if applicable:

- ☐ This is the final Payment Request Form and Lessee certifies that the entire Equipment Group subject to the Lease has been delivered and installed in accordance with Lessee's Specifications and, for the purpose of the Lease, is fully and finally accepted by Lessee.

\_\_\_\_\_  
Lessee

**GE GOVERNMENT FINANCE, INC. ,**  
Lessor

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

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

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

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

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

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

## EXHIBIT B

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### **GE GOVERNMENT FINANCE, INC. ESCROW FEE SCHEDULE**

**ADMINISTRATION FEE** \_\_\_\_\_ (\$ \_\_\_\_\_) per year

- First year administration fee payable upon execution of escrow
- Ongoing annual administration fees will be charged against the account income
- Qualified Investment: \_\_\_\_\_

#### **REIMBURSEMENT OF EXPENSES**

Out of pocket expenses for supplies and other items including but not limited to long distance charges, delivery expenses, insurance tax reporting forms, postage, checks and envelopes will be charged in addition to the above fees.

#### **DISCLOSURE**

When extraordinary duties or additional services are required or requested, additional fees will be charged. Fees are subject to adjustment, as circumstances require.

EXHIBIT C

FORM OF AMENDMENT

THIS AMENDMENT TO ESCROW AGREEMENT is dated as of \_\_\_\_\_, 20\_\_ (this "Amendment") by and among GE Government Finance, Inc. ("Lessor"), \_\_\_\_\_ ("Lessee") and \_\_\_\_\_ ("Escrow Agent").

RECITALS

A. Lessor, Lessee and Escrow Agent have entered into an Escrow Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement").

B. Pursuant to Section 7.08 of the Agreement, the parties may amend the date specified in Section 2.03 of the Agreement to a date no more than three years after the date of closing.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, it is hereby agreed as follows:

1. Lessor, Lessee and Escrow Agent amend Section 2.03 of the Agreement by replacing the date "\_\_\_\_\_, 20\_\_" as it appears in the first sentence thereof with the date "\_\_\_\_\_, \_\_\_\_."

2. In consideration for the administrative work incurred in connection with the extension granted hereby, Lessee agrees to pay to Lessor an administrative fee in the sum of \$250. Escrow Agent is hereby instructed by Lessor and Lessee to disburse \$250 to Lessor from the investment earnings in the Equipment Acquisition Account.

3. This Amendment shall become effective only upon execution hereof by duly authorized officers or representatives of Lessor, Lessee and Escrow Agent.

4. All other terms and conditions of the Agreement not specifically amended by this Amendment shall remain in full force and effect and are hereby ratified and confirmed by Lessor, Lessee and Escrow Agent.

5. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in their respective corporate names by their duly authorized officers, all as of the date first written above.

Lessor:

GE GOVERNMENT FINANCE, INC.

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

Lessee:

\_\_\_\_\_

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

Escrow Agent:

\_\_\_\_\_

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

# II

## FINANCING DOCUMENTATION

**C. IRS FORM 8038 (City of San Diego Information Return)**

# Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

## Part I Reporting Authority

If Amended Return, check here ► ☐

1 Issuer's name		2 Issuer's employer identification number (EIN)
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only) 3
6 City, town, or post office, state, and ZIP code		7 Date of issue
8 Name of issue		9 CUSIP number
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a

## Part II Type of Issue (enter the issue price). See the instructions and attach schedule.

11 Education . . . . .	11		
12 Health and hospital . . . . .	12		
13 Transportation . . . . .	13		
14 Public safety . . . . .	14		
15 Environment (including sewage bonds) . . . . .	15		
16 Housing . . . . .	16		
17 Utilities . . . . .	17		
18 Other. Describe ►	18		
19 If obligations are TANs or RANs, check only box 19a . . . . .	►	<input type="checkbox"/>	
If obligations are BANs, check only box 19b . . . . .	►	<input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box . . . . .	►	<input type="checkbox"/>	

## Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$	\$	years	%

## Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest . . . . .	22		
23 Issue price of entire issue (enter amount from line 21, column (b)) . . . . .	23		
24 Proceeds used for bond issuance costs (including underwriters' discount) . . . . .	24		
25 Proceeds used for credit enhancement . . . . .	25		
26 Proceeds allocated to reasonably required reserve or replacement fund . . . . .	26		
27 Proceeds used to currently refund prior issues . . . . .	27		
28 Proceeds used to advance refund prior issues . . . . .	28		
29 Total (add lines 24 through 28) . . . . .	29		
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) . . . . .	30		

## Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the bonds to be currently refunded . . . . .	►	years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded . . . . .	►	years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) . . . . .	►	
34 Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)		

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 9-2011)

**Part VI Miscellaneous**

- |            |  |            |                          |
|------------|--|------------|--------------------------|
| <b>35</b>  | Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .  | <b>35</b>  |                          |
| <b>36a</b> | Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .   | <b>36a</b> |                          |
| <b>b</b>   | Enter the final maturity date of the GIC ▶ _____   |            |                          |
| <b>c</b>   | Enter the name of the GIC provider ▶ _____   |            |                          |
| <b>37</b>  | Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .  | <b>37</b>  |                          |
| <b>38a</b> | If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:  |            |                          |
| <b>b</b>   | Enter the date of the master pool obligation ▶ _____   |            |                          |
| <b>c</b>   | Enter the EIN of the issuer of the master pool obligation ▶ _____  |            |                          |
| <b>d</b>   | Enter the name of the issuer of the master pool obligation ▶ _____   |            |                          |
| <b>39</b>  | If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . .  |            | <input type="checkbox"/> |
| <b>40</b>  | If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . .  |            | <input type="checkbox"/> |
| <b>41a</b> | If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:   |            |                          |
| <b>b</b>   | Name of hedge provider ▶ _____   |            |                          |
| <b>c</b>   | Type of hedge ▶ _____  |            |                          |
| <b>d</b>   | Term of hedge ▶ _____  |            |                          |
| <b>42</b>  | If the issuer has superintegrated the hedge, check box . . . . .   |            | <input type="checkbox"/> |
| <b>43</b>  | If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . . |            | <input type="checkbox"/> |
| <b>44</b>  | If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . .   |            | <input type="checkbox"/> |
| <b>45a</b> | If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement . . . . . ▶ _____  |            |                          |
| <b>b</b>   | Enter the date the official intent was adopted ▶ _____   |            |                          |

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative \_\_\_\_\_ Date \_\_\_\_\_ Type or print name and title \_\_\_\_\_

**Paid Preparer Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name ▶ _____	Firm's EIN ▶ _____			
Firm's address ▶ _____	Phone no. _____			

