



## MEMORANDUM

**TO:** CITY COUNCIL

**FROM:** DEBBIE MALICOAT, DIRECTOR OF ADMINISTRATIVE SERVICES

**SUBJECT:** CONSIDERATION OF LEASE PURCHASE FINANCING FOR PUBLIC WORKS DEPARTMENT VEHICLES AND EQUIPMENT

**DATE:** AUGUST 22, 2017

### **RECOMMENDATION:**

It is recommended the City Council:

1. Adopt a Resolution authorizing lease purchase financing with Holman Capital for Public Works vehicles and equipment; and
2. Delegate authority to the City Manager to execute all necessary documents to facilitate the financing.

### **SUMMARY OF ACTION:**

Take action to approve borrowing money for the purchase of vehicles, equipment and aftermarket products for the City's fleet.

### **IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:**

The replacement of Public Works vehicles and equipment is proposed through a lease/purchase arrangement utilizing the services of a municipal financing firm. Payments for a four (4) year lease/purchase arrangement were allocated in various Public Works Divisions for the FY 2017-18 budgets. Approval of the purchases is recommended under a separate agenda item.

### **BACKGROUND:**

The FY 2017-18 adopted budget includes funds for replacing aging vehicles and equipment in the Public Works Department fleet. The annual allocation of replacement funds is intended to cover a four (4) year lease payment arrangement with a municipal financing company.

After assessing the condition of the fleet, a plan for replacements was developed, as described in more detail in a separate agenda item. The total cost of vehicles, equipment and aftermarket products is approximately \$478,300.

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**ANALYSIS OF ISSUES:**

Given the life cycle of large equipment and previous direction from the City Council, the use of lease purchase financing enables the City to spread the cost of vehicles and equipment over several years, thus establishing consistent annual replacement budgets. The use of lease purchase agreements has been very successful in managing the cost of the City's fleet for more than a decade.

Staff solicited financing terms for a four year lease purchase agreement and recommends utilizing Holman Capital. Final "lock in" of interest rates will occur just before funding of the loan, therefore financing costs are still estimates at this time. The essential terms of the financing are:

- Term: 4 years
- Interest rate: 2.60%
- Semi-Annual payments
- Semi-Annual payment amount: \$63,338
- Total Payments: \$513,702 (includes documentation fee of \$7,000)

It is recommended that the City Council delegate authority to finalize the necessary financing documents to the City Manager provided they do not substantively change the terms of the lease and are generally in conformance with the attached draft documents. This will facilitate ease of closing the transaction without the necessity of returning to the City Council for final document approval. Preliminary draft documents are provided as Attachment 1.

Rather than entering into a lease purchase arrangement, the City could pay for the purchase of the vehicles and equipment through the use of fund balance. Paying cash for the vehicles and equipment would save the City \$35,400 in financing costs. This was not contemplated in the preparation of the FY 2017-18 budget; rather spreading the cost over several years to more closely match the useful life and replacement cycles of equipment was proposed. Given the future fiscal uncertainty of retirement costs and the historically low interest rates, it seems most prudent to finance these purchases and retain fund balances at their current levels.

**ALTERNATIVES:**

The following alternatives are provided for the Council's consideration:

1. Adopt the Resolution authorizing the lease purchase financing and delegate authority to the City Manager to execute all necessary documents;
2. Do not adopt the Resolution and provide direction to staff to use fund balances to facilitate the purchases; or
3. Provide other direction to staff.

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**ADVANTAGES:**

The Public Works fleet will be updated and reduce upfront costs by allowing payments to be made over four years.

**DISADVANTAGES:**

The recommended action will commit the City to a four year lease purchase program.

**ENVIRONMENTAL REVIEW:**

No environmental review is required for this item.

**PUBLIC NOTIFICATION AND COMMENTS:**

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

Attachment:

1. Draft legal documents

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE-PURCHASE AGREEMENT, AN ESCROW AGREEMENT AND EQUIPMENT SCHEDULE WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING, AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION**

**WHEREAS**, the City of Arroyo Grande (the “Lessee”), a body politic and corporate duly organized and existing as a city and political subdivision of the State of California, is authorized by the laws of the State of California to purchase, acquire, and lease personal property for the benefit of the Lessee and those it provides services to and to enter into contracts with respect thereto; and

**WHEREAS**, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; including without limitation various vehicles and all other equipment Lessee or its Designated Officers may deem necessary and/or desirable in an amount not more than \$500,000.00 (the “Equipment”); and

**WHEREAS**, in order to acquire such Equipment, the Lessee proposes to enter into one or more Equipment Lease-Purchase Agreements (together with the Equipment Schedules and all related exhibits, schedules, and certificates attached thereto, the “Lease Agreements”) with Holman Capital Corporation (the “Lessor”) and one Escrow Agreement (together with the Disbursement/Payment Request Form and Acceptance Certificate, the “Escrow Agreement”, and together with the Lease Agreements, the “Transaction Documents”) with the Lessor, the forms of which have been presented to the governing body of the Lessee at this meeting; and

**WHEREAS**, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Transaction Documents for the purchase, acquisition, and leasing of the Equipment to be therein described on the terms and conditions therein provided.

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Arroyo Grande as follows:

**SECTION 1. Approval of Documents.** The governing body of the Lessee hereby approves the form, terms and provisions of the Transaction Documents in substantially the forms presented to this meeting and authorizes and directs James A. Bergman, the City Manager of the City of Arroyo Grande, and such other persons as he may delegate

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(the "Designated Officers"), and each of them individually, for and in the name of and on behalf of the Lessee, to execute and deliver the Transaction Documents, and any related Certificate, Exhibits, or other documents attached thereto in such forms with such changes, insertions, revisions, corrections, or amendments as shall be approved by the officer executing them. The execution of the foregoing by a Designated Officer shall constitute conclusive evidence of such officer's and the governing body's approval of any such changes, insertions, revisions, corrections, or amendments to the respective forms of agreements presented to this meeting.

**SECTION 2. Other Actions Authorized.** The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Transaction Documents to carry out, give effect to, and consummate the transactions contemplated thereby (including, but not limited to, the execution and delivery of Certificates of Acceptance and Disbursement/Payment Requests, Notice and Acknowledgements of Assignments, and any tax certificate and agreement, each with respect to and as contemplated in the Agreement and/or Escrow Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Transaction Documents. The Designated Officers and all other officers and employees of the Lessee are hereby directed and authorized to take and shall take all action necessary or reasonably required in order to select, purchase, and take delivery of the Equipment. All actions heretofore taken by officers, employees, and agents of the Lessee that are in conformity with the purposes and intent of this resolution are hereby approved, confirmed, and ratified.

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

**SECTION 4. Appointment of Authorized Lessee Representatives.** The Designated Officers are each hereby designated to act as authorized representatives of the Lessee for purposes of the Transaction Documents until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Transaction Documents.

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

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

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

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, and on the following roll call vote, to wit:

**AYES:**

**NOES:**

**ABSENT:**

the foregoing Resolution was passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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**JIM HILL, MAYOR**

**ATTEST:**

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**KELLY WETMORE, CITY CLERK**

**APPROVED AS TO CONTENT:**

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**JAMES A. BERGMAN, CITY MANAGER**

**APPROVED AS TO FORM:**

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**HEATHER WHITHAM, CITY ATTORNEY**

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**INDEX TO LEGAL DOCUMENTS**  
**BANK-QUALIFIED, APPROPRIATION-BASED, ESCROW FUNDED**  
**TAX-EXEMPT EQUIPMENT LEASE-PURCHASE AGREEMENT**

**DATED < > BY AND BETWEEN**

**HOLMAN CAPITAL CORPORATION**

**And**

**<LESSEE NAME>**

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Lease Documents:

- |         |   |
|---------|---|
| Tab 1:  | Equipment Lease-Purchase Agreement;   |
| Tab 2:  | Exhibit A – Equipment Schedule;   |
| Tab 3:  | Exhibit B – Notice and Acknowledgment of Assignment;                              |
| Tab 4:  | Exhibit C-1 – Insurance Coverage Request;   |
| Tab 5:  | Exhibit C-2 – Self-Insurance Rider (if applicable);                               |
| Tab 6:  | Exhibit D – Essential Use Certificate;  |
| Tab 7:  | Exhibit E – Incumbency Certificate;   |
| Tab 8:  | Exhibit F – Opinion of Lessee’s Counsel;  |
| Tab 9:  | Exhibit G – Bank Qualified Designation;   |
| Tab 10: | Exhibit H – Post Issuance Tax Compliance Procedures;                              |
| Tab 11: | Exhibit I – Escrow Agreement;   |
| Tab 12: | Resolution of Lessee;   |
| Tab 13: | UCC-1 Financing Statement with attached Schedule A (to be filed by the Investor); |
| Tab 14: | Form 8038-G;  |
| Tab 15: | Closing Memorandum/Payment Proceeds Direction; and                                |

Assignment Documents (Lessor and Investor Only):

- |         |   |
|---------|---|
| Tab 16: | Assignment Agreement with Schedule A thereto. |
|---------|---|
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**HOLMAN CAPITAL CORPORATION**

## ENERGY CONSERVATION EQUIPMENT LEASE-PURCHASE AGREEMENT

1. **Agreement.** Subject to the terms and conditions contained in this Energy Conservation Equipment Lease-Purchase Agreement dated < > (this "Lease Agreement"), HOLMAN CAPITAL CORPORATION, as lessor ("Lessor"), whose mailing address is 25201 Paseo de Alicia, Suite 290, Laguna Hills, CA 92653, hereby purchases from and agrees to sell, transfer and lease back to the <LESSEE>, as lessee ("Lessee"), whose mailing address is <Lessee Address, City, State, Zip>, and Lessee hereby sells to and agrees to acquire, purchase and lease back from Lessor, the items of personal property (together with any replacement parts, additions, substitutions, repairs or accessories now or hereafter incorporated in or affixed to it, hereinafter referred to collectively as the "Equipment") described in Exhibits A-1 and A-2 attached hereto. The Lease Agreement and Equipment Schedule shall constitute the "Lease."

