

Installment Purchase Agreement and Payment Schedule [PROJECT TITLE] Project

This **Installment Purchase Agreement and Payment Schedule** ("Agreement") is entered into this ____ day of _____, 20__ between the Energy Financial Provider, **[FINANCIAL PROVIDER]**, a **[STATE]** corporation ("FINANCER"), and the Commonwealth of Pennsylvania ("Commonwealth"), acting through the **[FUNDING AGENCY]** ("Funding Agency").

WITNESSETH:

WHEREAS, GESA Contractor and Commonwealth will enter into a Guaranteed Energy Savings Contract ("GESA Contract" --**Exhibit A**) for the implementation of the Energy Conservation Measures ("ECM") at the Funding Agency's facilities located in **[COUNTY]** County, Pennsylvania, **[PROJECT NUMBER AND NAME]** Project;

WHEREAS, the FINANCER will provide financing for the GESA Contract and receive payments from the Funding Agency in accordance with the terms of this Agreement;

WHEREAS, the GESA Contractor will implement/construct the ECMs and adhere to all terms of the GESA Contract; and

WHEREAS, the Funding Agency will approve payments to be made to the GESA Contractor for work satisfactorily completed by the GESA Contractor during the implementation/construction of the ECMs and make payments to the FINANCER in accordance with the terms of this Agreement.

NOW THEREFORE, the parties intending to be legally bound, agree as follows:

1. FUNDING AND PAYMENT FOR GESA CONTRACT

- A. To assure the availability of moneys to pay the GESA Contractor, the cost of the GESA Contract for, inter alia, the implementation/construction of the ECMs, the FINANCER has, at the request of the Commonwealth, deposited **[ACQUISITION AMOUNT]** \$\$ (the "Acquisition Amount") into a segregated escrow account (the "Escrow Account") at **[ESCROW AGENT]**, (the "Escrow Agent") to be held, invested, and disbursed by the Escrow Agent in accordance with the terms of that certain Escrow and Account Control Agreement dated as of _____ by and among the Financer, the Funding Agency, and the Escrow Agent (the "Escrow Agreement").
- B. The ECMs will be implemented/constructed by the GESA Contractor at the location specified in the GESA Contract. The GESA Contractor will submit Applications for Payment in accordance with the GESA Contract, and once the Applications for Payment are reviewed/approved by the Funding Agency, the Funding Agency will request disbursement from the Escrow Account for the payment of the cost of the ECMs.
- C. The FINANCER shall then make payments to the GESA Contractor for the amount specified by the Funding Agency.

- D. In the event that the amounts in the Escrow Account are insufficient to pay the costs of the ECMs, the Funding Agency shall deposit additional funds into the Escrow Account to eliminate such insufficiency. The deposit of additional funds into the Escrow Account shall be documented by an amendment to the Escrow Agreement executed by the parties with review and approval by agency counsel.
- E. In the event that the amount in the Escrow Account exceeds the cost of the ECMs (the "Excess Funds"), the Funding Agency shall pay such Excess Funds to FINANCER and such Excess Funds shall be applied as a principal prepayment to the first payment on the Payment Schedule, and to each succeeding payment on the Payment Schedule, until all of the Excess Funds have been applied. Upon acceptance of all the ECMs, the Funding Agency shall deliver to FINANCER an Acceptance Certificate in the form attached to this Agreement as **Exhibit B**.

2. TERM

- A. This Agreement will become effective upon receipt of a fully executed Agreement by all parties. This Agreement, unless earlier terminated as expressly provided for in this Agreement, will continue until all payments set in the Payment Schedule (**Exhibit C**) have been made in full ("Agreement Term").