San Diego Proforma (In USD)														
		cost to	Total	8%		15%		10%		Net Taxed	total	Unit price Installed		
		Contractor	Material only	Tax	total	Contractor	total contractor	Contractor	Total Contractor	Contractor	contractor	w/ labor & Tax	Initial	
Product & Qty (w/ Labor & Tax)					Tax	Mark up	mark up	Over head	Over head	Labor	Labor		Yr 1	
3220	GE Spec ified GE Evolve IQ ntelligent Nodes (installation assumed to be incl	\$ 2,441.64	\$ 7,862,080.80	\$ 195.33	\$ 628,966.46	none	none	none	none	inlc uded	none	\$ 2,636.97	\$ 8,491,047	
1	lot Contingency	\$ -	\$ -	\$ -	\$ -		0	0	0		0		\$ 1,000,000	
13979	GE Spec ified GE Lightgrid Controls inc luded w/ fixtures)	\$ -	\$ -	\$ -	\$ -	direct sale	none	direct sale	none	w/fixture	none			
14579	LED Fixtures	\$ -	\$ -	\$ -	\$ -		0		0		0			
3158	GE Spec ified GE Evolve Cobra Head (Shoe/Box Parks 400w Met Hal)	\$ 672.66	\$ 2,124,260.28	\$ 53.81	\$ 169,940.82	\$ 108.97	344130.1654	\$ 83.54	263833.1268	\$ 100.00	315800	\$ 1,018.99	\$ 3,217,964	
2871	GE Spec ified Intelligent Sports Fixture w/ GE Lt Grid Node)	\$ 1,494.06	\$ 4,289,446.26	\$ 119.52	\$ 343,155.70	\$ 242.04	694890.2941	\$ 185.56	532749.2255	\$ 300.00	861300	\$ 2,341.18	\$ 6,721,541	
3000	GE Spec ified GE Avery Post Tops w GE Light Grid Node	\$ 1,322.01	\$ 3,966,030.00	\$ 105.76	\$ 317,282.40	\$ 214.17	642496.86	\$ 164.19	492580.926	\$ 100.00	300000	\$ 1,906.13	\$ 5,718,390	
600	GE Spec ified Post Tops Filters	\$ 155.40	\$ 93,240.00	\$ 12.43	\$ 7,459.20	direct sale	none	direct sale	none	inlc uded	none	\$ 167.83	\$ 100,699	
4950	GE Spec ified GE Evolve Cobra Head ( Resi street 100w)	\$ 339.66	\$ 1,681,317.00	\$ 27.17	\$ 134,505.36	\$ 55.02	272373.354	\$ 42.19	208819.5714	\$ 100.00	495000	\$ 564.04	\$ 2,792,015	
3600	Replace GE Nodes (old node to new) (GE Lt Grid Node)	\$ 83.25	\$ 299,700.00	\$ 6.66	\$ 23,976.00	direct sale	none	direct sale	none	\$ 10.00	36000	\$ 99.91	\$ 359,676	
			\$20,316,074.34		\$ 1,625,285.95		\$ 1,953,890.67		\$ 1,497,982.85		\$ 2,008,100.00		Initial	
			Total Material only		Total Material Tax		Total Contractor Mark up		Total contractor ov erhead		Total Labor only		Yr 1	
Data, Services													\$ 1,842,432	\$ -
Prefix Platform: sec urity, c onnectivity (edge-to-c loud), storage, ac c ess													\$ 25,000	
12GB (41MM events)/mo Parking - API													\$ 207,360	\$ 110,165
6GB (123K events)/mo Car Image on Demand - API													\$ -	\$ 43,770
31GB (77MM events)/mo Traffic - API													\$ 20,736	\$ 182,608
55GB (14K events)/mo Public Safety - API													\$ -	\$ 147,882
124GB (311MM events)/mPedestrian Planning - API													\$ 20,736	\$ 723,944
4GB (10MM events) /mo Environment Data - API													\$ -	\$ 45,692
- 3rd Party Data - API													\$ -	\$ -
Entire c ity (30 nodes/sq mi)Gun Shot Detection - Shotspotter App													\$ -	\$ -
VMS + 30 days c loud Surveillance - Genetec App													\$ -	\$ -
See Civic Smart Tab Civic Smart (note: does not inc luded existing c ontract values)													\$ 128,600	\$ 93,234
hosting, network, etc . Lightgrid Controls													\$ -	\$ 224,045
Commissioning													\$ 1,440,000	\$ -
Concession														\$ (1,571,340)
													Initial	Yr 1
Service Cost													\$ -	\$ -
Customer Support (Predix)													\$ -	\$ 65,641
Global Care - Maintenance and Support													\$ -	\$ 215,417
Training													\$ -	\$ -
Concession														\$ (281,058)
													Initial	Yr 1
Financing Cost													\$ -	\$ (2,482,069)
Loan principle													\$ 30,243,766	
Interest Expense (1% APR; Term = 13yrs)														\$ (2,482,069)
													Initial	Yr 1
Energy Savings													\$ -	\$ 2,401,772
													Initial	Yr 1
San Diego Cash Flow													\$ -	\$ 2,963
Annual Loan Payment													\$ -	\$ (2,482,069)
One time Rebate of \$1,082,380 (ammort 13yrs)													\$ -	\$ 83,260
Energy Cost (savings)													\$ -	\$ 2,401,772