2. **Term.** The term of this Lease (the "Lease Term") begins as of the Commencement Date stated in Exhibit A and shall continue so long as any amounts remain unpaid hereunder. The Lease Term will terminate upon the first to occur of: (a) the exercise by Lessee of the option to purchase the Equipment pursuant to Paragraph 10, (b) Lessor's election to terminate this Lease Agreement pursuant to Paragraph 16, (c) Lessee's option to terminate this Lease Agreement pursuant to Section 3, and (d) the payment by Lessee of all sums required to be paid by Lessee hereunder.

2.5. **Escrow Agreement.** On the Commencement Date, Lessor and Lessee shall enter into an escrow agreement (an "Escrow Agreement") dated the Commencement Date, between Lessor, Lessee, and <Bank Name>, as escrow agent, relating to the escrow fund (an "Escrow Fund") created thereunder. On the Commencement Date, Lessor shall deposit: <Deposit Amount> into the Escrow Fund to be held in escrow and applied upon the express terms and conditions of the Escrow Agreement; for the acquisition of the equipment which shall be disbursed as provided for in the Closing Memorandum and/or Escrow Agreement, each of even date herewith.

3. **Rental Payments.** Lessee agrees to pay the rental payments hereunder for the Lease Term in the amounts and on the dates identified in Exhibit A. Payment of all rental payments and other amounts payable hereunder shall be made to Lessor at its above-stated address or as it shall otherwise designate in writing. As set forth in Exhibit A, a portion of each rental payment is paid as, and represents payment of, interest, and the balance of each rental payment is paid as, and represents payment of, principal.

Notwithstanding any provision to the contrary in this Lease Agreement, Lessee may terminate this Lease at the end of any fiscal year of Lessee as identified in Exhibit A (a "Fiscal Year") if sufficient funds are not appropriated by Lessee's governing body to pay rental payments and other amounts due hereunder during the next succeeding Fiscal Year (an "Event of Nonappropriation"). Lessee hereby agrees to notify Lessor at least 30 days prior to the last day of its then current Fiscal Year of the occurrence of an Event of Nonappropriation or, if nonappropriation has not occurred by that date, promptly upon the occurrence of an Event of Nonappropriation.

Lessee represents and warrants that: (a) it has made sufficient appropriations or has other legally available funds to pay all rental payments hereunder due during the first Fiscal Year hereunder; (b) the officer of Lessee responsible for budget preparation will do all things lawfully within his/her power to obtain appropriated funds for the payment of rental payments and other amounts required to be paid hereunder in each next succeeding Fiscal Year for the Lease Term; and (c) Lessee acknowledges that Lessor has relied upon these representations as an inducement to enter into this Lease. If an Event of Nonappropriation hereunder shall occur, Lessee agrees, at Lessee's sole cost and expense, peaceably to deliver the corresponding Equipment to Lessor at such location in the continental United States as is specified by Lessor, in the condition required by Paragraph 7 of this Lease Agreement, on or before the effective date of termination.

Lessee's obligation to pay rental payments and any additional amounts payable hereunder constitutes a current obligation payable exclusively from legally available funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement.

4. **Essentiality.** Subject to Paragraph 3 of this Lease Agreement, Lessee's present intention is to make rental payments for the Lease Term as long as it has sufficient appropriations or other legally available funds. Lessee represents that, with respect hereto, (a) the use and operation of the Equipment is essential to its proper, efficient, and economic governmental operation and (b) the functions performed by the Equipment could not be transferred to other equipment available for its use. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest

therein prior to the last rental payment scheduled to be paid hereunder. On the Commencement Date, Lessee shall complete and provide Lessor a certificate in the form of Exhibit D.

**5. Disclaimer of Warranties. LESSEE REPRESENTS THAT IT HAS SELECTED THE EQUIPMENT PRIOR TO HAVING REQUESTED LESSOR TO FINANCE THE SAME. LESSEE AGREES THAT LESSOR HAS NOT MADE ANY, AND MAKES NO, REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING (WITHOUT LIMITATION) THE SUITABILITY OF THE EQUIPMENT, ITS DURABILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, ITS MERCHANTABILITY, ITS CONDITION, ITS CAPACITY, ITS OPERATION, ITS PERFORMANCE, ITS DESIGN, ITS MATERIALS, ITS WORKMANSHIP AND/OR ITS QUALITY. AS BETWEEN LESSEE AND LESSOR, LESSEE LEASES, PURCHASES AND ACQUIRES THE EQUIPMENT "AS IS" "WHERE IS" AND "WITH ALL FAULTS."** Lessor hereby assigns to Lessee, to the extent that it may lawfully do so, so long as no Event of Default and no Event of Nonappropriation shall have occurred and be continuing hereunder, all rights and benefits that Lessor may have under any warranty, guaranty or the like that may be made with respect to the Equipment by the manufacturer, seller and/or supplier (collectively, the "Vendor") thereof. Lessor shall not be liable to Lessee or any third party for any loss, damage, injury or expense of any kind or nature caused directly or indirectly by any of the Equipment or the use or maintenance thereof or any defect therein, the failure of operation thereof or by any interruption of service or loss of use thereof or for any loss of business or damage whatsoever and howsoever caused. Lessor makes no warranty as to the treatment of this Lease for tax or accounting purposes or as to the compliance of the Equipment with applicable government regulations or requirements. Lessee agrees to look solely to the Vendor for any claim arising from any defect, breach of warranty, failure or delay in delivery, mis-delivery or inability to use the Equipment for any reason whatsoever and Lessee's obligations to Lessor hereunder shall not in any manner be affected thereby, including (without limitation) Lessee's obligations to pay Lessor all rental payments and other amounts payable hereunder. Lessee has selected both the Equipment and the Vendor and acknowledges that Lessor has not participated in any way in Lessee's selection of the Equipment or the Vendor. Lessor has no obligation to install, erect, test, adjust, service or maintain the Equipment.

**6. Delivery and Acceptance; Quiet Enjoyment.** Lessee shall accept the Equipment for which disbursement is requested from the Escrow Fund upon its delivery and authorizes Lessor to insert on Exhibit A the serial numbers and any additional description of the items of Equipment so delivered. As evidence of that acceptance, Lessee shall execute and deliver to Lessor a Certificate of Acceptance in the form attached as Exhibit A to the Escrow Agreement. Regardless of whether Lessee has furnished a Certificate of Acceptance pursuant to this Paragraph 6, by making a rental payment after its receipt of the Equipment, Lessee shall be deemed to have accepted the Equipment on the date of such rental payment for purposes hereof. During the Lease Term, Lessee shall be entitled to quiet enjoyment of the Equipment, subject to the terms of this Lease Agreement.

**7. Use of Equipment; Maintenance and Repairs.** Lessee shall keep the Equipment within the State at the "Equipment Location" stated in Exhibit A and Lessee shall not remove any of the Equipment therefrom without Lessor's prior written consent. Lessee shall use the Equipment in a careful manner and shall at all times, at its sole expense, keep the Equipment in good operating condition, repair and appearance and comply with all laws, ordinances, regulations or requirements of any governmental authority, official, board or department relating to its installation, possession, use or maintenance. Lessee shall not make any alterations, additions, or improvements to the Equipment that are not readily removable without causing damage to or reducing the value of the Equipment. All alterations, additions, or improvements not readily removable shall become property of Lessor.

**8. Security Interest; Title to Equipment.** (a) The provisions of this Section 8(a) apply generally to all Equipment, regardless of the type, and the Escrow Fund (if any/applicable): To secure the performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor, and Lessor shall have and retain, a security interest constituting a first priority and perfected lien and security interest on the Equipment delivered hereunder and on any attachments, proceeds therefrom. Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, financing statements, landlord-tenant or mortgagee waivers, notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of Lessor's rights hereunder. As further security therefor, Lessee hereby grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time in the Escrow Fund and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party under the applicable Uniform Commercial Code. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests

therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. Lessor shall have the right during normal hours, upon reasonable prior notice to Lessee, to enter upon the premises where the Equipment is located in order to inspect the Equipment.