3. PAYMENT

- A. The Funding Agency agrees to pay to FINANCER, or any assignee of the FINANCER, the payments, including the interest portion, as specified in the Payment Schedule at the office of FINANCER (or such other place as FINANCER or its assignee may from time to time designate in writing).
- B. Such payments will be made commencing on (and thereafter) the dates set in the Payment Schedule.
- C. Unless specifically provided otherwise in this Agreement, the Funding Agency's obligation to make the payments to the Financer shall commence approximately one (1) month after the Final Payment has been paid to the GESA Contractor by the Escrow Agent and shall be absolute and unconditional in all events except as expressly provided in Section 4 and Section 19.
- D. The Funding Agency believes that sufficient funds can be obtained to make all payments during the Agreement Term and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which the payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its best efforts to have such portion of the budget approved, and exhausting all available administrative reviews and appeals in the event that such portion of the budget is not approved.
- E. It is the Funding Agency's intent to make payment for the full Agreement Term if funds are legally available, and in that regard, the Funding Agency represents that the use of the ECMs is essential to its proper, efficient, and economic operation.

- F. During the Agreement Term, the Funding Agency will, upon the request of FINANCER, annually make available to FINANCER, or its assignee, current financial statements, budgets, proof of appropriation for the ensuing fiscal period, and such other financial information as may be requested by FINANCER or any assignee relating to the ability of the Funding Agency to continue to make installment payments and other sums due under this Agreement.
- G. If payment or other sums owed by the Funding Agency are not paid when due, interest may accrue in accordance with State law.

4. NONAPPROPRIATION OF FUNDS

- A. In the event that no funds or insufficient funds are appropriated and budgeted in any Commonwealth Fiscal Period for payments due under this Agreement, then the Funding Agency will immediately notify FINANCER or its assignee of such occurrence, and this Agreement shall terminate on the last day of Commonwealth's Fiscal Period for which appropriations were received without penalty or expense to the Funding Agency of any kind whatsoever. In the event of such termination, the Funding Agency agrees to peaceably surrender possession of all ECMs requested by FINANCER in good operating condition, subject to normal wear and tear to FINANCER or its assignee on the date of such termination, packed for shipment in accordance with manufacturer's published specifications and with freight and insurance prepaid to FINANCER's or its assignee's nearest warehouse location in the United States, such location to be specified by FINANCER or its assignee. FINANCER or its assignee will have all legal and equitable rights and remedies to take possession of the ECMs. Upon such termination, title to the ECMs will revert to FINANCER or its assignee.
- B. If on the thirtieth (30th) day after the commencement of any Fiscal Period, sufficient funds have not been appropriated for the purpose of making all of the payments scheduled to be paid in such Fiscal Period, the Funding Agency shall cause to be delivered written notice (a "notice of non-appropriation") to FINANCER or its assignee within ten (10) calendar days after such thirtieth (30th) day. Upon FINANCER's receipt of a notice of non-appropriation, this Agreement shall terminate as of the end of the Fiscal Period just ended; provided, however, that such termination shall not become effective as of the end of such Fiscal Period just ended if, within ten (10) calendar days of the thirtieth (30th) day after the end of such Fiscal Period just completed, the Funding Agency shall cause to be delivered to FINANCER a written statement to the effect that it reasonably expects sufficient funds for the then-current Fiscal Period to be appropriated for this Agreement, and in such event that the term shall continue into the then-current Fiscal Period so long, but only so long, as an appropriation becomes available from which to make the payments. Notwithstanding the foregoing, the Funding Agency agrees that it will not cancel this Agreement under the provisions of this paragraph if any funds are appropriated to it, or by it, for this Guaranteed Energy Saving Act project for the Fiscal Period following the Fiscal Period in which funds were appropriated.

5. AUTHORITY AND AUTHORIZATION

- A. Commonwealth represents, covenants, and warrants that:

