

MEMORANDUM

Department of Information Services



To: Honorable Mayor and City Council
From: Bill Marion, Information Services Director
Through: Thomas Williams, City Manager
Emma Karlen, Finance Director
Subject: Network Equipment Lease
Date: January 28, 2009

BACKGROUND: In 2000, the City Council approved the purchase of approximately \$450,000 of network equipment in order to upgrade the existing telecommunications network for planned technology projects, as well as to support the new City Hall. The upgrade was completed in 2001 and the network has now been in operation for over 8 years. The planned life of this type of equipment is generally 5 years. After this period of continuous operation, the equipment is prone to failure and often support is no longer available from the manufacturer. This is the case with most of the equipment installed in 2001. In the past year, we have experienced four significant equipment failures. A major failure of the telecommunications network would seriously impact service delivery in all departments, including critical public safety functions.

At the beginning of FY08/09 staff began a design project for a replacement network. This design took into account new technologies as well as the new facilities constructed by the City. The design was completed in late 2008 and staff then explored various options to acquire the necessary equipment. The original 2001 upgrade was funded by a technology bond issued in 2000. These funds have been expended and given the current financial situation, a new bond issue does not seem prudent. A Technology Replacement Fund has been established, but would require in excess of four years to accumulate sufficient funds to purchase the equipment for the network upgrade.

An option available to the City is a program through a California Department of General Services state-wide contract, called CalNet II, which is part of the State of California Multiple Award Schedule (CMAS). This program features a no-interest lease through the equipment manufacturer for a period of five years. The equipment would be acquired from AT&T with leasing provided by Key Government Financial. There are no fees associated with the program and the lease includes provisions for termination should the City be unable to fund the annual payment. The annual payment would be \$77,157.36 and would commence in FY08/09 and terminate in FY12/13. At the completion of the lease, the equipment would become the property of the City. Pursuant to Municipal Code Title I, Section 2-3.08 Cooperative Purchasing, the City can enter into the lease without a competitive bidding process, since the CalNet II program is an agreement that was competitively negotiated and/or used bidding procedures at least as restrictive as the City's. This program has been utilized by many agencies, including the Milpitas Unified School District.

Given the difficulties of funding the total purchase price, staff is recommending that the City proceed with the lease agreement in order to start the network replacement project this fiscal year and avoid a potentially major failure of the City's telecommunications network. Currently there is sufficient funding for the first annual payment in the Equipment Replacement Fund. The remaining payments will be programmed in the Equipment Replacement Fund as part of the annual budgeting process. The lease program and the lease documents have been reviewed and approved by the City Attorney's Office and the Purchasing Agent and the network design has been approved by the Telecommunications Commission.

RECOMMENDATION: Adopt a resolution authorizing the City Manager to execute a lease agreement with Key Government Financial for network equipment in the amount of \$385,786.82 and appropriate the first annual lease payment for \$77,157.36 from the Information Technology Replacement Fund.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE WITH KEY GOVERNMENT FINANCIAL FOR NETWORK EQUIPMENT MAIN

WHEREAS, in 2000, the City Council approved the purchase of approximately \$450,000 of network equipment in order to upgrade the existing telecommunications network for planned technology projects, as well as to support the new City Hall. The upgrade was completed in 2001 and the network has now been in operation for over 8 years, even though the planned life of this type of equipment is generally 5 years; and

WHEREAS, Section I-2-3.08 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the purchase is pursuant to a cooperative agreement by another public agency in California that used competitive negotiation or bidding procedures at least as restrictive as the City's; and

WHEREAS, CalNet II provided by the California Department of General Services, is an agreement that was competitively negotiated and/or used bidding procedures at least as restrictive as the City's; and

WHEREAS, Key Government Financial has offered to provide a no-interest, five-year lease to the City under the CalNet II program for the purchase of the network equipment.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is authorized to execute a five-year lease with Key Government Financial under the CalNet II program, a cooperative agreement, for network equipment for an amount not-to-exceed \$385,786.82 and subject to approval as to form by the City Attorney.

PASSED AND ADOPTED this _____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

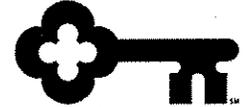
APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney



Key Government Finance, Inc.
1000 South McCaslin Boulevard
Superior, CO 80027-9456

Friday, January 30, 2009

City of Milpitas
Bill Marion
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411

Re: Key Government Finance, Inc.
Property Schedule No. 1

Dear Mr. Marion:

Enclosed, please find two (2) sets of financing documents for your review and execution. (If these documents were emailed to you, please print out two (2) sets.) Execute both sets and return all of the originals to my attention. **The original sets of the executed documents are required prior to funding your transaction. To expedite the return of these documents, please overnight them to me using Key Government Finance's FedEx account #308222926, and send to:**

KEY GOVERNMENT FINANCE, INC. ATTN: MYRA AKSAMIT
1000 S. MCCASLIN BLVD, SUPERIOR, CO 80027.

Please Note: All fully executed documents must be returned no later than Thursday, February 19, 2009; otherwise, the transaction is subject to re-pricing.

Only the person with Signing Authority should execute the documents. For verification of original documents, please execute in blue ink. Upon closing, Key Government Finance will return a fully executed original set for your files.

Please refer to the enclosed Document Checklist when preparing the documents.

Executed documents required for funding are:

1. Master Tax-Exempt Lease/Purchase Agreement
2. Property Schedule No. 1
3. Property Description and Payment Schedule (Exhibit 1)
4. Lessee's Counsel's Opinion (Exhibit 2) – **Agreed to use "Approved as to Form" stamp in place of formal letter.**
5. Lessee's Certificate (Exhibit 3) – **Need the City's Resolution in place of the Lessee's Certificate.**
6. Payment of Proceeds Instructions (Exhibit 4)
7. Acceptance Certificate (Exhibit 5)
8. Bank Qualification and Arbitrage Rebate (Exhibit 6)
9. Certificate of Insurance – **Required prior to funding.**
10. Notification of Tax Treatment with Tax Exemption Certificate or Letter – **Required for annual state tax audits.**
11. 8038-G IRS form with Report Number filled in – **Original required to be submitted to the IRS at funding, which we will submit on your behalf.**
12. Invoicing Instructions – **Required in order to ensure that invoices are directed to the proper area in your organization.**

Please contact me at 720-304-1291 with any questions or concerns you may have.

Sincerely,
Myra Aksamit, Account Manager

DOCUMENTATION CHECKLIST

- Master Tax-Exempt Lease/Purchase Agreement** – Schedule 1*
- Property Schedule 1***
- Property Description and Payment Schedule** -Exhibit 1
- Lessee's Counsel's Opinion** - Exhibit 2. *Agreed to use "Approved as to Form" stamp in place of formal letter.*
- Lessee's Certificate** - Exhibit 3. *Need the City's Resolution in place of the Lessee's Certificate.*
- Payment of Proceeds Instructions** - Exhibit 4. This is the Vendor payment information.
- Acceptance Certificate** - Exhibit 5. *The date of Acceptance will need to be filled in with the date the equipment is installed and accepted.*
- Bank Qualification and Arbitrage Rebate** -Exhibit 6
- Request for Certificate of Insurance** – Please fill out the form and fax it to your insurance company. The Insurance Certificate is required prior to funding.
- Notification of Tax Treatment** - Please provide your State of Sales/Use Tax Exemption Certificate
- 8038-G** - The purpose of this form is to report to the IRS that we have completed a tax-exempt financing. **Per the Internal Revenue Service, you are required to fill in the Report Number information for Line 4 (if the form included in your package is an 8038-G)**

****We must have this information in order to complete your financing.****

8038-G Line 4. After the preprinted **3**, enter two self-designated numbers. Number reports consecutively during any calendar year (e.g., 334, 335, etc.).