(b) Solely with respect to Equipment that is *not* comprised of vehicles and during the Lease Term, ownership and legal title of all of the Equipment and all substitutions, repairs, modifications, and replacements shall be in Lessee, and Lessee shall take all necessary action to vest such ownership and title in Lessee. Lessor does not own the Equipment, and, by this Lease Agreement, Lessor is merely financing the acquisition of the Equipment for the Lessee. Lessor has not been in the chain of title, does not operate, control or have possession or control over the Equipment, or Lessee's use, maintenance, operation, storage, or maintenance of the Equipment. Lessee is entitled to use and possession of the Equipment, subject to the rights of Lessor hereunder (including its interest in the Equipment as the lessor hereunder). If Lessor terminates this Lease Agreement pursuant to Paragraph 16 hereof or an Event of Nonappropriation occurs hereunder, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. Lessor shall have the right during normal hours, upon reasonable prior notice to Lessee, to enter upon the premises where the Equipment is located in order to inspect the Equipment.

(c) Solely with respect to Equipment consisting of vehicles, the provisions of this Section 8(c) shall apply: Lessee agrees to either cause the original registration of Lessor or its assignee as legal owner of the Equipment or endorse the certificate of ownership showing Lessor or its assignee as legal owner (as required by Section 6301 of the California Vehicle Code). Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, MSOs/Certificates of Origin, Title Applications, notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of Lessor's rights hereunder. During the Lease Term, Lessee shall be the owner (as defined in Section 460 of the California Vehicle Code) of the Equipment entitled to use and possession of the Equipment, subject to the rights of Lessor hereunder, which is the legal owner (as defined in Section 370 of the California Vehicle Code) of the Equipment. If Lessor terminates this Lease Agreement pursuant to Paragraph 16 hereof or an Event of Nonappropriation occurs hereunder, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee.

9. **Personal Property.** The Equipment shall be and remain personal property notwithstanding the manner in which it may be attached or affixed to realty. Lessee covenants that, unless Lessee owns the premises in which the Equipment is to be located and such premises are not subject to any mortgage or lease, at Lessor's request, Lessee shall provide Lessor with a waiver from each landlord and/or mortgagee of the premises in which the Equipment is to be located of any rights that such landlord and/or mortgagee may have in respect of any of the Equipment.

10. **Purchase of Equipment by Lessee; Prepayment.** At the option of Lessee, and provided that no Event of Default has occurred and is continuing hereunder, Lessor's interest in all, but not less than all, of the Equipment will be transferred, conveyed and assigned to Lessee, and this Lease shall terminate: (a) upon payment in full of the rental payments and all other payments then due hereunder or (b) on any rental payment date hereunder, provided Lessee shall have delivered written notice at least 30 days prior to such date of Lessee's intention to purchase the Equipment pursuant to this provision, by paying to Lessor, in addition to the rental payment due on such date, an amount equal to the concluding payment (the "Concluding Payment") shown for such rental payment date in the rental payment schedule in Exhibit A. Lessee shall not have the option to purchase the Equipment hereunder as provided in the foregoing clause (b) on any rental payment date hereunder for which a Concluding Payment is not stated in the rental payment schedule.

11. **Risk of Loss.** Lessee shall bear the entire risk of loss, theft, destruction of or damage to the Equipment or any part thereof from any cause whatsoever during the Lease Term and thereafter until redelivery to a location designated by Lessor, and shall not be relieved of the obligation to pay rental payments or any other obligation hereunder because of any such occurrence. If (a) the Equipment or any portion thereof hereunder is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof hereunder is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the net proceeds of any insurance claim (including self-insurance) or condemnation award to be applied, at Lessor's option, to (i) the prompt repair, restoration, modification

or replacement of the Equipment so affected or (ii) the payment in full of the then applicable Concluding Payment. Any balance of net proceeds remaining after completion of such work or payment of such Concluding Payment shall be paid promptly to Lessee. If the net proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Concluding Payment in full, Lessee shall, at Lessor's direction, either complete the work or pay the then applicable Concluding Payment in full and in either case pay any cost in excess of the amount of net proceeds, but only from legally available funds.

12. **Insurance.** (a) Insurance Policies. If Lessee is not self-insured (as hereafter provided), Lessee shall, at its expense, keep the Equipment fully insured against loss, fire, theft, damage or destruction from any cause whatsoever in an amount not less than the greater of (a) the total rental payments for the Lease Term, and (b) the full replacement cost of the Equipment without consideration for depreciation. Lessee shall also provide such additional insurance against injury, loss or damage to persons or property arising out of the use or operation of the Equipment as is customarily maintained by the owners of like property, with companies satisfactory to Lessor. Each policy shall provide that, as to the interest or coverage of Lessor or Lessor's assignee, the insurance afforded thereby shall not be suspended, forfeited or in any manner prejudiced by any default or by any breach of warranty, condition or covenant on the part of Lessee. If Lessee shall fail to provide any such insurance required hereunder or, within ten (10) days after Lessor's request therefor, shall fail to deliver the policies or certificates thereof to Lessor, then Lessor, at its option, shall have the right to procure such insurance and to add the full cost thereof to the rental payment next becoming due, which Lessee agrees to pay as additional rent. All such insurance shall be in form, issued by such insurance companies and be in such amounts as shall be satisfactory to Lessor, and shall provide that losses, if any, shall be payable to Lessor and its successors and/or assigns as "loss payee," and all such liability insurance shall name Lessor and its successors and/or assigns as an "additional insured." Lessee shall pay the premiums for such insurance and deliver to Lessor a certification in the form of Exhibit C-1 and satisfactory evidence of the insurance coverage required hereunder on or before the Commencement Date of the Lease, but in no event not later than the date on which an Acceptance Certificate is executed with respect to any Equipment hereunder. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payments of and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy.

(b) **Self-Insurance.** If Lessee is self-insured (including any self-insured retentions and deductibles) with respect to equipment such as the Equipment, the Equipment will be self-insured under an actuarially sound self-insurance program that is subject to Lessor's prior written consent and approval. If the Lessee shall maintains during the Lease Term such actuarially sound self-insurance program and in lieu of the coverage required under Section 16(a) hereunder, Lessee will, at all times, provide Lessor a certification in the form of Exhibit C-2 together with evidence of the self-insurance program in form and substance satisfactory to Lessor. The approval of self-insurance, self-insured retentions, and deductibles are all subject to Lessor's approval and prior written consent, which shall be based on the Lessor's then current credit underwriting practices.

13. **Fees; Taxes and Other Governmental Charges; Liens.** Lessee covenants and agrees at all times to keep the Equipment free and clear of all levies, liens (other than those created hereunder) and encumbrances, and to pay all charges, taxes and fees (including any recording or stamp fees or taxes) that may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment and shall give Lessor immediate written notice of any of the foregoing. If any of same shall remain unpaid when due, Lessor may pay same and add such payment to the rental payment next becoming due, as additional rent. Lessee shall execute and deliver to Lessor upon Lessor's request such further instruments and documents containing such other assurances as Lessor deems necessary or advisable for the confirmation or perfection of Lessor's rights hereunder or to otherwise effectuate the intent of this Lease Agreement and the Lease.

14. **Indemnification.** (a) To the extent authorized by law, Lessee shall indemnify and save Lessor, its officers, employees, agents, servants, successors and assigns, harmless from any and all liabilities (including, without limitation, negligence, tort and strict liability), damages, expenses, claims, actions, proceedings, judgments, settlements, losses, liens and obligations, including (without limitation) attorneys' fees and costs ("Claims"), arising out of the ordering, purchase, delivery, rejection, non-delivery, ownership, selection, possession, operation, control, use, condition, maintenance, transportation, storage, repair, return or other disposition of the Equipment, any claims arising under federal, state or local environmental protection and hazardous substance clean up laws and regulations and any claims of patent, trademark or copyright infringement or, if Lessee shall be in default hereunder, arising out of the condition of any item of Equipment sold or disposed of after use by Lessee, including (without limitation) claims for injury to or death of persons and for damage to property. The indemnities, assumption of liabilities and obligations herein provided shall be payable solely from funds legally available for such purpose and shall continue in

full force and effect notwithstanding the expiration, termination or cancellation of this Lease Agreement for any reason whatsoever. However, Lessee shall not be obligated to indemnify Lessor from Claims arising from the actual, proven and proximate gross negligence, bad faith, fraud or willful misconduct of Lessor.