- I. The execution, delivery, and performance by Commonwealth of this Agreement have been duly authorized by necessary action on the part of Commonwealth;
- II. This Agreement has been duly executed and delivered on behalf of Commonwealth and constitutes a legal, valid, and binding obligation of Commonwealth enforceable in accordance with its terms; and
- III. The Commonwealth has complied with all bidding requirements where necessary, and by due notification, presented this Agreement for approval as a valid obligation on its part. The Commonwealth agrees that:
 - a. The Commonwealth will do, or cause to be done, all things necessary to preserve and keep the Agreement in full force and effect;
 - b. The Funding Agency has sufficient appropriations or other funds available to pay all amounts due for the current Fiscal Period;
 - c. The Funding Agency's obligations are not guaranteed by the United States of America or any agency or instrumentality;
 - d. The Funding Agency has not established, and will not establish, any sinking fund, redemption fund, debt service fund, reserve fund, replacement fund, or similar fund to be used to pay principal or interest composing the payments due;
 - e. The Funding Agency will take no action that would cause the interest portion of the payments due to become included 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 (the "Regulations"), and the Funding Agency 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 payments due does not become included 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); and
 - f. The Funding Agency will sign and submit to FINANCER for filing with the Secretary of the Treasury, information reporting statements and other information relating to this Agreement at the times and in the forms required by the Code and the Regulations.

6. TITLE

- A. Upon final acceptance of the implemented/constructed ECMs by Commonwealth, title to the ECMs will vest in Commonwealth, provided however, that:

- I. In the event of termination of this Agreement by the Funding Agency pursuant to NONAPPROPRIATION OF FUNDS paragraph and delivery of the ECMs to FINANCER; or
- II. Upon repossession of the ECMs in the event of a default, title will immediately vest in FINANCER or its assignee.

7. SECURITY INTEREST

- A. In order to secure all of its obligation, the Funding Agency:
 - I. Grants to FINANCER a first priority security interest in any and all right, title, and interest of the Funding Agency in the ECMs and in all additions, attachments, accessions, and substitutions, and on any proceeds therefrom;
 - II. Agrees that this Agreement may be filed as a financing statement evidencing such security interest; and
 - III. Agrees to execute and deliver all financing statements, certificates of title, and other instruments necessary or appropriate to evidence such security interest.
- B. Once all payments set in Payment Schedule have been made, then the Funding Agency will own the ECMs free and clear of all liens or other encumbrances.

8. PERSONAL PROPERTY

- A. The ECMs are, and will remain, personal property, and will not be deemed to be affixed to, or be a part of, the real estate on which it may be situated, notwithstanding that the ECMs, or any part thereof, may be or hereafter become in any manner, physically affixed or attached to real estate or any building hereon.

9. MAINTENANCE

- A. The Funding Agency, at its own cost and expense, will maintain the ECMs in good operating condition for the duration of this Agreement and will not use or deal with the ECMs in any manner which is inconsistent with any laws or regulations. The ECMs will not be misused, abused, wasted, or be allowed to deteriorate except for ordinary wear and tear resulting from its intended use. The Funding Agency agrees to cause the ECMs to be maintained pursuant to manufacturer's standard maintenance specifications and will provide proof of proper maintenance at FINANCER's request.

10. ALTERATIONS

- A. The Funding Agency will not make any alterations, additions, or improvements to the ECMs without FINANCER's prior written consent unless such alterations, additions, or improvement may be readily removed without damage to the ECMs.

11. LIENS AND ENCUMBRANCES

- A. Commonwealth shall keep the ECMs free and clear of all levies, liens, and encumbrances, except those created under this Agreement. The Funding Agency shall pay, when due, all charges which may be imposed upon the ownership, leasing, rental, sale, purchase, possession, or use of the ECMs, excluding, however, all taxes on or measured by FINANCER's income. If the Funding Agency fails to pay said charges when due, FINANCER shall have a right, but shall not be obligated, to pay said charges. If FINANCER pays any charges for which the Funding Agency is responsible or liable under this Agreement, the Funding Agency shall reimburse FINANCER.