- Invoicing Instructions** – The information you provide enables us to invoice you correctly.

*The items above marked with an asterisk require a signature in the presence of a witness/attestor. The attesting of the signature does not require a notary, but the signature of a person present at the time the document is signed.

Master Tax-Exempt Lease/Purchase Agreement

BETWEEN:	Key Government Finance, Inc. (the "Lessor") 1000 South McCaslin Blvd. Superior, CO 80027
AND:	City of Milpitas (the "Lessee") 455 E. Calaveras Blvd. Milpitas, CA 95035-5411 Attention: Bill Marion Telephone: 408-586-2701
DATED:	1/13/2009

ARTICLE I

1.01 Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"**Agent**" means any agent for the Registered Owners, if any, to which all or a portion of Lessor's right, title and interest in, to and under a Property Schedule and the Property under such Property Schedule may be assigned for the benefit of the Registered Owners of Lease Participation Certificates in such Property Schedule.

"**Agreement**" means this Master Tax-Exempt Lease/Purchase Agreement, including all exhibits and schedules attached hereto.

"**Commencement Date**" is the date when the term of a Property Schedule and Lessee's obligation to pay rent thereunder commences, which date shall be set forth in the Property Schedule.

"**Event of Nonappropriation**" is defined in Section 6.06.

"**Event of Default**" is defined in Section 13.01.

"**Lease Participation Certificates**" means certificates evidencing a right to receive a share of Rental Payments payable under a Property Schedule and Purchase Price Payments payable under a Property Schedule and any other rights set forth herein with respect to the Property under said Property Schedule.

"**Lease Term**" means, with respect to a Property Schedule, the Original Term and all Renewal Terms. The Lease Term for each Property Schedule executed hereunder shall be set forth in such Property Schedule, as provided in Section 4.02.

"**Lessee**" means the entity identified as such in the first paragraph hereof, and its permitted successors and assigns.

"**Lessor**" means the entity identified as such in the first paragraph hereof, and its successors and assigns.

"**Original Term**" means, with respect to a Property Schedule, the period from the Commencement Date until the end of the budget year of Lessee in effect at the Commencement Date.

"**Property**" means, collectively, the property lease/purchased pursuant to this Agreement, and with respect to each Property Schedule, the property described in such Property Schedule, and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article IX.

"**Property Schedule**" means a Property Schedule in the form attached hereto for Property Schedule 1. Subsequent Property Schedules pursuant to this Agreement shall be numbered consecutively, beginning with Property Schedule 2.

"**Purchase Price**" means the amount that Lessee may, in its discretion, pay to Lessor to purchase the Property under a Property Schedule, as provided in Section 11.01 and as set forth in the Property Schedule.

"**Registered Owners**" means the registered owners of Lease Participation Certificates in a Property Schedule as shown on the registration books maintained by the Agent.

"**Renewal Terms**" means the renewal terms of a Property Schedule, each having a duration of one year and a term coextensive with Lessee's budget year.

"**Rental Payments**" means the rental payments payable by Lessee under Article VI of this Agreement and each Property Schedule, as set forth in each Property Schedule.

"**Rental Payments Dates**" means the rental payments dates for the Rental Payments as set forth in each Property Schedule.

"**State**" means the state in which Lessee is situated.

"**Vendor**" means the manufacturer or contractor of the Property as well as the agents or dealers of the manufacturer or contractor from whom Lessor or Lessee purchased or is purchasing all or any portion of the Property.

ARTICLE II

2.01 Property Schedules Separate Financings. Each Property Schedule executed and delivered under this Agreement shall be treated as a separate financing, distinct from other Property Schedules. Without limiting the foregoing, upon the occurrence of an Event of Default or an Event of Nonappropriation with respect to a Property Schedule, Lessor shall have the rights and remedies specified herein with respect to the Property financed and the Rental Payments payable under such Property Schedule, and except as expressly provided in Section 12.02 below, Lessor shall have no rights or remedies with respect to Property financed or Rental Payments payable under any other Property Schedules unless an Event of Default or Event of Nonappropriation has also occurred under such other Property Schedules.

ARTICLE III

3.01 Covenants of Lessee. As of the Commencement Date for each Property Schedule executed and delivered hereunder, Lessee shall be deemed to represent, covenant and warrant for the benefit of Lessor, any Agent, and any Registered Owners, as follows:

- (a) Lessee is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority to enter into this Agreement and the Property Schedule and the transactions contemplated thereby and to perform all of its obligations thereunder.
- (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent Lessee should merge with another entity under the laws of the State, Lessee agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Lessee's rights and shall assume Lessee's obligations hereunder.
- (c) Lessee has been duly authorized to execute and deliver this Agreement and the Property Schedule by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Property Schedule, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the Property Schedule and the acquisition by Lessee of the Property thereunder. On or before the Commencement Date for the Property Schedule, Lessee shall cause to be executed an opinion of counsel in substantially the form attached to the form of the Property Schedule as Exhibit 2.
- (d) During the Lease Term for the Property Schedule, the Property thereunder will perform and will be used by Lessee only for the purpose of performing essential

governmental uses and public functions within the permissible scope of Lessee's authority.

- (e) Lessee will make available current financial statements, budgets and proof of appropriation for the ensuing budget year and other financial information relating to the ability of Lessee to continue this Agreement and the Property Schedule in such form and containing such information as may be requested by Lessor.
- (f) Lessee will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments under the Property Schedule and will not use or permit the use of the Property in such a manner as to cause a Property Schedule to be a "private activity bond" under Section 141(a) of the Code. Lessee covenants and agrees that it will use the proceeds of the Property Schedule as soon as practicable and with all reasonable dispatch for the purpose for which the Property Schedule has been entered into, and that no part of the proceeds of the Property Schedule shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Property Schedule to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Property Schedule.
- (g) The execution, delivery and performance of this Agreement and the Property Schedule and compliance with the provisions hereof and thereof by Lessee does not conflict with or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease or other instrument to which Lessee is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Lessee or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of Lessee or to which it is subject.
- (h) Lessee's exact legal name is as set forth on the first page of this Agreement. Lessee will not change its legal name in any respect without giving thirty (30) days prior notice to Lessor.

ARTICLE IV

4.01 Lease of Property. On the Commencement Date of each Property Schedule executed hereunder, Lessor will be deemed to demise, lease and let to Lessee, and Lessee will be deemed to rent, lease and hire from Lessor, the Property described in such Property Schedule, in accordance with this Agreement and such Property Schedule, for the Lease Term set forth in such Property Schedule.

4.02 Lease Term. The term of each Property Schedule shall commence on the Commencement Date set forth therein and shall terminate upon payment of the final Rental Payment set forth in such Property Schedule and the exercise of the Purchase Option described in Section 11.01, unless terminated sooner pursuant to this Agreement or the Property Schedule.

4.03 Delivery, Installation and Acceptance of Property. Lessee shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Property Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. To the extent funds are deposited under an escrow agreement or trust agreement for the acquisition of the Property, such funds shall be disbursed as provided therein. When the Property described in such Property Schedule is delivered, installed and accepted as to Lessee's specifications, Lessee shall immediately accept the Property and evidence said acceptance by executing and delivering to Lessor the Acceptance Certificate substantially in the form attached to the Property Schedule.

ARTICLE V

5.01 Enjoyment of Property. Lessee shall during the Lease Term peaceably and quietly have, hold and enjoy the Property, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. No Registered Owner shall interfere with such quiet use and enjoyment during the Lease Term so long as Lessee is not in default under the subject Property Schedule.

5.02 Location; Inspection. The Property will be initially located or based at the location specified in the applicable Property Schedule. Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Property.