(b) Lessor's Indemnification of Lessee. Lessor shall indemnify, defend, and hold harmless Lessee, its Governing Board, boards, commissions, officials, employees, and volunteers ("Indemnitees") from and against any and all Claims arising from or in any manner connected to Lessor's willful misconduct or any negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Lease Agreement. If Claims are filed against Indemnitees that allege negligence on behalf of Lessor, Lessor shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Lessor. However, Lessor shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

**15. Assignment; Subleasing.** LESSEE SHALL NOT ASSIGN, PLEDGE, MORTGAGE, SUBLET OR OTHERWISE TRANSFER OR ENCUMBER ANY OF ITS RIGHTS UNDER THIS LEASE, THE ESCROW AGREEMENT (INCLUDING THE ESCROW FUND CREATED THEREUNDER) OR IN THE EQUIPMENT OR ANY PART THEREOF, NOR PERMIT ITS USE BY ANYONE OTHER THAN LESSEE AND ITS REGULAR EMPLOYEES, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT. ANY SUCH PURPORTED TRANSFER, ASSIGNMENT OR OTHER ACTION WITHOUT LESSOR'S PRIOR WRITTEN CONSENT SHALL BE VOID.

Lessor may, at any time and from time to time, assign, transfer or otherwise convey all or any part of its interest in the Equipment, this Lease, and the Escrow Agreement (including the Escrow Fund created thereunder), including, but not limited to, Lessor's rights to receive the rental payments hereunder or any part thereof (in which event Lessee agrees to make all rental payments thereafter to the assignee designated by Lessor) without the necessity of obtaining Lessee's consent, *provided, however*, Lessor will deliver to Lessee prior written notice of an assignment. No such assignment, transfer or conveyance shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee. During the term of this Lease, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments with respect hereto in form necessary to comply with Section 149 of the Internal Revenue Code of 1986, as amended (the "Code"). Lessee agrees (unless otherwise stated), if so requested, to acknowledge any such assignment in writing within 15 days after request therefor in the form attached as Exhibit B hereto. Lessee further agrees that any moneys or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

**16. Events of Default; Remedies.** Each of the following events constitutes an "Event of Default" hereunder: (a) Lessee fails to pay in full the rental payment due hereunder on any date upon which such rental payment is due; (b) Lessee fails to comply with any other agreement or covenant of Lessee hereunder for a period of 30 days following receipt of written notice of violation of such agreement or covenant and demand that such violation be remedied; (c) Lessee institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar officer is appointed for Lessee or any of its property; (d) any warranty, representation or statement made in writing by or on behalf of Lessee in connection herewith is found to be incorrect or misleading in any material respect on the date made; (e) actual or attempted sale, lease or encumbrance of any of the Equipment or the making of any levy, seizure or attachment thereof or thereon; or (f) Lessee defaults in its obligations under any other agreement for borrowing money, lease financing of property, or otherwise receiving credit and the obligee thereunder (or trustee on its behalf) is permitted to exercise any remedies under the agreement.

Immediately upon the occurrence of an Event of Default hereunder, Lessor may terminate this Lease Agreement, the Lease, or Lessee's rights hereunder and in any such event repossess the Equipment, which Lessee hereby agrees, at its expense, to surrender promptly to Lessor at such location in the continental United States as Lessor shall direct. Such right of repossession and other rights as specifically provided in this Paragraph 16 shall constitute the sole remedies for Lessee's failure to make payments or otherwise perform its obligations when required hereunder. If Lessor is entitled to repossess the Equipment under any provision of this Lease Agreement, Lessee shall permit Lessor or its agents to enter the premises where the Equipment is then located. In the event of any such repossession, Lessee shall execute and deliver such documents as may reasonably be required to restore title to and possession of the Equipment to Lessor, free and clear of all liens and security interests to which the Equipment may have become subject. Upon repossession, if the Equipment is damaged or otherwise made less suitable for the purposes for which it was manufactured than when delivered to Lessee, Lessee agrees, at its option, to (a) repair and restore the Equipment to the same condition in which it was received by Lessee (reasonable wear and tear excepted) or (b) pay to Lessor the reasonable costs of such repair and restoration. If Lessor sells or otherwise liquidates the

Equipment following an Event of Default or an Event of Nonappropriation as herein provided and realizes net proceeds (after payment of costs) in excess of total rental payments that would have been paid during the Lease Term plus any other amounts then due hereunder, Lessor shall immediately pay the amount of any such excess to Lessee.

If Lessor terminates this Lease Agreement and/or the Lease under this Paragraph 16 or an Event of Nonappropriation occurs hereunder and in either case Lessee continues to use the Equipment or if Lessee otherwise refuses to pay rental payments hereunder due during a Fiscal Year for which Lessee's governing body has appropriated sufficient legally available funds to pay such rental payments due hereunder, Lessor (i) may declare the rental payments due and owing for the Fiscal Year for which such appropriations have been made to be immediately due and payable and (ii) shall be entitled to bring such action at law or in equity to recover money and other damages attributable to such holdover period for the Equipment.

Lessor shall also be entitled to exercise any or all remedies available to a secured party under the applicable Uniform Commercial Code and all other rights and remedies that Lessor may have at law or in equity. All rights and remedies of Lessor shall be cumulative and not alternative. Lessor's failure to exercise or delay in exercising any right or remedy shall not be construed as a waiver thereof, nor shall a waiver on one occasion be construed to bar the exercise of any right or remedy on a future occasion. Lessee agrees to reimburse Lessor for any expenses reasonably incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor, but only from legally available funds.

17. **Late Payments.** Whenever any rental payment or other amount payable to Lessor by Lessee hereunder is not paid within thirty (30) days of the regularly scheduled due date (or if not a regularly scheduled due date, then the due date specified in an undisputed invoice), Lessee agrees to pay Lessor a late charge on the delinquent amount at the rate of one percent (1%) per month, or the maximum amount permitted under applicable law, whichever is less. Such amount(s) shall be payable solely from legally available funds in addition to all amounts payable by Lessee as a result of the exercise of any of the remedies herein provided.

18. **Rental Payments to Be Unconditional.** Except as expressly set forth in this Lease Agreement (including Paragraph 3), Lessee agrees that as of the Commencement Date, Lessee's obligations under the Lease are absolute and unconditional and shall continue without set-off, deduction, counterclaim, abatement, recoupment, or reduction and regardless of any disability of Lessee to use the Equipment or any part thereof because of any reason including, but not limited to, war, act of God, governmental regulations, strike, loss, damage, destruction, obsolescence, failure of or delay in delivery or failure of the Equipment to operate properly.

19. **Tax Covenants.** Lessee agrees that it will not take any action that would cause the interest component of rental payments hereunder to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action which omission would cause the interest component of rental payments hereunder to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes. Lessee agrees to (a) execute and deliver to Lessor, upon Lessor's request, a tax certificate and agreement in form and content acceptable to Lessor and Lessee, relating to the establishment and maintenance of the excludability from gross income of the interest component of rental payments hereunder for federal income tax purposes; (b) complete and file in a timely manner an information reporting return as required by the Code; and (c) rebate an amount equal to excess earnings on the Escrow Fund to the federal government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code. Any tax certificate or agreement executed pursuant hereto shall be fully incorporated by reference herein.

Lessee represents that neither Lessee nor any agency or unit of Lessee has on hand any property, including cash and securities, that is legally required or otherwise restricted (no matter where held or the source thereof) to be used directly or indirectly to purchase the Equipment. Lessee has not and will not establish any funds or accounts (no matter where held or the source thereof) the use of which is legally required or otherwise restricted to pay directly or indirectly rental payments hereunder. Lessor and Lessee certify that, so long as any rental payments hereunder remain unpaid, moneys on deposit in the Escrow Fund will not be used in a manner that will cause this Lease to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code.

If Lessor either (i) receives notice, in any form, from the Internal Revenue Service or (ii) reasonably determines, based on an opinion of nationally recognized independent tax counsel selected by Lessor, that Lessor may not exclude any Interest paid under any Lease from its Federal gross income (each an "Event of Taxability"), the

Lessee shall pay to Lessor upon demand (x) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the Interest due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by such Lease through the date of such event and (y) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor.

It is Lessor's and Lessee's intention that this Lease not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment hereunder for federal income tax purposes.

20. **Lessee Representations and Warranties.** Lessee hereby represents and warrants to and agrees with Lessor that:

(a) Lessee is a political subdivision of the State of California, within the meaning of Section 103(c) of the Code, and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such.

(b) Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Lease and the Escrow Agreement and has been duly authorized to execute and deliver this Lease and the Escrow Agreement and to carry out its obligations hereunder and thereunder. Lessee has provided to Lessor a full, true and correct copy of a resolution or other appropriate official action of Lessee's governing body specifically authorizing Lessee to execute and deliver this Lease and the Escrow Agreement and all documents contemplated hereby and thereby. Lessee has provided to Lessor a full, true, and correct copy of an Incumbency Certificate in substantially the form attached as Exhibit F hereto relating to the authority of the officers who have executed and delivered this Lease and who will execute and deliver this Lease and the Escrow Agreement and all documents in connection herewith and therewith on behalf of Lessee.

(c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Lease and the Escrow Agreement, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Lease and the Escrow Agreement.