12. RISK OF LOSS; DAMAGE; DESTRUCTION

- A. Upon acceptance of the ECMs, Commonwealth and/or GESA Contractor, as per the terms of the GESA Contract, assumes all risks of loss or damage to the ECMs from any cause whatsoever, and no such loss of or damage to the ECMs or defect, or unfitness, or obsolescence, shall relieve the Funding Agency of its obligation to make payments or to perform any other obligation under this Agreement.
- B. In the event of damage to any item or ECM, the Funding Agency will immediately notify GESA Contractor and place the same in good repair. If the Funding Agency determines that any item of ECMs is lost, stolen, destroyed, or damaged beyond repair, the Funding Agency will either:
 - I. Replace the same with like ECMs in good repair; or
 - II. On the next payment date following occurrence of loss, pay FINANCER or its assignee:
 - a. All amounts for said lost, stolen, destroyed, or damaged beyond repair ECM then owed by the Funding Agency to FINANCER under this Agreement, including the payment for such item(s) due on such date; and
 - b. The proportionate amount of applicable payment set in the PAYMENT SCHEDULE.

13. INSURANCE

- A. GESA Contractor will insure against any or all risks in accordance with the GESA Contract. GESA Contractor shall demonstrate to the satisfaction of FINANCER or assignee that adequate insurance is provided. In the event of any loss, damage, injury, or accident involving the ECMs, Commonwealth will promptly provide GESA Contractor with written notice within ten (10) days and make available to GESA Contractor all relative information and documentation.
- B. Upon final acceptance of ECMs, and in accordance with Section 6 of this Agreement, title of the ECMs will vest with the Commonwealth. Commonwealth will then self-insure against any or all risks assumed in this Agreement. Commonwealth shall demonstrate to the satisfaction of FINANCER or assignee that adequate self-insurance is provided. In the event of any loss, damage, injury, or accident involving the ECM(s), Commonwealth will promptly

provide GESA Contractor with written notice within ten (10) days and make available to GESA Contractor all relative information and documentation.

- C. Upon Commonwealth self-insuring the ECMs, Commonwealth will assume all risks and liabilities for injury to or death of any person or damage to any property, in any manner arising out of possession, use, operation, custody, control, condition, or storage of the ECMs by Commonwealth, whether such injury or death be with respect to Commonwealth's property or the property of other; provided, however, that said damage or injury results from the negligence of Commonwealth, its agents or employees, and that either Commonwealth agrees to settle such claim or judgment has been obtained against Commonwealth. This Section shall not be construed to limit or waive in any way the sovereign immunity of Commonwealth, liability of which under the Section is limited to amounts in which Commonwealth is otherwise permitted or required to respond in accordance with applicable law.

14. PREPAYMENT OPTION

- A. Upon thirty (30) days' prior written notice from the Funding Agency to FINANCER, and provided that there is no Event of Default, or an event with which notice or lapse of time, or both, could become an Event of Default, then existing, the Funding Agency will have the right to terminate the Funding Agency's continued obligation to make payments, as specified in the PAYMENT paragraph and Payment Schedule to FINANCER on the purchase of the ECMs.
- B. Under this paragraph, payments up to date of prepayment and the Purchase Price, along with any interest accrued from the date of the last payment, will be due to FINANCER on the date of prepayment. Upon satisfaction by the Funding Agency of such purchase conditions, FINANCER shall then have no rights, title, and interest in the ECMs. No voluntary prepayment is permitted prior to the date of the first scheduled payment under the Payment Schedule.

15. ASSIGNMENTS

- A. Without FINANCER's prior written consent, Commonwealth will not assign, transfer, pledge, or grant any security interest in, or otherwise dispose, of this Agreement, the ECMs, or any interest in this Agreement or the ECMs. FINANCER may assign its rights, title, and interest to this Agreement, the ECMs, and any other documents executed with respect to this Agreement and/or grant or assign a security interest in this Agreement and the ECMs, in whole or in part. Any such assignee shall have all of the rights of FINANCER under this Agreement. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the heirs, executors, administrators, successors, and assigns of the parties.
- B. Upon assignment of FINANCER's interests, FINANCER will cause written notice of such assignment to be sent to the Funding Agency, which will be sufficient if it discloses the name of the assignee and address to which payments should be made. No further action will be required by FINANCER or by the Funding Agency to evidence the assignment, but the Funding Agency will acknowledge such assignments in writing, if so requested.