ARTICLE VI

6.01 Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional, statutory or charter limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the faith and credit or taxing power of Lessee. Upon the appropriation of Rental Payments for a fiscal year, the Rental Payments for said fiscal year, and only the Rental Payments for said current fiscal year, shall be a binding obligation of Lessee; provided that such obligation shall not include a pledge of the taxing power of Lessee.

6.02 Payment of Rental Payments. Lessee shall promptly pay Rental Payments under each Property Schedule, exclusively from legally available funds, in lawful money of the United States of America, to Lessor in such amounts and on such dates as described in the applicable Property Schedule, at Lessor's address set forth on the first page of this Agreement, unless Lessor instructs Lessee otherwise. Lessee shall pay Lessor a charge on any delinquent Rental Payments under a Property Schedule in an amount sufficient to cover all additional costs and expenses incurred by Lessor and Agent from such delinquent Rental Payment. In addition, Lessee shall pay a late charge of five cents per dollar or the highest amount permitted by applicable law, whichever is lower, on all delinquent Rental Payments.

6.03 Interest Component. A portion of each Rental Payment due under each Property Schedule is paid as, and represents payment of, interest, and each Property Schedule hereunder shall set forth the interest component (or method of computation thereof) of each Rental Payment thereunder during the Lease Term.

6.04 Rental Payments to be Unconditional. SUBJECT TO SECTION 6.06, THE OBLIGATIONS OF LESSEE TO PAY THE RENTAL PAYMENTS DUE UNDER THE PROPERTY SCHEDULES AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT LESSEE'S RIGHTS OR ACTIONS AGAINST ANY VENDOR AS PROVIDED IN SECTION 10.02.

6.05 Continuation of Lease by Lessee. Lessee intends to continue all Property Schedules entered into pursuant to this Agreement and to pay the Rental Payments thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the term of all Property Schedules can be obtained. Lessee agrees that its staff will provide during the budgeting process for each budget year to the governing body of Lessee notification of any Rental Payments due under the Property Schedules during the following budget year. Notwithstanding this covenant, if Lessee fails to appropriate the Rental Payments for a Property Schedule pursuant to Section 6.06, such Property Schedule shall terminate. Although Lessee has made this covenant, in the event that it fails to provide such notice, no remedy is provided and Lessee shall not be liable for any damages for its failure to so comply.

6.06 Non-Appropriation. If sufficient funds are not appropriated to make Rental Payments required under a Property Schedule, such Property Schedule shall terminate and Lessee shall not be obligated to make Rental Payments under said Property Schedule beyond the then current fiscal year for which funds have been appropriated. Upon the occurrence of such nonappropriation (an "Event of Nonappropriation") Lessee shall, no later than the end of the fiscal year for which Rental Payments have been appropriated, deliver possession of the Property under said Property Schedule to Lessor. If Lessee fails to deliver possession of the Property to Lessor upon termination of said Property Schedule by reason of an Event of Nonappropriation, the termination shall nevertheless be effective but Lessee shall be responsible for the payment of damages in an amount equal to the portion of Rental Payments thereafter coming due that is attributable to the number of days after the termination during which the Lessee fails to deliver possession and for any other loss suffered by Lessor as a result of Lessee's failure to deliver possession as required. In addition, Lessor may, by written instructions to the Agent or to any other escrow agent who is holding proceeds of the Property Schedule, instruct the Agent or such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to Lessee's obligations under the Property Schedule and this Agreement. Lessee shall notify Lessor in writing within seven (7) days after the failure of the Lessee to appropriate funds sufficient for the payment of the Rental Payments, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee.

6.07 Defeasance of Rental Payments. Lessee may at any time irrevocably deposit in escrow with a defeasance escrow agent for the purpose of paying all of the principal component and interest component accruing under a Property Schedule, a sum of cash and non-callable securities consisting of direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America or any agency or instrumentality thereof, in such aggregate amount, bearing

interest at such rates and maturing on such dates as shall be required to provide funds sufficient for this purpose. Upon such defeasance, all right, title and interest of Lessor in the Property under said Property Schedule shall terminate. Lessee shall cause such investment to comply with the requirements of federal tax law so that the exclusion from gross income of the interest component of Rental Payments on said Property Schedule is not adversely affected.

ARTICLE VII

7.01 Title to the Property. Upon acceptance of the Property by Lessee and unless otherwise required by the laws of the State, title to the Property shall vest in Lessee, subject to Lessor's interests under the applicable Property Schedule and this Agreement.

7.02 Personal Property. The Property is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Property or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Property from any party having an interest in any such real estate or building.

7.03 Security Interest. To secure the performance of all of Lessee's obligations under this Agreement, including without limitation all Property Schedules now existing or hereafter executed, Lessee grants to Lessor, for the benefit of Lessor and its successors and assigns, a security interest constituting a first lien on Lessee's interest in all of the Property, whether now owned or hereafter acquired, all additions, attachments, alterations and accessions to the Property, all substitutions and replacements for the Property, and on any proceeds of any of the foregoing, including insurance proceeds. Lessee shall execute any additional documents, including financing statements, affidavits, notices and similar instruments, in form and substance satisfactory to Lessor, which Lessor deems necessary or appropriate to establish, maintain and perfect a security interest in the Property in favor of Lessor and its successors and assigns. Lessee hereby authorizes Lessor to file all financing statements which Lessor deems necessary or appropriate to establish, maintain and perfect such security interest.

7.04 Substitution. Lessee may substitute for all or any portion of the Property under a Property Schedule personal property of approximately equal or greater market value and with an equal or greater useful life. In the event of any such substitution, Lessee shall deliver to Lessor a certification that the personal property proposed to be substituted has approximately equal or greater market value and an equal or greater useful life as the portion of the Property being substituted for, together with an opinion of counsel acceptable to Lessor to the effect that the proposed substitution will not adversely affect the exemption of the interest components of Rental Payments under the Property Schedule from federal income taxation. Lessee shall be responsible for all costs and expenses of Lessor, including counsel fees, for any such substitution. Lessee shall cause all financing statements, fixture filings, certificates of title, affidavits, notices and similar instruments, to be made or filed in a timely manner to secure and perfect the security interest of Lessor in the substituted property.

ARTICLE VIII

8.01 Maintenance of Property by Lessee. Lessee shall keep and maintain the Property in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Property in conformity with all laws and regulations concerning the Property's ownership, possession, use and maintenance, and shall keep the Property free and clear of all liens and claims, other than those created by this Agreement. Lessee shall have sole responsibility to maintain and repair the Property. Should Lessee fail to maintain, preserve and keep the Property in good repair and working order and in accordance with manufacturer's specifications, and if requested by Lessor, Lessee will enter into maintenance contracts for the Property in form approved by Lessor and with approved providers.

8.02 Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Property free of all levies, liens and encumbrances, except for the interest of Lessor under this Agreement. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Property will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement and the Property Schedules hereunder have been established to reflect the savings resulting from this exemption from taxation. Lessee will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Lessee shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. Lessee shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term for such Property.

8.03 Insurance. At its own expense, Lessee shall maintain (a) casualty insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount equal to at least the outstanding principal component of Rental Payments, and (b) liability insurance that protects Lessor from liability in all events in an amount reasonably acceptable to Lessor, and (c) worker's compensation insurance covering all employees working on, in, near or about the Property; provided that Lessee may self-insure against all such risks. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. All such insurance shall be with insurers that are authorized to issue such insurance in the State. All such liability insurance shall name Lessor as an additional insured. All such casualty insurance shall contain a provision making any losses payable to Lessor and Lessee as their respective interests may appear. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Lessor and Lessee at least thirty (30) days in advance of such cancellation or modification. Such changes shall not become effective without Lessor's prior written consent. Lessee shall furnish to Lessor, on or before the Commencement Date for each Property Schedule, and thereafter at Lessor's request, certificates evidencing such coverage, or, if Lessee self-insures, a written description of its self-insures, a written description of its self-insurance program together with a certification from Lessee's risk manager or insurance agent or consultant to the effect that Lessee's self-insurance program provides adequate coverage against the risks listed above.