(d) Lessee is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Lessee from entering into this Lease and the Escrow Agreement, or performing any of its obligations hereunder or thereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Lease or the Escrow Agreement, or any other agreement or instrument to which Lessee is a party and that is used or contemplated for use in the consummation of the transactions contemplated by this Lease or the Escrow Agreement. All authorizations, consents, and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Lease and the Escrow Agreement or in connection with the carrying out by Lessee of its obligations hereunder and thereunder have been obtained.

(f) The payment of the rental payments or any portion thereof hereunder is not (under the terms of this Lease) directly or indirectly (i) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (ii) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local government unit. No portion of the purchase price for the Equipment will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(g) The entering into and performance of this Lease Agreement, the Lease, and the Escrow Agreement will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of Lessee or on the Equipment pursuant to an indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(h) Lessee's name as indicated on the first page of this Lease Agreement is its true, correct, and complete legal name.

(i) The useful life of the Equipment will not be less than the Lease Term hereof.

(j) Lessee has entered into this Lease for the purpose of purchasing, acquiring, and leasing the Equipment and not for the purpose of refinancing any outstanding obligation of Lessee more than 90 days in advance of its payment or prepayment date. The purchase price for the Equipment has been or will be paid directly by Lessor from the Escrow Fund to the Vendor, and no portion of the purchase price for the Equipment has been or will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the execution and delivery hereof.

(k) The application, statements, and credit or financial information submitted by it to Lessor are true and correct and made to induce Lessor to enter into this Lease and the Escrow Agreement.

(l) During the term of this Lease, Lessee shall (i) provide Lessor, no later than ten days prior to the end of each Fiscal Year (commencing with the current Fiscal Year), with current budgets or other proof of appropriation for the ensuing Fiscal Year and such other information relating to Lessee's ability to continue the Lease Term for the next succeeding Fiscal Year as may be reasonably requested by Lessor and (ii) furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available and in any event not later than 180 days after the close of each Fiscal Year, the audited financial statements of Lessee at the close of and for such Fiscal Year, all in reasonable detail, audited by and with the report of Lessee's auditor.

(m) On the Commencement Date, Lessee shall cause to be executed and delivered to Lessor an Opinion of Lessee's Counsel in substantially the form attached as Exhibit G hereto.

(n) Lessee shall pay the excess (if any) of the actual costs of acquiring the Equipment hereunder over the amount deposited by Lessor in the Escrow Fund and interest earnings thereon.

(o) Lessee has experienced no material change in its financial condition since the date of its last prepared financial statements, which was <LAST AUDIT DATE – MM-DD-YY>.

(p) Lessee acknowledges that: (a) Lessor is acting solely for its own account and not as a fiduciary for Lessee or in the capacity of broker, dealer, municipal securities underwriter or municipal advisor; (b) Lessor has not provided, and will not provide, financial, legal, tax, accounting or other advice to or on behalf of Lessee with respect to its acquisition of the Equipment; and (c) Lessee has sought and obtained financial, legal, tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to this Lease from its financial, legal and other advisors (and not Lessor) to the extent that Lessee desired to obtain such advice.

21. **Execution in Counterparts; Chattel Paper.** This Lease Agreement and the Equipment Schedule 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; *provided, however*, that only Counterpart No. 1 of this Lease Agreement and Equipment Schedule hereof shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

22. **Applicable Law.** This Lease Agreement shall be construed under the laws of the State of California.

23. **Binding Effect; Severability; Survival.** This Lease shall not become effective until accepted by Lessor at its herein-described office, and upon such acceptance shall inure to and bind the parties, their successors, legal representatives, and assigns. No provision of this Lease that may be construed as unenforceable shall in any way invalidate any other provision hereof, all of which shall remain in full force and effect.

24. **Miscellaneous Provisions.** Any notice to a party hereunder shall be deemed given when mailed to that party by certified mail, return receipt requested, at its address set forth herein or such other address as either may designate for itself in such notice to the other. This Lease and the Escrow Agreement constitute the entire mutual understanding of the parties regarding the subject matter hereof and thereof and may not be modified except in writing, signed by the party against whom such modification is asserted. Upon the request of Lessor, Lessee shall at any time and from time to time execute and deliver such further documents and do such further acts as Lessor may reasonably request in order fully to effect the purposes hereof and any assignment hereof. If a court with competent jurisdiction rules that the interest rate charged hereunder exceeds the maximum rate of interest allowed by applicable law, then the effective rate of interest hereunder shall be automatically reduced to the maximum lawful rate allowable under the applicable laws.

*[Remainder of page intentionally left blank]*

THE UNDERSIGNED HEREBY AGREE TO ALL OF THE TERMS AND CONDITIONS AS SET FORTH IN THIS ENERGY CONSERVATION EQUIPMENT LEASE-PURCHASE AGREEMENT.

HOLMAN CAPITAL CORPORATION, Lessor

<LESSEE NAME>, Lessee

By: x \_\_\_\_\_  
Lance S. Holman  
President & CEO

By: x \_\_\_\_\_  
Name: <Name>  
Title: <Title>

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

**EXHIBIT A**  
**EQUIPMENT SCHEDULE TO ENERGY CONSERVATION EQUIPMENT LEASE-PURCHASE**  
**AGREEMENT DATED <DATE>**

1. DESCRIPTION OF THE EQUIPMENT:

Energy conservation measures purchased/installed pursuant to that certain **Installment Agreement with** <Vendor Name> (the "Vendor") to reduce Lessee's <Brief Description> and financed by this Equipment Schedule dated <Date> to that certain Equipment Lease-Purchase Agreement dated <Date> by and between Holman Capital Corporation and <Lessee Name>, including, without limitation, the following:

together with all accessories, attachments, substitutions and accessions.

2. EQUIPMENT LOCATION: <Address, City, State, Zip>.

3. RENTAL PAYMENT SCHEDULE: The rental payments shall be made for the Equipment as follows: The following schedule is subject to change upon a change in the Maximum Federal Corporate Tax Rate (as hereinafter defined).

*\* Assumes that all rental payments and additional rentals due on and prior to that date have been paid.*

4. INTEREST RATE: **0.000%** multiplied by the Margin Rate Factor.

"*Margin Rate Factor*" means the greater of (i) 1.0 and (ii) product of (a) one minus the Maximum Federal Corporate Tax Rate newly in effect multiplied by (b) one divided by the sum of one minus the Maximum Federal Corporate Tax Rate as of the Commencement Date (which for the avoidance of doubt equals 1.53846). The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change.

"*Maximum Federal Corporate Tax Rate*" means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations generally shall not be applicable to the Bank, the maximum statutory rate of federal income taxation which could apply to the Bank).

5. COMMENCEMENT DATE: <Date>

6. SCHEDULED LEASE TERM: **15 years**

7. Lessee's current Fiscal Year extends from July 1, 2016.

8. The terms and provisions of the Energy Conservation Equipment Lease-Purchase Agreement described above (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

9. Lessee hereby represents, warrants, and covenants that (i) its representations, warranties, and covenants set forth in the Energy Conservation Equipment Lease-Purchase Agreement (particularly Paragraph 20 thereof) are true and correct as though made on the date of execution of this Schedule, and (ii) sufficient funds have been appropriated by Lessee for the payment of all rental payments due under this Schedule during Lessee's current Fiscal Year.

10. Interest, if any, accruing from the Commencement Date to the actual date of funding shall be retained by Lessor as additional consideration for entering into this Schedule No. 01.

<LESSEE NAME>,  
as Lessee

HOLMAN CAPITAL CORPORATION,  
as Lessor

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

Name: <Name>  
Title: <Title>

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

Name: Lance S. Holman  
Title: President & CEO

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

**EXHIBIT B**

**NOTICE AND ACKNOWLEDGEMENT OF SALE OF RENTAL PAYMENTS AND  
ASSIGNMENT OF LEASE AGREEMENT AND ESCROW AGREEMENT**

Holman Capital Corporation (“*Lessor*”) and the <Lessee Name> (“*Lessee*”) have entered into an Energy Conservation Equipment Lease-Purchase Agreement and Equipment Schedule thereto both dated <Date> (the “*Lease Agreement*”), under which Lessee has, or will have prior to its execution hereof, leased equipment (the “*Equipment*”) described therein.

Lessee is hereby notified that Lessor has assigned its right, title, and interest in and to the Lease Agreement, the leased Equipment, and the rental payments as permitted by the Lease Agreement.

Lessee is hereby directed to pay any and all rental payments and other amounts due under the Lease Agreement to <Bank Name> and/or its affiliates, as Lessor’s assignee (the “*Assignee*”), as directed by the Assignee or a paying agent acting on behalf of Assignee, pursuant to the instructions contained in any invoice or notice.

By signing this Notice and Acknowledgment, Lessee agrees that it will pay all amounts due under the Lease Agreement as directed in the invoice without any set-off or deduction whatsoever notwithstanding any defect in, damage to or requisition of any of the Equipment leased under the Lease Agreement, any other similar or dissimilar event, any defense, set-off, counterclaim or recoupment arising out of any claim against Lessor or Assignee.