- C. Notwithstanding the foregoing, no such assignments of FINANCER's interests shall be effective against the Funding Agency unless the Funding Agency receives notification in writing of the Agreement designating the name and address of any such assign. In compliance with Section 149(a) of the Internal Revenue Code, Commonwealth agrees to affix a copy of each notification of assignment to Commonwealth's counterpart of the Agreement.
- D. NOT BEING THE MANUFACTURER OR VENDOR OF THE ECMs, ANY ASSIGNEE OF FINANCER SHALL BE DEEMED TO HAVE MADE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITIONS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE ECMs. In no event shall any assignee be liable for any incidental, indirect, special, or consequential damage in connection with, or arising out of, this Agreement or the existence, furnishing, functioning, or the Funding Agency's use of any item of ECMs, or products, or services provided for in this Agreement.

16. EVENTS OF DEFAULT BY the Funding Agency

- A. The term "Event of Default," as used in paragraphs 17 and 18, means the occurrence of any one of the following events:
 - I. The Funding Agency, in accordance with the GESA Contract, fails to make any payment as it becomes due in accordance with the terms of this Agreement, and any such failure continues for sixty (60) days after receipt of written notice of Default; or
 - II. The Funding Agency fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it, and such failure is not cured within sixty (60) days after written notice by FINANCER.

17. REMEDIES BY FINANCER

- A. Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, FINANCER may at its option, exercise any one or more of the following remedies:
 - I. By written notice to the Funding Agency, with or without terminating this Agreement, declare an amount equal to all amounts then due under this Agreement, and all remaining payments due for which funds have been appropriated, to be immediately due and payable, whereupon the same shall become immediately due and payable;
 - II. By written notice to the Funding Agency, request the Funding Agency to, at the Funding Agency's expense, promptly return the ECMs to FINANCER in the manner specified in NONAPPROPRIATION OF FUNDS paragraph, or FINANCER, at its option, may enter upon the premises where the ECM is located and take immediate possession of and remove the same, and the Funding Agency hereby expressly waives any damages occasioned by such actions not caused by FINANCER's willful misconduct or negligence;

- III. Sell the ECMs and apply any proceeds of such disposition in the following order: (i) all costs incurred in securing possession of the ECMs; (ii) all expenses incurred in completing the disposition; (iii) any sales or transfer taxes; (iv) the applicable payment; and (v) the balance of any payments owed by the Funding Agency for which funds have been appropriated. Any disposition proceeds remaining after the requirements of clauses (i), (ii), (iii), (iv), and (v) have been met shall be paid to the Funding Agency; and
- IV. Exercise any other right, remedy, or privilege which may be available to it under applicable laws of the Commonwealth of Pennsylvania, or any other applicable law, or proceed by appropriate court action to enforce the terms of this Agreement, or to recover damages for the breach of this Agreement, or to terminate this Agreement as to any or all of the ECMs. In addition, the Funding Agency will remain liable to the extent not prohibited by law for all covenants under this Agreement and for all fees, other costs, and expenses incurred by FINANCER with respect to the enforcement of any of the remedies listed above or any other remedy available to the FINANCER.

18. EVENTS OF DEFAULT BY FINANCER AND REMEDIES BY COMMONWEALTH

- A. If FINANCER fails to make any payment as it becomes due in accordance with the terms of this Agreement, and any such failure continues for sixty (60) days after receipt of written notice of Default, then Commonwealth may pursue any right, remedy, or privilege which may be available to it under applicable laws of the Commonwealth of Pennsylvania, or any other applicable law, or proceed by appropriate court action to enforce the terms of this Agreement, or to recover damages for the breach of this Agreement.

19. NOTICES

- A. All notices to be given under this Agreement shall be made in writing and mailed by certified mail (return receipt requested) to the other party at its address or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five (5) days after mailing.

20. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

- A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
- B. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.

- C. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
- D. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- E. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- F. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- G. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- H. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- I. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

- J. The commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

21. CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

(a). DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

1. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
2. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
3. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.
4. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
5. "Financial Interest" means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
6. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
7. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

(b) In furtherance of this policy, Contractor (i.e., FINANCER) agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state of federal laws or regulations or any other applicable laws or regulations or other requirements

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applicable to Contractor or that govern contracting or procurement with the Commonwealth.