8.04 Advances. In the event Lessee shall fail to either maintain the insurance required by this Agreement or keep the Property in good repair and working order, Lessor may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof or maintain and repair the Property and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the Lease Term for the Property Schedule for which the Property is under and shall be due and payable on the next Rental Payment Date and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date such amounts are advanced until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

ARTICLE IX

9.01 Damage or Destruction. If (a) the Property under a Property Schedule or any portion thereof 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 Property under a Property Schedule or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessor and Lessee will cause the Net Proceeds (as hereinafter defined) of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, unless Lessee shall have exercised its right to defease the Property Schedule as provided herein, or unless Lessee shall have exercised its option to purchase Lessor's interest in the Property if the Property Schedule so provides. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee. For purposes of Section 14.02(b) and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

9.02 Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01, Lessee shall (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Section 6.02, or (b) defease the Property Schedule pursuant to Section 6.07, or (c) exercise its option to purchase Lessor's interest in the Property pursuant to the optional purchase provisions of the Property Schedule, if any. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after such defeasance or purchase may be retained by Lessee.

ARTICLE X

10.01 Disclaimer of Warranties. LESSOR MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND LESSOR HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS LEASED TO LESSEE "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY LESSEE. Lessee acknowledges that it has made (or will make) the selection of the Property from the Vendor based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Lessor. Lessee understands and agrees that (a) neither the Vendor nor any sales representative or other agent of Vendor, is (i) an agent of Lessor, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Property Schedules, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Property Schedules.

10.02 Vendor's Warranties. Lessor hereby irrevocably assigns to Lessee all rights that Lessor may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Property, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendor of the Property.

10.03 Use of the Property. Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Property Schedule. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, Lessee agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property; provided that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Property or its interest or rights under this Agreement. Lessee shall promptly notify Lessor in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Property Schedule or the Property thereunder.

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

ARTICLE XI

11.01 Option to Purchase. Lessee shall have the option to purchase Lessor's entire interest in all of the Property subject to a Property Schedule and to terminate any restrictions herein on the Property under such Property Schedule on the last day of the Lease Term for a Property Schedule, if the Property Schedule is still in effect on such day, upon payment in full of the Rental Payments due thereunder plus payment of One (1) Dollar to Lessor. Lessee shall give written notice to Lessor of its intent to purchase Lessor's interest in the Property at least sixty (60) days prior to the last day of the Lease Term for applicable Property Schedule. Upon exercise of the purchase option as set forth in this Section 11.01 and payment of the purchase price under the applicable Property Schedule, and performance by Lessee of all other terms, conditions and provisions hereof, Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably require to evidence the transfer, without warranty by or recourse to Lessor, of all of Lessor's right, title and interest in and to the Property subject to such Property Schedule to Lessee.

11.02 Option to Prepay. Lessee shall have the option to prepay the Rental Payments due under a Property Schedule, but only if the Property Schedule so provides, and on the terms set forth in the Property Schedule.

ARTICLE XII

12.01 Assignment by Lessor. Lessor's right, title and interest in, to and under each Property Schedule and the Property under such Property Schedule may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor and, to the extent of their interest, by any Registered Owner, without the necessity of obtaining the consent of Lessee; provided that (i) any assignment, other than an assignment to or by a Registered Owner, shall not be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee, and (ii) any assignment to or by a Registered Owner shall not be effective until it is registered on the registration books kept by the Agent. Lessee shall retain all such notices as a register of all assignees (other than Registered Owners) and shall make all payments to the assignee or assignees designated in such register or, in the case of Registered Owners, to the Agent. In the event that Lessor's interest in a Property Schedule and the Property thereunder is assigned to the Agent, Lease Participation Certificates in that Property Schedule may be executed and delivered by the Agent to Registered Owners. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interests in this Agreement and the Property Schedules.

12.02 Property Schedules Separate Financings. Assignees of the Lessor's rights in one Property Schedule shall have no rights in any other Property Schedule unless such rights have been separately assigned. Lessor may collectively assign two or more Property Schedules with the same Commencement Date to the Agent for the purpose of causing the execution and delivery of Lease Participation Certificates in the Property Schedules with the same Commencement Date. Such assignment shall occur on such Commencement Date and upon such assignment all Property Schedules so assigned shall be treated as a single financing and a single Property Schedule with respect to rights and remedies upon the occurrence of an Event of Default or an Event of Nonappropriation under this Agreement. Registered Owners rights with respect to the Property Schedules shall be determined as provided in the escrow agreement or trust agreement relating to such Lease Participation Certificates.

12.03 Assignment and Subleasing by Lessee. NONE OF LESSEE'S RIGHT, TITLE AND INTEREST IN, TO AND UNDER THIS AGREEMENT AND IN THE PROPERTY MAY BE ASSIGNED, SUBLEASED OR ENCUMBERED BY LESSEE FOR ANY REASON, WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR.

12.04 Release and Indemnification Covenants. To the extent permitted by applicable law, Lessee shall indemnify, protect, hold harmless, save and keep harmless Lessor from and against any and all liability, obligation, loss, claim and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest (collectively, "Losses") arising out of or resulting from the entering into this Agreement, any Property Schedules hereunder, the ownership of any item of the Property, the loss of federal tax exemption of the interest on any of the Property Schedules, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Property or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Property resulting in damage to property or injury to or death to any person; provided, however, that Lessee shall not be required to indemnify Lessor for Losses arising out of or resulting from Lessor's own willful or negligent conduct, or for Losses arising out of or resulting from Lessor's preparation of disclosure material relating to Lease Participation Certificates (other than disclosure material provided to Lessor by Lessee). The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement, or the applicable Property Schedule, or the termination of the Lease Term for such Property Schedule for any reason.

ARTICLE XIII

13.01 Events of Default Defined. Any of the following shall constitute an "Event of Default" under a Property Schedule:

- (a) Failure by Lessee to pay any Rental Payment under the Property Schedule or other payment required to be paid with respect thereto at the time specified therein;
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Property Schedule, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is

instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

- (c) Any statement, representation or warranty made by Lessee in or pursuant to the Property Schedule or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- (d) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or
- (e) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

The foregoing provisions of Section 13.01 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to perform its agreements under this Agreement and the Property Schedule (other than the obligations on the part of Lessee contained in Article VI hereof) Lessee shall not be in default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee.

13.02 Remedies on Default. Whenever any Event of Default exists with respect to a Property Schedule, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) Without terminating the Property Schedule, and by written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee thereunder to the end of the then-current budget year of Lessee to be due, including without limitation delinquent Rental Payments under the Property Schedule from prior budget years, and such amounts shall thereafter bear interest at the rate of 12% per annum or the maximum rate permitted by applicable law, whichever is less;
- (b) Lessor may terminate the Property Schedule, may enter the premises where the Property subject to the Property Schedule is located and retake possession of the Property, or require Lessee, at Lessee's expense, to promptly return any or all of the Property to the possession of Lessor at such place within the United States as Lessor shall specify, and Lessor may thereafter dispose of the Property in accordance with Article 9 of the Uniform Commercial Code in effect in the State; provided, however, that any proceeds from the disposition of the property in excess of the sum required to (i) defease the Property Schedule pursuant to Section 6.07, (ii) pay any other amounts then due under the Property Schedule, and (iii) pay Lessor's costs and expenses associated with the disposition of the Property (including attorneys fees), shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto, and further provided that no deficiency shall be allowed against Lessee;
- (c) By written notice to the Agent, if any, Lessor may instruct the Agent to apply all sums held by the Agent in any accounts relating to the Property Schedule under the applicable escrow or trust agreement as provided in the applicable escrow or trust agreement.
- (d) By written notice to any escrow agent (other than the Agent) who is holding proceeds of the Property Schedule, Lessor may instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under the Property Schedule;
- (e) Lessor may take any action, at law or in equity, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Property Schedule and this Agreement.