Lessee further acknowledges and agrees that Assignee has not assumed any of Lessor’s obligations or duties under the Lease Agreement or made any warranties whatsoever as to the Lease Agreement or the Equipment. Lessee agrees that no change may be made to the Lease Agreement without the prior written consent of Assignee.

By signing this Notice and Acknowledgment, Lessee warrants that its representations and warranties under the Lease Agreement are true and correct on the date hereof.

Date: <Date>

<LESSEE NAME>, as Lessee

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

Name: <Name>

Title: <Title>

EXHIBIT C-1

INSURANCE CERTIFICATION

[complete **only** if Lessee is **not** self-insured]

Holman Capital Corporation  
25201 Paseo de Alicia, Suite 290  
Laguna Hills, CA 92653

<Date>

Re: Energy Conservation Equipment Lease-Purchase Agreement dated  
<Date>

In connection with the above-referenced Lease Agreement, <Lessee Name>, as lessee (the "Lessee") certifies that it has instructed the insurance agent named below (please fill in name, address, and telephone number):

Name of Agent: [Exclusive Risk Management Authority of California]  
Address: [Need additional information from Lessee]  
Phone:  
to issue:

*Liability Insurance.* Lessee is required to maintain public liability insurance, personal injury and property damage with policy limits of \$3,000,000. The policy should be endorsed to  
X name <Bank Name> (the assignee of Holman Capital Corporation) as an additional insured.

*Casualty Insurance.* Lessee is required to maintain all risk extended coverage, malicious mischief and vandalism insurance for the Equipment described in the above-referenced  
X Equipment Schedule in an amount not less than the greater of <\$0.00> or the full replacement cost of the Equipment. Such insurance shall be endorsed to name <Bank Name> as a co-loss payee with respect to such Equipment.

The required insurance should also be endorsed to give <Bank Name> at least 30 days prior written notice of the effective date of any material alteration or cancellation of coverage, and an endorsement confirming that the interest of <Bank Name> shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee.

Proof of insurance coverage will be provided to <Bank Name> prior to and/or commensurate with the later of the Commencement Date of the Lease or the delivery and acceptance of the Equipment.

Very truly yours,

<LESSEE NAME> , as Lessee

By: \_\_\_\_\_  
Name: <Name>  
Title: <Title>

**EXHIBIT C-2**

[complete **only** if Lessee **is** self-insured]

Holman Capital Corporation  
25201 Paseo de Alicia, Suite 290  
Laguna Hills, CA 92653

<DATE>

Re: Energy Conservation Equipment Lease-Purchase Agreement dated <Date>

In connection with the above-referenced Lease Agreement, <Lessee Name>, as lessee (the “*Lessee*”) certifies that it participates in an actuarially sound self-insurance program for property damage and public liability risks.

The following is attached (check all that apply):

- Letter from risk manager describing self-insurance program
- Other evidence of Lessee’s participation in self-insurance program

Very truly yours,

<LESSEE NAME>, as Lessee

By: \_\_\_\_\_  
Name: <Name>  
Title: <Title>

**EXHIBIT D**

**ESSENTIAL USE CERTIFICATE**

Holman Capital Corporation  
25201 Paseo de Alicia, Suite 290  
Laguna Hills, CA 92653

<Date>

Re: Energy Conservation Equipment Lease-Purchase Agreement dated <Date>

I, <Name>, appointed, or designated representative and <Title> of the <Lessee Name>, as lessee (the “Lessee”), am qualified to answer the questions set forth below regarding the Equipment to be acquired by Lessee in connection with the above-referenced Lease Agreement:

- 1. *What is the specific use of the Equipment?*
  
- 2. *What increased capabilities will the Equipment provide?*
  
- 3. *Why is the Equipment essential to your ability to deliver governmental services?*
  
- 4. *Does the Equipment replace existing equipment?  
(If so, please explain why you are replacing the existing equipment)*
  
- 5. *Why did you choose this specific Equipment?*
  
- 6. *For how many years do you expect to utilize the Equipment?*

Very truly yours,  
<LESSEE NAME>, as Lessee

By: \_\_\_\_\_  
Name: <Name>  
Title: <Title>

**EXHIBIT E**

**INCUMBENCY CERTIFICATE**

I, <Lessee Name>, do hereby certify that I am the <Title> of the <Lessee Name>, which is a body corporate and politic duly established and validly existing as a political subdivision of the State of California and operates under a Governing Board, and that I have custody of the records of such entity.

I hereby certify that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the District holding the offices set forth opposite their respective names. I further certify that:

- (i) The signatures set opposite their respective names and titles are their true and authentic signatures, and
- (ii) Such officers have the authority on behalf of such entity to:
  - a. Enter into that certain Energy Conservation Equipment Lease-Purchase Agreement and Equipment Schedule both dated <Date>(the “Lease Agreement”), between the <Lessee Name> and Holman Capital Corporation, as lessor, and that certain Escrow Agreement dated as of <Date>(the “Escrow Agreement”) between the <Lessee Name>, Holman Capital Corporation, and <Bank Name>, as escrow agent; and
  - b. Execute Certificates of Acceptance, Payment Request/Disbursement Request Forms, and any and all other certificate, documents, and agreements relating to the Lease Agreement and Escrow Agreement.

NAME	TITLE	SIGNATURE
<Name>	<Title>	_____
		_____
		_____

IN WITNESS WHEREOF, I have duly executed this Certificate on behalf of the <Lessee Name>.

<Date>

\_\_\_\_\_  
Name: <Name>  
Title: <Title>

**EXHIBIT F**

[Print on Counsel Letterhead]

**OPINION OF LESSEE'S COUNSEL**

<Date>

Holman Capital Corporation  
25201 Paseo de Alicia, Suite 290  
Laguna Hills, CA 92653

Re: Energy Conservation Equipment Lease-Purchase Agreement and Equipment Schedule  
both dated <Date>

Ladies and Gentlemen:

As counsel to the <Lessee Name> (the "*Lessee*"), I have examined the Energy Conservation Equipment Lease-Purchase Agreement and Equipment Schedule both dated <Date> (collectively, the "*Lease Agreement*"), between the Lessee and Holman Capital Corporation, as lessor ("*Lessor*"), the form of the Escrow Agreement, together the Disbursement Request Form and Certificate of Acceptance (collectively, the "*Escrow Agreement*"), and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement and the Escrow Agreement. The Lease Agreement and the Escrow Agreement are herein collectively referred to as the "*Transaction Documents*." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. The Lessee is a political subdivision of the State of California and operates under a Governing Board, and the laws of the State of California with full power and authority to enter into the Transaction Documents.

2. The Transaction Documents have each been duly authorized, executed, and delivered by the Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.

3. The Equipment to be leased pursuant to the Lease Agreement constitutes personal property and, when subjected to use by the Lessee, will not be a fixture under applicable law.

4. The Lessee has complied with any applicable public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. By proper action, the Governing Body of the Lessee authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.

5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the Governing Body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement.

6. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation applicable to the Lessee or result in any breach of, or constitute a default under,

or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee or on the Equipment (as such term is defined in the Lease Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound. Notwithstanding the foregoing, upon the due and timely filing of a UCC-1 and a Title Application and/or Certificate of Title (the latter solely with respect to Equipment constituting titled vehicles), the Lessor will have a perfected security interest in the Equipment.

This opinion may be relied upon by purchasers and assignees of Lessor's interests in the Lease Agreement.

Respectfully submitted,

---

**EXHIBIT G**

**BANK-QUALIFIED DESIGNATION**

The <LESSEE>, as lessee, (the “*Lessee*”) under that certain Equipment Lease-Purchase Agreement and Equipment Schedule (collectively, the “Lease”) both dated as of **September 10, 2015** to which this Designation is attached, hereby designates the Lease as a “qualified tax-exempt obligation” for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Lease) the aggregate principal amount of which exceed \$10,000,000 during the calendar year in which the Lease is executed and delivered and interest commences to accrue thereunder.

This Designation is attached to and made a part of the Lease and inures to the benefit of the Lessor and its successors and/or assigned.

**EXECUTED as of this DD day of MONTH, 20YY.**

<LESSEE>, as Lessee

By: \_\_\_\_\_  
Name: <AUTHORIZED SIGNATORY>  
Title: <SIGNATORY TITLE>

## EXHIBIT H

### POST-ISSUANCE TAX COMPLIANCE PROCEDURES

Dated: <Date>

The following certificate is delivered in connection with the execution and delivery of the Energy Conservation Equipment Lease-Purchase Agreement dated <Date> (the "Lease Agreement"), entered into between the <Lessee Name> (the "Lessee") and Holman Capital Corporation (the "Corporation"). Capitalized terms used herein have the meanings defined in the Lease Agreement.