2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements or these provisions as they relate to Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

3. Contractor, its affiliates, agents and employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive, or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

4. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

5. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

- i. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- ii. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
- iii. had any business license or professional license suspended or revoked;
- iv. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation, or anti-trust; and
- v. been, and is not currently, the subject of a criminal investigation by any federal, state, or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.

If Contractor cannot certify to the above, then it must submit, along with its bid proposal or contract, a written explanation (**Exhibit D**) of why such certification cannot be made, and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof.

Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances, or were false, or should have been known to be false, when entering into the contract.

6. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

7. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

8. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices, or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

9. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents, or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract, or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create

privity of contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.

10. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

22. CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

(a) The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.

(b) The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

(c) The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes or other Commonwealth obligations, or if it, or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

(d) The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.

(e) The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

(f) The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.pa.gov> or contacting:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 787-5599
FAX No. (717) 787-9138

23. AMERICANS WITH DISABILITIES ACT

Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. §35.101 et seq., FINANCER understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. As a condition of accepting this Agreement, FINANCER agrees to comply with the "General Prohibitions Against Discrimination", 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services programs, and activities provided by the Commonwealth of Pennsylvania through the contracts with outside contractors.

FINANCER shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of FINANCER's failure to comply with the provisions of subparagraph above.

24. INDEMNIFICATION

Subject to Exhibit D, neither the FINANCER nor the Commonwealth assumes any liability for each other. As to liability to each other for injury or death to persons, or damages to property, the Commonwealth and the FINANCER do not waive any defenses as a result of entering into this Agreement. This provision shall not be construed to limit the Commonwealth's rights, claims or defenses which arise as a matter of law pursuant to any provisions of this Agreement. This provision shall not be construed to limit the sovereign immunity of the Commonwealth.

25. RIGHT-TO-KNOW

- A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency and "this Contract" shall refer to the Agreement together with its Payment Schedule and "the Contractor" shall refer to FINANCER.

- B. If the Commonwealth needs the Contractor's assistance in a matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- C. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 - I. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - II. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- D. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- E. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- F. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- G. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- H. The contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts; however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of

the Commonwealth's disclosure of Requested Information pursuant to RTKL.

- I. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

26. OFFSET PROVISION

- A. Subject to Exhibit D, the contractor agrees that the Commonwealth may offset the amount of any state tax or Commonwealth liability of the contractor or its affiliates and subsidiaries that is owed to the Commonwealth against any payments due the contractor under this or any other contract with the Commonwealth.

27. GOVERNING LAW

- A. This Agreement shall be construed in accordance with, and governed by the laws of, the Commonwealth of Pennsylvania.

28. ENHANCED MINIMUM WAGE PROVISIONS

- A. **Enhanced Minimum Wage.** Contractor agrees to pay no less than \$10.15 per hour to its employees for all hours worked directly performing the services called for in this Contract, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- B. **Adjustment.** Beginning January 1, 2017, and annually thereafter, Contractor shall pay its employees described in Paragraph 1. above an amount that is no less than the amount previously in effect; increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication as determined by the United States Bureau of Labor Statistics; and rounded to the nearest multiple of \$0.05. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- C. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - I. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - II. covered by a collective bargaining agreement;
 - III. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - IV. required to be paid a higher wage under any state or local policy or ordinance.
- D. **Notice.** Contractor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- E. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- F. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in

the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.

- G. Subcontractors. Contractor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

D. PARAGRAPH HEADINGS

- a. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

E. COUNTERPARTS

- a. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which together are a single Agreement.