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

13.04 Costs and Attorney Fees. Upon the occurrence of an Event of Default by Lessee in the performance of any term of this Agreement, Lessee agrees to pay to Lessor or reimburse Lessor for, in addition to all other amounts due hereunder, all of Lessor's costs of collection, including reasonable attorney fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid and shall bear interest at the rate of 12% per annum or the maximum amount permitted by law, whichever is less. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

ARTICLE XIV

14.01 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee (other than a Registered Owner) at its address as it appears on the registration books maintained by Lessee and to any Registered Owner at its address as it appears on the registration books maintained by the Agent.

14.02 Certification as to Arbitrage. Unless a separate Certificate as to Arbitrage is delivered on the Commencement Date, Lessee shall be deemed to make the following representations and covenants as of the Commencement Date for each Property Schedule:

- (a) The estimated total costs, including taxes, freight, installation, cost of issuance, of the Property under the Property Schedule will not be less than the total principal amount of the Rental Payments.
- (b) The Property under the Property Schedule has been ordered or is expected to be ordered within six months and the Property is expected to be delivered and installed, and the Vendor fully paid, within one year from the Commencement Date. Lessee will pursue the completion of the Property and the expenditure of the net proceeds of the Property Schedule with due diligence.
- (c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments under the Property Schedule, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments under the Property Schedule.
- (d) The Property under the Property Schedule has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments under the Property Schedule.
- (e) There are no other obligations of Lessee which (i) are being sold within 15 days of the Commencement Date of the Property Schedule; (ii) are being sold pursuant to the same plan of financing as the Property Schedule; and (iii) are expected to be paid from substantially the same source of funds.
- (f) The officer or official who has executed the Property Schedule on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of the Property Schedule. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in herein are accurate and the expectations of Lessee set forth herein are reasonable.

14.03 Further Assurances. Lessee agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of Lessor, to perfect, confirm, establish, reestablish, continue, or complete the interests of Lessor in this Agreement and the Property Schedules, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and the Property Schedules.

14.04 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

14.05 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not

invalidate or render unenforceable any other provision hereof.

14.06 Waiver of Jury Trials. Lessee and Lessor hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Lessor or Lessee in the negotiation, administration, performance or enforcement hereof.

14.07 Amendments, Changes and Modifications. This Agreement may be amended in writing by Lessor and Lessee to the extent the amendment or modification does not apply to outstanding Property Schedules at the time of such amendment or modification. The consent of the applicable assignee or Agent, if any, shall be required to any amendment or modification before such amendment or modification shall be applicable to any outstanding Property Schedule.

14.08 Execution in Counterparts. This Agreement and the Property Schedules hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

14.09 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

14.10 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

Lessor: Key Government Finance, Inc.
By:
Name:
Title:

Lessee: City of Milpitas
By:
Name:
Title:

Approved as to Form:
By:
Name:
Title:

Attest:
By:
Name:
Title:

Property Schedule No. 1

Master Tax-Exempt Lease/Purchase Agreement

This **Property Schedule No. 1** is entered into as of the Commencement Date set forth below, pursuant to that certain Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement"), dated as of 1/13/2009, between Key Government Finance, Inc., and City of Milpitas.

1. Interpretation. The terms and conditions of the Master Agreement are incorporated herein by reference as if fully set forth herein. Reference is made to the Master Agreement for all representations, covenants and warranties made by Lessee in the execution of this Property Schedule, unless specifically set forth herein. In the event of a conflict between the provisions of the Master Agreement and the provisions of this Property Schedule, the provisions of this Property Schedule shall control. All capitalized terms not otherwise defined herein shall have the meanings provided in the Master Agreement.
2. Commencement Date. The Commencement Date for this Property Schedule is 2/17/2009.
3. Property Description and Payment Schedule. The Property subject to this Property Schedule is described in Exhibit A hereto. Lessee shall not remove such property from the locations set forth therein without giving prior written notice to Lessor. The Rental Payment Schedule for this Property Schedule is set forth in Exhibit 1.
4. Opinion. The Opinion of Lessee's Counsel is attached as Exhibit 2. Lessor agrees to allow Lessee to use "Approved as to Form" stamp in lieu of the formal letter.
5. Lessee's Certificate. The Lessee's Certificate is attached as Exhibit 3. Lessor agrees to accept resolution in lieu of this document.
6. Proceeds. Lessor shall disburse the proceeds of this Property Schedule in accordance with the instructions attached hereto as Exhibit 4.
7. Acceptance Certificate. The form of Acceptance Certificate is attached as Exhibit 5.
8. Additional Purchase Option Provisions. In addition to the Purchase Option provisions set forth in the Master Agreement, Rental Payments payable under this Property Schedule shall be subject to prepayment as follows: See termination amount in Exhibit 1 (Payment Schedule), subject to per diem adjustment.
9. Bank Qualification and Arbitrage Rebate. Attached as Exhibit 6.
10. Expiration. Lessor, at its sole determination, may choose not to accept this Property Schedule if the fully executed, original Agreement (including this Property Schedule all ancillary documents) are not received by Lessor at its place of business by 2/19/2009.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Property Schedule to be executed in their names by their duly authorized representatives as of the Commencement Date above.

Lessor: Key Government Finance, Inc.
By: _____
Name: _____
Title: _____

Lessee: City of Milpitas
By: _____
Name: _____
Title: _____

Approved as to Form:
By _____
Name: _____
Title: _____

Attest
By _____
Name: _____
Title: _____

EXHIBIT 1

Property Description and Payment Schedule

Re: **Property Schedule No. 1** to Master Tax-Exempt Lease/Purchase Agreement between Key Government Finance, Inc. and City of Milpitas.

The Property is as follows: The Property as more fully described in Exhibit A incorporated herein by reference and attached hereto.

EQUIPMENT LOCATION: City of Milpitas, 455 E. Calaveras Blvd., Milpitas, CA 95035-5411

USE: Networking Equipment - This use is essential to the proper, efficient and economic functioning of Lessee or to the services that Lessee provides; and Lessee has immediate need for and expects to make immediate use of substantially all of the Property, which need is not temporary or expected to diminish in the foreseeable future.

Rental Payment Schedule

If the Due Dates are not defined in this Rental Payment Schedule, they shall be defined as the day of each period of this Rental Payment Schedule commencing with the Acceptance Date.

Total Principal Amount \$385,786.82

The financing table below is net of the special financing promotion payment from Cisco Systems, Inc. in the amount of \$41,104.57. This payment will be made by Cisco to Lessor.