#### **Section 1. In General.**

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the "Equipment") to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Equipment Schedule executed under the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply \$0.00 (the "Principal Amount") toward the acquisition of the Equipment and closing costs, and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the governing board's approval or other official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule. The Principal Amount will be deposited in escrow by Lessor on the date of issuance of the Financing Documents and held by <BANK>, as escrow agent (the "Escrow Agent") pending acquisition of the Equipment under the terms of that certain Escrow Agreement dated as of <Date> (the "Escrow Agreement"), by and between Lessor, Lessee and Escrow Agent.

1.4. Lessee will timely file for each payment schedule issued under the Lease a Form 8038-G (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC) relating to such Lease with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code").

1.5. The Lease is a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

#### **Section 2. Non-Arbitrage Certifications.**

2.1. The Rental Payments due under the Financing Documents will be made with monies retained in Lessee's general operating fund (or an account or subaccount therein). No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefor.

2.2. There have been and will be issued no obligations by or on behalf of Lessee that would be deemed to be (i) issued or sold within fifteen (15) days before or after the date of issuance of the Financing Documents, (ii) issued or sold pursuant to a common plan of financing with the Financing Documents and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.

2.3. Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.

2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.

2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

**Section 3. Disbursement of Funds; Reimbursement to Lessee.**

3.1 It is contemplated that the entire Principal Amount will be used to pay the acquisition cost of Equipment to the vendors or manufacturers thereof or for any financial advisory or closing costs, provided that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2 below are satisfied.

3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following conditions have been satisfied:

(a) If applicable, Lessee adopted a resolution or otherwise declared its official intent in accordance with Treasury Regulation § 1.150-2 (a copy of which will be provided to Lessor, if applicable, the “Declaration of Official Intent”), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to the Vendor not earlier than sixty (60) days before Lessee adopted the Declaration of Official Intent;

(b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18) months after the items of Equipment to which such payment relates were placed in service;

(c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and

(d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

**Section 4. Use and Investment of Funds; Temporary Period.**

4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee’s control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate. No portion of the Principal Amount will be used to acquire investments that do not carry out the governmental purpose of the Financing Documents and that have a substantially guaranteed yield of four (4) years or more.

4.3.(a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited under the Escrow Agreement to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by <Date>.

(b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless (i) the entire Principal Amount is expended on the Equipment by the date that is the six-month anniversary of the Financing Documents or (ii) the Principal Amount is expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within six months from the date of issuance of the Financing Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within 12 months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents.

(c) Lessee hereby covenants that (i) Lessee is a governmental unit with general tax powers; (ii) the Lease is not a “private activity bond” under Section 141 of the Code; (iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee; and (iv) the aggregate principal amount of all tax-exempt obligations (including the Lease) issued by Lessee and its subordinate entities, if any, during the current calendar year is not reasonably expected to exceed \$5,000,000. Accordingly, the rebate requirements of Section 148(f) of the Code are treated as being met, in lieu of the spending exceptions set forth in paragraph (b) above.

**Section 5. Escrow Account.**

The Financing Documents provide that the monies deposited in escrow shall be invested until payments to the vendor(s) or manufacturer(s) of the Equipment are due. Lessee will ensure that such investment will not result in Lessee's obligations under the Financing Documents being treated as an "arbitrage bond" within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended (the "Code"), respectively. Any monies which are earned from the investment of these funds shall be labeled as interest earned. All such monies will be disbursed on or promptly after the date that Lessee accepts the Equipment. Lessee acknowledges that the provisions of Sections 2 and 4 herein are particularly applicable when the Principal Amount is funded into an Escrow Fund subject to the Escrow Agreement.

**Section 6. No Private Use; No Consumer Loan.**

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than 10% of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

6.2. In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the "Excess Private Use Portion") will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 6.3, "Private Business Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

6.4. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

**Section 7. No Federal Guarantee.**

7.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

7.2. No portion of the Principal Amount or interest earned thereon shall be (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would cause the financing under the Financing Documents to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**Section 8. Miscellaneous.**

8.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code unless Lessor or its assignee agrees to act as Lessee's agent for such purpose.

8.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of five (5) years after payment in full under the Financing Documents.

8.3. To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

8.4. The Lessee's Tax Identification Number is: 33-0765218.

**IN WITNESS WHEREOF**, this Post-Issuance Tax Compliance Procedures Certificate has been executed on behalf of Lessee as of <Date>.

<LESSEE NAME>

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

Name: <Name>

Title: <Title>

**EXHIBIT I**

**ESCROW AGREEMENT**

LESSOR:  
Holman Capital Corporation  
25201 Paseo de Alicia, Suite 290  
Laguna Hills, CA 92653

ESCROW AGENT:  
<Bank Name>  
<Address>  
<City, State, ZIP>

LESSEE:  
<Lessee Name>  
<Address>  
<Address 2>  
<City, State, ZIP>

THIS ESCROW AGREEMENT (this “*Escrow Agreement*”) is made as of <Date>, between Holman Capital Corporation (“*Lessor*”), the <Lessee Name> (“*Lessee*”), and <Bank Name> (the “*Escrow Agent*”).

Lessor and Lessee have heretofore entered into that certain Energy Conversation Equipment Lease-Purchase Agreement and Equipment Schedule both dated <Date> (the “*Lease Agreement*”). The Lease Agreement contemplates that certain Equipment described therein (the “*Equipment*”) is to be acquired from the vendor(s) or manufacturer(s) thereof.

After acceptance of the Equipment by Lessee, the Equipment is to be leased by Lessor to Lessee pursuant to the terms of the Lease Agreement.

The Lease Agreement contemplates that Lessor will deposit with the Escrow Agent cash in the amount of <\$0.00> (the “*Deposit Amount*”), for deposit into the escrow fund (the “*Escrow Fund*”), to be held in escrow by the Escrow Agent and applied on the express terms and conditions set forth herein. Such deposit into the Escrow Fund, together with all interest and additions received with respect thereto, is to be applied from time to time to pay the vendor(s) or manufacturer(s) of the Equipment its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee). The Escrow Fund is to be held for the account and benefit of Lessee, and Lessee has granted to Lessor a first priority and perfected lien on and security interest in the Escrow Fund and any all proceeds, interest and other earnings thereon and investments therein to the Lessor by virtue of the execution of this Escrow Agreement without the need for any additional filings or financing statements.

The parties desire to set forth the terms on which the escrow is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, the parties agree as follows:

1. The Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. The Escrow Agent agrees that the Escrow Fund shall be held irrevocably in trust for the account and benefit of Lessee and all interest earned with respect to the Escrow Fund shall accrue to the benefit of Lessee and shall be applied as expressly set forth herein.

To the limited extent required to perfect the first, priority security interest hereby granted by Lessee to Lessor in the cash and negotiable instruments from time to time held in the Escrow Fund, Lessor hereby appoints the Escrow Agent as its security agent, and the Escrow Agent hereby accepts the appointment as security agent, and agrees to hold physical possession of such cash and negotiable instruments on behalf of Lessor.

2. On such day as determined to the mutual satisfaction of the parties (the “*Commencement Date*”), Lessor shall deposit with the Escrow Agent cash in the amount of the Deposit Amount to be held by the Escrow Agent on the express terms and conditions set forth herein. The Escrow Agent agrees to accept the deposit of the Deposit

Amount by Lessor with the Escrow Agent, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto in escrow on the express terms and conditions set forth herein.

3. The Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of the Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments held in the Escrow Fund from time to time shall be held or registered in the name of the Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lessor).
4. Lessee hereby directs the Escrow Agent to invest the cash held in the Escrow Fund from time to time in a <Bank Name> non-interest bearing demand deposit account with no fees or costs or, in the event such fund is not at the time available, such other investments as Lessee may specify in writing, to the extent the same are at the time legal for investment of the funds being invested. Interest or other amounts earned and received by the Escrow Agent with respect to the Escrow Fund shall be deposited in and become a part of the Escrow Fund. No investment shall be made that would cause the Lease Agreement to be deemed to be an arbitrage bond within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended.
5. Lessor and Lessee hereby authorize the Escrow Agent to take the following actions with respect to the Escrow Fund:
  - a. From time to time, the Escrow Agent shall pay the vendor or manufacturer of the Equipment payments then due and payable, or reimburse Lessee for amounts that it has paid to the vendor or manufacturer of the Equipment, upon receipt of the following: (a) a duly executed Certificate of Acceptance and Payment Request in the form attached as Exhibit A hereto, (b) the vendor(s) or manufacturer(s) invoice(s) specifying the acquisition price of the Equipment described in the requisition request, and (c) any additional documentation required by Lessor.
  - b. If Lessor provides to the Escrow Agent written notice of the occurrence of an Event of Default or an Event of Nonappropriation by Lessee under the Lease Agreement, the Escrow Agent shall thereupon promptly remit to Lessor the entire balance of the Escrow Fund.
  - c. Upon receipt by the Escrow Agent of a duly executed Certificate of Acceptance and Payment Request identified as the final such request, the Escrow Agent shall transfer the then remaining balance of the Escrow Fund to Lessee, upon the express condition that Lessee hereby agrees to use such excess amount solely for capital expenditures as shall be approved by Lessee or, at the written direction of Lessee, for application against the interest component of the Lessee's payment obligation under the Lease Agreement, as provided therein, unless otherwise agreed by Lessor.
6. The Escrow Agent shall have no liability for acting upon any written instruction presented by Lessee and Lessor in connection with this Escrow Agreement that the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own gross negligence, willful misconduct, or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investments made pursuant to Section 4.
7. To the extent authorized by law, Lessee hereby agrees to indemnify and save the Escrow Agent harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder and that are not due to the Escrow Agent's gross negligence or willful misconduct. No indemnification will be made under this Section or elsewhere in this Escrow Agreement for damages arising solely out of gross negligence, willful misconduct, or bad faith by the Escrow Agent, its officers, agents, employees, successors or assigns.
8. The Escrow Agent may at any time resign by giving at least 30 days' prior written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of the successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written

agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by instrument in writing executed by Lessor and Lessee. Such notice shall set forth the effective date of the removal. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent.