F. DELIVERY OF RELATED DOCUMENTS

- a. Commonwealth will execute or provide, as requested by FINANCER, such other documents and information as are reasonable necessary with respect to the transaction contemplated by this Agreement.
- b. Commonwealth agrees that, pursuant to Section 149(a) of the Internal "Revenue Code of 1986, as amended (the "Code"), and any temporary and final income tax regulations promulgated thereunder, it shall file the applicable Internal Revenue Service Form 8039G or 8038GC (Information Return for Tax Exempt Governmental Bond Issues). Additionally, Commonwealth, pursuant to Section 149 (a) of the Code, appoints the FINANCER, or any assignee, as "Agent" of the Lessee to keep a record of the assignees who maintain an interest in this Lease. Commonwealth agrees that it shall remit to the Internal Revenue Service any rebates due as provided by the Code.

G. ENTIRE AGREEMENT; WAIVER

- a. This Agreement, together with the Request for Bid Proposals for Financing, the FINANCER's Bid Proposal, the GESA Contract, the Payment Schedule, and the documents delivered pursuant to the requirements of paragraph 27 of this Agreement, constitute the entire Agreement between the parties with respect to the financing of the GESA Contract, and this Agreement shall not be modified amended, altered, or changed except with the written consent of the FINANCER and the Commonwealth (the Funding Agency). Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. The waiver by the FINANCER and the Commonwealth (the Funding Agency) of any breach by the other party of any term, covenant, or condition shall not operate as a waiver of any subsequent breach.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS.]

The parties have caused this contract to be executed on the dates written above.

ATTEST:

[FINANCAL PROVIDER]

Printed Name

Printed Name

Title

Title

Signature *Date*

Signature *Date*

Federal Identification No. _____

Vender No. _____

COMMONWEALTH OF PENNSYLVANIA
Acting through the [FUNDING AGENCY]

Signature *Date*

Title: *Date*

APPROVED AS TO FORM AND LEGALITY:

Office of Chief Counsel *Date*
[FUNDING AGENCY]

Office of General Counsel *Date*

Office of Attorney General *Date*

Comptroller Operations *Date*

Exhibit A
to Installment Purchase Agreement and Payment Schedule

GESA CONTRACT (WITH EXHIBITS)

SAMPLE

Exhibit B
to Installment Purchase Agreement and Payment Schedule

SAMPLE

FORM OF ACCEPTANCE CERTIFICATE

FINANCER ADDRESS

Attn: Contract Administration

Re: Installment Purchase Agreement and Payment Schedule (the "Agreement") dated as of _____ between _____ ("FINANCER") and the Commonwealth of Pennsylvania, Acting through the [Funding Agency] (the "Funding Agency")

Ladies and Gentlemen:

In accordance with the Agreement, the undersigned Funding Agency hereby certifies and represents to, and agrees with Lessor as follows:

1. The implementation/construction of the ECMs (as defined in the Agreement) has been completed by the GESA Contractor (as defined in the Agreement) and such ECMs have been delivered, installed, are operating in a manner consistent with the GESA Contractor's intended use and has been inspected and finally accepted for all purposes by the Funding Agency and title thereto has transferred to the Funding Agency and any security interest of the GESA Contractor therein has been released.

2. The Funding Agency has conducted such inspection and/or testing of the ECMs as it deems necessary and appropriate in order to determine the capability and functionality of the ECMs in order to accept such ECMs and hereby acknowledges that it accepts the ECMs for all purposes.

3. The Funding Agency is self-insured in accordance with Section 13 of the Agreement.

4. The Funding Agency hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.

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

Date: _____

Commonwealth of Pennsylvania, Acting through
the [Funding Agency] (the "Funding Agency")

By: _____

Name: _____

Title: _____

(Seal)

Exhibit C
to Installment Purchase Agreement and Payment Schedule

SAMPLE

Exhibit D
to the Installment Purchase Agreement and Payment Schedule

SAMPLE

**Contractor Integrity Provisions,
Indemnification
And Offset Provision
Banc of America Public Capital Corp's
Written Explanation**

SAMPLE

January __, 2018

Section 21. Contractor Integrity Provisions:

As a written explanation to Section 21(b)2 of the Contractor Integrity Provisions of the Agreement, please note the following: Bank of America Corporation ("BAC") is a large and diversified institution. BAC and its affiliates and subsidiaries, which include Banc of America Public Capital Corp (a wholly owned subsidiary of Bank of America, National Association (the "Bank")) ("BAPCC"), had approximately 210,247 full time equivalent employees as of December 31, 2016. Accordingly, it is not reasonably possible for BAPCC to perform due diligence across the full panoply of associates and related entities in preparing BAPCC's response. BAC is committed to the highest standards of ethical and professional conduct. Employees of BAC and its affiliates and subsidiaries are required to take and pass annual compliance training, which includes a Code of Conduct review. Our Code of Conduct policy is posted on the Bank's website and it is not posted at each Bank of America site.