Financing Start Date: 2/17/2009

Payment No.	Due Date	Rental Payment from City of Milpitas	Rental Payment from Cisco	Principal	Interest	Termination
1	17-Feb-2009	0.00	41,104.57	41,104.57	0.00	355,022.72
2	17-Mar-2009	77,157.36	0.00	75,557.83	1,599.53	277,198.15
3	17-Mar-2010	77,157.36	0.00	61,782.09	15,375.28	213,562.60
4	17-Mar-2011	77,157.36	0.00	65,311.74	11,845.62	146,291.50
5	17-Mar-2012	77,157.36	0.00	69,043.05	8,114.31	75,177.16
6	17-Mar-2013	77,157.36	0.00	72,987.53	4,169.83	0.00

Lessee: City of Milpitas
By:
Name:
Title:

EXHIBIT A

Property Description

Equipment as described in AT&T Datacom Price Quotation #CM2008-10-10-001 dated 10/28/2008 (inserted below):

Item#	Product	Item	Description	Qty
Core 6504 & Data Center				
1	Cisco	3560E-24TD[6]	Catalyst 3560E 24 10/100/1000+2*10GE(X2),265W,IPB s/w	6
2	Cisco	CAB-AC	Power Cord,110V	6
3	Cisco	CVR-X2-SFP-2	Two (2) Cisco TwinGig Converter Modules	6
4	Cisco	3560E-24TD	Catalyst 3560E 24 10/100/1000+2*10GE(X2),265W,IPB s/w	1
5	Cisco	CAB-AC	Power Cord,110V	1
6	Cisco	CON-SNT-3560E2TS	SMARTNET 8X5XNBD WS-C3560E-24TD-S	1
7	Cisco	CVR-X2-SFP-2	Two (2) Cisco TwinGig Converter Modules	1
8	Cisco	6504 Sup720	Catalyst 6500 Enhanced 4-slot chassis,5RU,no PS,no Fan Tray	1
9	Cisco	CAB-7513AC	AC POWER CORD NORTH AMERICA (110V)	1
10	Cisco	CAB-7513AC	AC POWER CORD NORTH AMERICA (110V)	1
11	Cisco	CF-ADAPTER-SP	SP adapter for SUP720 and SUP720-10G	1
12	Cisco	CON-SNT-WSC6504E	SMARTNET 8X5XNBD Cisco Catalyst 4-sl	1
13	Cisco	FAN-MOD-4HS	High-Speed Fan Module for 7604/6504-E	1
14	Cisco	MEM-XCEF720-256M	Catalyst 6500 256MB DDR, xCEF720 (67xx interface, DFC3A)	1
15	Cisco	PWR-2700-AC/4	2700W AC Power Supply for Cisco 7604/6504-E	1
16	Cisco	PWR-2700-AC/4	2700W AC Power Supply for Cisco 7604/6504-E	1
17	Cisco	S733ISK9M-12233SXH	Cisco CAT6000-SUP720 IOS IP SERVICES SSH (MODULAR)	1
18	Cisco	WS-F6700-CFC	Catalyst 6500 Central Fwd Card for WS-X67xx modules	1
19	Cisco	WS-SUP720-3B	Catalyst 6500/Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B	1
20	Cisco	WS-X6724-SFP	Catalyst 6500 24-port GigE Mod: fabric-enabled (Req. SFPs)	1
21	Cisco	WS-X6748-GE-TX	Cat6500 48-port 10/100/1000 GE Mod: fabric enabled, RJ-45	1
22	Cisco	6504 Sup720	Catalyst 6500 Enhanced 4-slot chassis,5RU,no PS,no Fan Tray	1
23	Cisco	CAB-7513AC	AC POWER CORD NORTH AMERICA (110V)	1
24	Cisco	CAB-7513AC	AC POWER CORD NORTH AMERICA (110V)	1
25	Cisco	CF-ADAPTER-SP	SP adapter for SUP720 and SUP720-10G	1
26	Cisco	CON-SNT-WSC6504E	SMARTNET 8X5XNBD Cisco Catalyst 4-sl	1
27	Cisco	FAN-MOD-4HS	High-Speed Fan Module for 7604/6504-E	1
28	Cisco	MEM-XCEF720-256M	Catalyst 6500 256MB DDR, xCEF720 (67xx interface, DFC3A)	1
29	Cisco	PWR-2700-AC/4	2700W AC Power Supply for Cisco 7604/6504-E	1
30	Cisco	PWR-2700-AC/4	2700W AC Power Supply for Cisco 7604/6504-E	1
31	Cisco	S733ISK9M-12233SXH	Cisco CAT6000-SUP720 IOS IP SERVICES SSH (MODULAR)	1
32	Cisco	WS-F6700-CFC	Catalyst 6500 Central Fwd Card for WS-X67xx modules	1
33	Cisco	WS-SUP720-3B	Catalyst 6500/Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B	1
34	Cisco	WS-X6724-SFP	Catalyst 6500 24-port GigE Mod: fabric-enabled (Req. SFPs)	1
35	Cisco	WS-X6748-GE-TX	Cat6500 48-port 10/100/1000 GE Mod: fabric enabled, RJ-45	1
36	Cisco	GLC-T=[4]	1000BASE-T SFP	4
North Milpitas Clients				
37	Cisco	3560G-24PD	Catalyst 3560 24 10/100/1000T PoE + 4 SFP + IPB Image	1
38	Cisco	CAB-16AWG-AC	AC Power cord, 16AWG	1

39	Cisco	3560G-24PD	Catalyst 3560 24 10/100/1000T PoE + 4 SFP + IPB Image	1
40	Cisco	CAB-16AWG-AC	AC Power cord, 16AWG	1
41	Cisco	CON-SNT-3560GPS	SMARTNET 8X5XNBD Cat 3560 24 10/100/1000T PoE + 4 SF	1
42	Cisco	3560G-48PD[7]	Catalyst 3560 48 10/100/1000T PoE + 4 SFP + IPB Image	7
43	Cisco	CAB-16AWG-AC	AC Power cord, 16AWG	7
44	Cisco	3560G-48PD	Catalyst 3560 48 10/100/1000T PoE + 4 SFP + IPB Image	1
45	Cisco	CAB-16AWG-AC	AC Power cord, 16AWG	1
46	Cisco	CON-SNT-3560G48S	SMARTNET 8X5XNBD Cat 3560 48 10/100/1000T PoE + 4 SF	1
47	Cisco	GLC-SX-MM=[16]	GE SFP, LC connector SX transceiver	16
City Hall				
48	Cisco	3560G-24PD[7]	Catalyst 3560 24 10/100/1000T PoE + 4 SFP + IPB Image	7
49	Cisco	CAB-16AWG-AC	AC Power cord, 16AWG	7
50	Cisco	3560G-48PD[11]	Catalyst 3560 48 10/100/1000T PoE + 4 SFP + IPB Image	11
51	Cisco	CAB-16AWG-AC	AC Power cord, 16AWG	11
52	Cisco	GLC-LH-SM=[32]	GE SFP,LC connector LX/LH transceiver	32
53	Cisco	GLC-SX-MM=[2]	GE SFP, LC connector SX transceiver	2
Fire Station 1				
54	CISCO	3560G-24PD[5]	Catalyst 3560 24 10/100/1000T PoE + 4 SFP + IPB Image	5
55	CISCO	CAB-16AWG-AC	AC Power cord, 16AWG	5
56	CISCO	CON-SNT-3560GPS	SMARTNET 8X5XNBD Cat 3560 24 10/100/1000T PoE + 4 SF	5
57	CISCO	3560G-48PD	Catalyst 3560 48 10/100/1000T PoE + 4 SFP + IPB Image	1
58	CISCO	CAB-16AWG-AC	AC Power cord, 16AWG	1
59	CISCO	GLC-LH-SM=[20]	GE SFP,LC connector LX/LH transceiver	20
60	CISCO	GLC-SX-MM=[2]	GE SFP, LC connector SX transceiver	2
Perimeter Security				
61	CISCO	ASA 5510	ASA 5510 Security Plus Appl with SW, HA, 2GE+3FE, 3DES/AES	1
62	CISCO	ASA-VPN-CLNT-K9	Cisco VPN Client Software (Windows, Solaris, Linux, Mac)	1
63	CISCO	CAB-AC	Power Cord,110V	1
64	CISCO	CON-SNT-AS1SBK9	SMARTNET 8X5XNBD ASA5510 Sec+ w/150 VPN Prs,5FE,3DES/AES	1
65	CISCO	SF-ASA-8.0-K8	ASA 5500 Series Software v8.0	1
66	CISCO	ASA 5510	ASA 5510 Security Plus Appl with SW, HA, 2GE+3FE, 3DES/AES	1
67	CISCO	ASA-VPN-CLNT-K9	Cisco VPN Client Software (Windows, Solaris, Linux, Mac)	1
68	CISCO	CAB-AC	Power Cord,110V	1
69	CISCO	SF-ASA-8.0-K8	ASA 5500 Series Software v8.0	1
70	CISCO	CISCO2801[2]	2801 w/AC PWR,2FE,4slots(2HWIC),2PVDM,2AIM,IP BASE,64F/128D	2
71	CISCO	CAB-AC	Power Cord,110V	2