Upon the effective date of resignation or removal, the Escrow Agent will transfer the Escrow Fund then held by it to the successor Escrow Agent selected by Lessor and Lessee.

9. This Escrow Agreement shall terminate upon receipt by the Escrow Agent of the written notice from Lessor specified in Section 5(c) or Section 5(d) hereof.
10. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other party at its respective address shown on page 1 of this Escrow Agreement or at such other address as such party shall from time to time designate in writing to the other parties; and shall be effective on the date of receipt.
11. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of the Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor and Lessee.
12. This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification, or change of terms hereof shall bind any party unless in writing signed by all parties.
13. The Escrow Agent may employ agents, attorneys and accountants in connection with its duties hereunder and shall not be liable for any action taken or omitted in good faith in accordance with the advice of counsel, accountants, or other skilled persons.
14. This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the internal laws of the State of California.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

LESSOR: HOLMAN CAPITAL  
CORPORATION

LESSEE: <LESSEE NAME>

By: \_\_\_\_\_  
Lance S. Holman  
President & CEO

By: \_\_\_\_\_  
<Name>  
<Title>

<BANK>

By: \_\_\_\_\_  
<Name>  
<Title>

EXHIBIT A TO ESCROW AGREEMENT

CERTIFICATE OF ACCEPTANCE AND PAYMENT REQUEST

The following payment request is directed to <BANK> (the “Escrow Agent”), as escrow agent under that certain Escrow Agreement dated <Date>(the “Escrow Agreement”), between the <Lessee Name> (“Lessee”), Holman Capital Corporation (“Lessor”), and the Escrow Agent. Because Holman Capital Corporation has assigned all of its right, title, and interest in and to the Escrow Agreement to <BANK>, all references herein to “Lessor” shall mean <BANK>.

The Escrow Agent is hereby requested to pay from the Escrow Fund established and maintained under the Escrow Agreement the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee). The equipment described below is part or all of the Equipment leased pursuant to that certain Energy Conversation Equipment Lease-Purchase Agreement and Equipment Schedule both dated <Date>(the “Lease Agreement”), between Lessor and Lessee:

QUANTITY	DESCRIPTION OF UNITS OF EQUIPMENT	AMOUNT	PAYEE
----------	--------------------------------------	--------	-------

Lessee hereby certifies and represents to and agrees with Lessor as follows with respect to the Equipment described above: (i) the Equipment has been delivered to the location(s) set forth in the Lease Agreement; (ii) a present need exists for the Equipment, which need is not temporary or expected to diminish in the near future; (iii) the Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee’s authority; (iv) the estimated useful life of the Equipment based upon the manufacturer’s representations and Lessee’s projected needs is not less than the term of the Lease Agreement; (v) Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes as of the date of this Certificate; (vi) the Equipment is covered by insurance in the types and amounts required by the Lease Agreement; (vii) no Event of Default or Event of Nonappropriation, as those terms are defined in the Lease Agreement, and no event that with the giving of notice or lapse of time or both, would become an Event of Default or an Event of Nonappropriation, has occurred and is continuing on the date hereof; and (viii) sufficient funds have been appropriated by Lessee for the payment of all rental payments due under the Lease Agreement during Lessee’s current Fiscal Year.

Based on the foregoing, the Escrow Agent is hereby authorized and directed to fund the acquisition of the Equipment set forth above by paying, or causing to be paid, the manufacturer(s)/vendor(s) the amounts set forth on the attached invoices from the Escrow Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) Original Invoice(s) and (b) Copies of Certificate(s) of Ownership, designating Lessor as legal owner, and evidence of filing.

*[Remainder of page intentionally left blank]*

IF REQUEST IS FINAL REQUEST, CHECK HERE . The undersigned hereby certifies that the items of Equipment described above, together with the items of Equipment described in and accepted by Certificates of Acceptance and Payment Requests previously filed by Lessee with Lessor constitute all of the Equipment subject to the Lease Agreement.

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

**Approved:**

<BANK>, as Lessor

<LESSEE NAME>, as Lessee

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

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

SCHEDULE A TO ESCROW AGREEMENT:

NOTICE AND ACKNOWLEDGEMENT OF  
ASSIGNMENT OF ESCROW AGREEMENT

Holman Capital Corporation ("Lessor"), <Lessee Name> ("Lessee"), and <BANK> ("Escrow Agent") have entered into an Escrow Agreement dated <Date> (the "Escrow Agreement"), pursuant to which Lessor, or its Assignee (as defined below), has deposited cash into the Escrow Fund established thereunder, which funds are to be used by Lessee to acquire certain Equipment.

Escrow Agent is hereby notified that Lessor has assigned all of its right, title, and interest in and to, but not its obligations under, the Escrow Agreement to <BANK> ("Assignee"), including, in particular, but without limitation, Lessor's security interest in the Escrow Fund and Lessor's right to approve all payment requests submitted by Lessee.

Date: <Date>

LESSOR: HOLMAN CAPITAL  
CORPORATION

LESSEE: <LESSEE NAME>

By: \_\_\_\_\_  
Lance S. Holman  
President & CEO

By: \_\_\_\_\_  
<Name>  
<Title>

ESCROW AGENT: <BANK>

By: \_\_\_\_\_  
<Name>  
<Title>

**IRS FORM 8038-G**

[To be prepared by Holman Capital Corporation]

**CLOSING MEMORANDUM**

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**<\$0.00> LEASE FOR ENERGY CONSERVATION PROJECT – PHASE 2B  
PURSUANT TO THAT ENERGY CONSERVATION EQUIPMENT LEASE-PURCHASE AGREEMENT AND EQUIPMENT SCHEDULE  
THERE TO BOTH DATED <DATE>  
BETWEEN <LESSEE NAME>, AS LESSEE, AND  
HOLMAN CAPITAL CORPORATION, AS LESSOR**

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**Pre-Closing:** Pre-Closing will be held at the Lessee’s convenience, on or before October 12, 2016. All documents will be executed and two (2) blue ink originals will be overnighted to Holman Capital Corporation, Attn.: Aditya Kajaria, 25201 Paseo de Alicia, Suite 290, Laguna Hills, CA 92653, for delivery no later than 9:00 am on the morning of October 12, 2016 and held in trust until such time as the wires and original documents are released by the Parties.

**Closing:** (1) By wire transfer and pending receipt of original, executed Lease Documents, on the morning of <Date>, the Investor is authorized by Lessee to wire the Principal Amount of Lease to Escrow Agent, an amount equal to the Total Lease Proceeds, as defined below, pursuant to the Wire Instructions as follows:

Bank Name: <BANK>  
ABA No:  
Account No:  
Account Name: <Lessee Name>

(2) By funds transfer and pending receipt of original, executed Lease Documents, on the morning of <Date>, the Investor is authorized by Lessee to transfer via internal credit the Issuance Costs (as defined below) to Lessor, pursuant to a general ledger credit to the Lessor as follows:

Bank Name: Community Business Bank  
ABA Number: 121144191  
Account Number: 201008281  
Account Name: Holman Capital Corporation

Holman Capital Corporation will confirm disbursement of funds to the Lessee’s escrow account and then release all of the original documents held in trust to the investor and forward a copy to the Lessee. Upon conformation by Escrow Agent of the Lease Proceeds, Lessee will wire closing costs, legal fees and other amounts to the parties in accordance with the invoices attached hereto.

**Sources and Uses of Funds:**

Principal Amount of Lease	<\$0.00>
<b>TOTAL SOURCES</b>	<b>&lt;\$0.00&gt;</b>
Total Equipment Cost:	<\$0.00>
Issuance Costs:	\$ 5,000.00
<b>TOTAL LEASE PROCEEDS</b>	<b>&lt;\$0.00&gt;</b>

**Attest:**  
<LESSEE NAME>

By: \_\_\_\_\_  
Name: <Name>  
Title: <Title>

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