As a clarification to Section 21(b)4 of the Contractor Integrity Provisions of the Agreement, BAPCC is a wholly owned subsidiary of the Bank, who may act as Escrow Agent for any resulting contract. BAPCC's affiliate, Banc of America Leasing & Capital, LLC, will be providing certain services in fulfillment of the resulting contract, and BAPCC will still remain ultimately responsible for the provisions of those services.

As a clarification to Section 21(b)5 of the Contractor Integrity Provisions of the Agreement, Bank of America Corporation ("BAC") is a large and diversified institution. BAC and its affiliates and subsidiaries, which include Banc of America Public Capital Corp (a wholly owned subsidiary of Bank of America, National Association (the "Bank")) ("BAPCC"), had approximately 210,247 full time equivalent employees as of December 31, 2016. Accordingly, it is not reasonably possible for BAPCC to perform due diligence across the full panoply of associates and related entities in preparing BAPCC's response. However, to the best knowledge of the individual signing below without independent inquiry, and subject to, and except as set forth in the provisions contained in this Exhibit D, neither BAPCC nor any current team member, or any of their current principals, officers, partners, directors or members, have been indicted/convicted for a felony within the past 5 years in connection with any business conduct related to their respective role or responsibilities at BAC, or been debarred or suspended by any department or agency of the U.S. Government from bidding for, or being awarded, a contract for the provision of banking services.

Banc of America Public Capital Corp is an indirect, wholly-owned subsidiary of Bank of America Corporation ("BAC"). BAC makes all required disclosures in its Form 10-K as filed with the Securities and Exchange Commission and its Annual Report as posted on its website at <http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-reportsannual>. In addition, BAC's registered broker-dealer and investment adviser subsidiaries make all required disclosures on their Form BDs as filed with FINRA and their Form ADVs as filed with the SEC. These filings include disclosures of investigations and litigation as required by the SRO's and federal law, and are publicly available. BAC cannot confirm or deny the existence of any other non-public investigation conducted by any governmental agency unless required to do so by law.

As a clarification to Sections 21(b)5 and 21(b)10 of the Contractor Integrity Provisions of the Agreement, please note the following:

Banc of America Public Capital Corp's services as Financer under the Agreement are to deposit funds into the Escrow Account at closing. Any termination of the Agreement by the Commonwealth after closing would require the Funding Agency to prepay the Agreement in accordance with its terms.

Section 24, Indemnification:

Under the Agreement, Banc of America Public Capital Corp's services as Financer are to deposit funds into the Escrow Account at closing and the obligations of the Commonwealth, acting through the Funding Agency, are, among other things, to assume the risk of loss in accordance with Section 12 of the Agreement and to provide insurance coverage in accordance with Section 13 of the Agreement.

Section 26. Offset Provision:

Bank of America Corporation ("BAC") is a large and diversified institution. BAC and its affiliates and subsidiaries, which include Banc of America Public Capital Corp (a wholly owned subsidiary of Bank of America, National

Association (the "Bank")) ("BAPCC"), had approximately 210,247 full time equivalent employees as of December 31, 2016. Under the Agreement, BAPCC's services as Financer are to deposit funds into the Escrow Account at closing and the obligations of the Commonwealth, acting through the Funding Agency, are, among other things, to pay the payments as set forth in the Payment Schedule, subject only to Section 4 of the Agreement.

Very truly yours,

BANC OF AMERICA PUBLIC CAPITAL CORP

By: _____

Its:

SAMPLE