Network Management

1	Cisco	CWHUM-1.1-M-K9	CW HUM1.1M 300 Dev Lic: NO Media, PAK only: Use LMS3.1 DVD	1
2	Cisco	CON-SAS-HUM1.1M	SW APP SUPP HealthandUtilization Mon1.1M 300 DevLic	1
3	Cisco	CWLMS-3.1-100-K9	LMS 3.1 Windows ONLY 100 Device Restricted	1
4	Cisco	CON-SAS-LMS3100	SW APP SUPP LMS3.1 Midmkt Sm Ntwrk100 Device or Less	1

EXHIBIT 2

Lessee's Counsel's Opinion

Lessor has agreed to allow the Lessee to use "Approved as to Form" stamp in place of a formal letter.

EXHIBIT 3

Lessee's Certificate

In lieu of the Lessee's Certificate, City of Milpitas has agreed to send their Resolution.

EXHIBIT 4

Payment of Proceeds Instructions

Key Government Finance, Inc.
1000 South McCaslin Blvd.
Superior, CO 80027

Re: Property Schedule No. 1 (the "Property Schedule") to Master Tax-Exempt Lease/Purchase Agreement between Key Government Finance, Inc. ("Lessor") and City of Milpitas ("Lessee").

Ladies and Gentlemen:

The undersigned, an Authorized Representative of the Lessee hereby requests and authorizes Lessor to disburse the net proceeds of the Property Schedule as follows:

Name of Payee: _____

By check _____

By wire transfer _____

If by check, Payee's address: _____

If by wire transfer, pay to:

Bank Name:
Bank Address:
Bank City, State, Zip:
Bank Phone:
For Account of:
Account No.:
ABA No.:

City of Milpitas

By: _____

Name: _____

Title: _____

EXHIBIT 5

Acceptance Certificate

Key Government Finance, Inc.
1000 South McCaslin Blvd.
Superior, CO 80027

Re: **Property Schedule No. 1** to Master Tax-Exempt Lease/Purchase Agreement between Key Government Finance, Inc. and City of Milpitas

Ladies and Gentlemen:

In accordance with the above-referenced Master Tax-Exempt Lease/Purchase Agreement (the "Master Agreement"), the undersigned ("Lessee") hereby certifies and represents to, and agrees with, Key Government Finance, Inc. ("Lessor"), as follows:

- (1) The Property, as such terms are defined in the above-referenced Property Schedule, has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) Lessee has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes.
- (3) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default or an Event of Nonappropriation (as such terms are defined in the Master Agreement) exists at the date hereof.

Date: _____

City of Milpitas
as Lessee

By: _____

Name: _____

Title: _____

EXHIBIT 6

Bank Qualification And Arbitrage Rebate

Key Government Finance, Inc.
1000 South McCaslin Blvd.
Superior, CO 80027

Re: **Property Schedule No. 1** to Master Tax-Exempt Lease/Purchase Agreement Key Government Finance, Inc. and City of Milpitas.

Qualified Tax-Exempt Obligation

This section intentionally left blank

Arbitrage Rebate.

(a) Lessee is a governmental unit under the law of the State with general taxing powers, (b) this Property Schedule is not a private activity bond as defined in Section 141 of the Code, and (c) 95% or more of the net proceeds of this Property Schedule will be used for local government activities of Lessee.

Lessee: City of Milpitas
By:
Name:
Title:

****Please fill out this form and fax it to your insurance company****

Request for Certificate of Insurance

TO:

Insurance Carrier: (Name) _____
(Address) _____
(Address) _____
(Contact Name) _____
(Contact Phone) _____
(Contact Fax) _____

FROM:

Customer/Lessee: City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411
Contact Name: Bill Marion
Contact Phone: 408-586-2701
Contact Fax: 408-586-2725

City of Milpitas is in the process of financing networking equipment with Key Government Finance, Inc..

City of Milpitas requests that Key Government Finance, Inc. be listed as "Key Government Finance, Inc., their successors and assigns" and that it be named ADDITIONAL INSURED as to liability coverage and LOSS PAYEE as to property coverage. A copy of said certificate should be forwarded to Key Government Finance, Inc. as described below.

NOTE: Coverage is to include:

- (1) insurance against all risks of physical loss or damage to the Equipment;
- (2) commercial general liability insurance (including blanket contractual liability coverage and products liability coverage) for personal and bodily injury and property damage of not less than \$1,000,000; and
- (3) if applicable, automobile liability coverage of not less than \$3,000,000.

Key Government Finance, Inc. is to receive **30 days** prior written notice of cancellation or material change in coverage. **Qualifying language such as "endeavor to provide"; "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representative" or the like will NOT be accepted and will delay funding.**

1. Please **FAX** this completed information to:

Key Government Finance, Inc.
Myra Aksamit, Account Manager
Phone Number: 720-304-1291
Fax Number: 720-304-1479

2. Please **MAIL** a Certificate of Insurance to:

Key Government Finance, Inc.
Myra Aksamit
1000 S. McCaslin Boulevard
Superior, CO 80027

3. Please **CONTACT** the Account Manager:

- ✓ When faxing this Certificate.
- ✓ If this cannot be completed today.
- ✓ If you have any questions.

Notification of Tax Treatment

Key Government Finance, Inc. is required to collect and remit sales/use tax in the taxing jurisdiction where your equipment will be located. In the event we do not receive a valid sales tax exemption certificate prior to the date your lease commences, you will be charged sales/use tax.

Personal property tax returns will be filed as required by local law. In the event that any tax abatements or special exemptions are available on the equipment you will be leasing from us, please notify us as soon as possible and forward the related documentation to us. This will ensure that your leased equipment will be reported correctly.

Please indicate below if you feel that your lease is subject to tax or whether a valid exemption exists.

- I agree that my lease is subject to sales/use tax.
- I am exempt from sales/use tax and I have attached a completed exemption certificate to Key Government Finance, Inc.
- I have previously provided a completed exemption certificate to Key Government Finance, Inc. which is valid for this transaction.
- I am exempt from state tax but subject to local tax. I have attached a completed exemption certificate.
- I have a valid abatement or property tax exemption (documentation attached).

If applicable to the tax rates in your state, are you outside the city limits or in an unincorporated area? _____

Additional comments:

Lessee: City of Milpitas
By:
Name:
Title:

INSTRUCTIONS FOR COMPLETING THE 8038 FORM

Per the Internal Revenue Service, you are required to fill in the Report Number information for Line 4 (if the form included in your package is an 8038-G).

****We must have this information in order to complete your financing.****

8038-G Line 4. After the preprinted 3, enter two self-designated numbers. Number the reports consecutively during each calendar year. (If this is the first tax-exempt financing that you have entered into this year, you would use the number 01. If this is the eleventh tax-exempt financing that you have entered into this year, you would use the number 11.)

Additionally, please sign at the bottom of the form and remember to print your name and title.

Thank you.

Information Return for Tax-Exempt Governmental Obligations

(Under Internal Revenue Code section 149(e))
(See separate instructions.)
(Caution: If the issue price is under \$100,000, use Form 8038-GC)

OMB No. 1545-0720

Part I Reporting Authority

If Amended Return, check here

1 Issuer's name City of Milpitas		2 Issuer's employer Identification number 94-6019192	
3 Number and street (or P. O. box if mail is not delivered to street address) 455 E. Calaveras Blvd.		Room/suite	4 Report number 3
5 City, town, or post office, state, and ZIP code Milpitas, CA 95035-5411			6 Date of issue
7 Name of issue Property Schedule No. 1 to Master Tax-Exempt Lease/Purchase Agreement			8 CUSIP number
9 Name and title of officer or legal representative whom the IRS may call for more information Bill Marion,		10 Telephone number of officer or legal representative 408-586-2701	

Part II Type of Issue (check applicable box(es) and enter the issue price for each) See instructions and attach schedule

11 <input type="checkbox"/> Education	11	
12 <input type="checkbox"/> Health and hospital	12	
13 <input type="checkbox"/> Transportation	13	
14 <input type="checkbox"/> Public Safety	14	
15 <input type="checkbox"/> Environmental (including sewage bonds).....	15	
16 <input type="checkbox"/> Housing	16	
17 <input type="checkbox"/> Utilities.....	17	
18 <input checked="" type="checkbox"/> Other. Describe (see instructions) <u>Networking</u>	18	\$385,786
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>		
20 If obligations are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>		

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

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$385,786	N/A	5.083 years	5.56

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

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

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

30 Enter the remaining weighted average maturity of the bonds to be currently refunded	N/A	years
31 Enter the remaining weighted average maturity of the bonds to be advance refunded	N/A	years
32 Enter the last date on which the refunded bonds will be called	N/A	
33 Enter the date(s) the refunded bonds were issued	N/A	

Part VI Miscellaneous

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	0.00
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	0.00
b Enter the final maturity date of the guaranteed investment contract		
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	0.00
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer		
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box <input type="checkbox"/>		
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>		
40 If the issuer has identified a hedge, check box <input type="checkbox"/>		

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature of Issuer's authorized representative _____ Date _____ Type or print name and title _____

LESSEE INVOICE INSTRUCTIONS

(The information you provide enables us to invoice you correctly.)

City of Milpitas

BILL TO ADDRESS:

BILLING CONTACT:

First, M.I. and Last Name:

Title:

Phone Number:

Fax Number:

PURCHASE ORDER NUMBER:

Invoices require purchase order numbers: YES _____ NO _____

Purchase Order Number:

FEDERAL TAX ID NUMBER:

EQUIPMENT LOCATION (If different from Billing Address):

ADDITIONAL INFORMATION NEEDED ON INVOICE:



AT&T DataComm Price Quotation

Sales Address: Attn: Charles Byrne
2600 Camino Ramon 4S100B
San Ramon, CA 94563
Phone: 925-824-9615
Fax: 408-493-9601

Quotation Valid for 30 Days From: 28-Oct-2008

Integration Solutions Executive: Jamie George
Inside Sales: Penny Eastwood

925-824-9705
925-824-9615

To: City of Milpitas

AT&T DataComm Equipment and Services
Cabinet 2 Pricing

Quote Number: CM2008-10-10-001
Quote Date: 28-Oct-2008
Quote Amount: \$ 374,019.13

Attn: Matthias Schwarz
Telecom Manager - City of Milpitas
408-586-2711

Table with columns: Item#, Product, Item, Description, Qty, Disc. %, Unit List Price, Unit Disc. Price, Extended Disc. Price. Rows include various Cisco equipment like Catalyst 3560E, 6500, and 7600 series, along with power supplies and modules.

Cabinet 2 Pricing

Please fax PO's to 707-435-6306 attention Penny
PLEASE NOTE NEW REMIT-TO ADDRESS
AT&T DataComm, Inc.
P.O. Box 8104
Aurora, IL 60507-8104

Summary table with columns: Category, Amount. Rows: Hardware Total (\$ 307,092.05), Sales Tax 8.25% (\$ 25,335.09), Maintenance Total (\$ 7,682.30), Installation Total (\$ 33,909.69), Estimated Shipping (Free Ground), Total (\$ 374,019.13).

Purchase orders shall indicate payment terms of net 30 days from date of invoice. Equipment invoices are issued when Equipment is delivered to carrier. Service invoices are issued 30 days after services are rendered.



AT&T DataComm Price Quotation

Sales Address: Attn: Charles Byrne
 2600 Camino Ramon 4S100B
 San Ramon, CA 94583
 Phone: 925-824-9615
 Fax: 408-493-9601

Quotation Valid for 30 Days From: 28-Oct-2008

Integration Solutions Executive: Jamie George 925-824-9705
 Inside Sales: Penny Eastwood 925-824-9615

To: City of Milpitas

AT&T DataComm Equipment and Services

Quote Number: CM2008-10-10-001
 Quote Date: 28-Oct-2008
 Quote Amount: \$ 11,767.69

Attn: Matthias Schwarz
 Telecom Manager - City of Milpitas
 408-586-2711

Item#	Product	Item	Description	Qty	Disc %	Unit List Price	Unit Disc Price	Extended Disc Price
Network Management								
1	Cisco	CWHUM-1.1-M-K9	CW HUM 1.1M 300 Dev Lic: NO Media, PAK only: Use LMS3.1 DVD	1	38%	3,995.00	\$ 2,476.90	\$ 2,476.90
2	Cisco	CON-SAS-HUM1.1M	SW APP SUPP: Health and Utilization Mon 1.1M 300 Dev Lic	1	15%	799.00	\$ 679.15	\$ 679.15
3	Cisco	CWLMS-3.1-100-K9	LMS 3.1 Windows ONLY 100 Device Restricted	1	38%	9,995.00	\$ 6,196.90	\$ 6,196.90
4	Cisco	CON-SAS-LMS3100	SW APP SUPP: LMS3.1 Midmkt Sm Ntwrk 100 Device or Less	1	15%	1,999.00	\$ 1,699.15	\$ 1,699.15
SUBTOTAL								\$ 11,052.10

Calnet 2 Pricing

Please fax PO's to 707-435-6306 attention Penny
 PLEASE NOTE NEW REMIT-TO ADDRESS
 AT&T DataComm, Inc.
 P.O. Box 8104
 Aurora, IL 60507-8104

Hardware Total \$ 8,673.80
 Sales Tax 8.25% \$ 715.59
 Maintenance Total \$ 2,378.30
 Installation Total Not Quoted
 Estimated Shipping Free Ground
 Total \$ 11,767.69

Purchase orders shall indicate payment terms of net 30 days from date of invoice. Equipment invoices are issued when Equipment is delivered to carrier. Service invoices are issued 30 days after services

Equipment Total \$ 374,019.13
 Management SW \$ 11,767.69
 Total \$ 385,786.82

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	505-2970	\$77,158	505-910-4242	\$77,158

Explain the reason for the budget change:

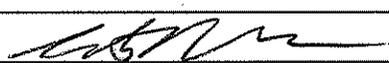
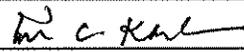
City's current network equipment was installed in 2001 and has now been in operation for over 8 years. The planned life of this type of equipment is generally 5 years. Through the California Department of General Services under the CalNet II program, the City can obtain a no-interest lease through the equipment manufacturer for a period of five years. There are no fees associated with the program and the lease includes provisions for termination should the City be unable to fund the annual payment. The annual payment would be \$77,157.36 and would commence in FY08/09 and terminate in FY12/13. At the completion of the lease, the equipment would become the property of the City.

Recommendation:

Adopt a resolution authorizing the City Manager to execute a lease agreement with Key Government Financial for network equipment in the amount of \$385,786.82 and appropriate the first annual lease payment for \$77,157.36 from the Information Technology Replacement fund.

Check if City Council Approval required.

Meeting Date: February 17, 2009

Itemization of funds, if needed:		Amount
Requested by:	Division Head:	Date:
	Department Head: 	Date: 2-3-09
Reviewed by:	Finance Director: 	Date: 1/30/09
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by: