ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

by and among

BANC OF AMERICA PUBLIC CAPITAL CORP

and

COUNTY OF MONTEREY

and

DEUTSCHE BANK NATIONAL TRUST COMPANY

Dated as of __________ 1, 2010
ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

THIS ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT (this “Control Agreement”), dated as of ___________ 1, 2010, is by and among BANC OF AMERICA PUBLIC CAPITAL CORP (the “Lessor”), a corporation organized and existing under the law of the State of Kansas, the COUNTY OF MONTEREY (the “County”), a county and political subdivision of the State of California organized and existing under the law of the State of California, and DEUTSCHE BANK NATIONAL TRUST COMPANY (the “Custodian”), a national trust company organized and existing under the law of the United States of America.

WITNESSETH:

WHEREAS, the County and the Lessor, have entered into the Master Equipment Lease/Purchase Agreement, dated as of __________, 2010 (the “Lease”), pursuant to which the County (as lessor) leases and lets to the Lessor (as lessee), and Lessor rents and leases from the County, the Existing Equipment as part of that certain equipment described in each Schedule (as each such term is defined in the Lease), (the “Equipment”) leased pursuant to the Lease; and immediately thereafter, the Lessor (as sublessor) leases and lets to the County (as sublessee), and County rents and leases from the Lessor, the Existing Equipment as part of the Equipment leased pursuant to the Lease; provided that once the County has acquired and leased pursuant to the terms of the Lease the Equipment in an amount at least equal to the Maximum Equipment Cost, the Existing Equipment (excluding any portion of the Existing Equipment that constitutes Equipment) shall be released from the lien and lease of the Lease upon the written consent of the Lessor;

WHEREAS, it is a requirement of the Lease that the amount to be paid by Lessor to the Acquisition Fund Custodian pursuant to Paragraph 6 of Exhibit A of the Lease be deposited into an escrow under terms satisfactory to Lessor, for the purposes of funding the Lease and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. Creation of Acquisition Fund. (a) There is hereby created a special trust fund to be known as the “Monterey/Natividad Acquisition Fund” (the “Acquisition Fund”) to be held in trust by the Custodian for the purposes stated herein, for the benefit of the County, to be held, disbursed and returned in accordance with the terms hereof.

(b) Amounts in the Acquisition Fund shall be disbursed by the Custodian in as provided in Sections 3, 4 and [5] hereof.

(c) The Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from the County. The County shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate
notice to the Custodian for the reinvestment of any maturing investment. Accordingly, neither the Custodian nor the Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and the County agrees to and does hereby release the Custodian and the Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this Control Agreement, “Qualified Investments” has the meaning ascribed thereto in Exhibit B hereto. In the absence of written instructions from the County, the Custodian is hereby authorized and directed to invest and re-invest all funds on deposit in the Acquisition Fund in paragraph (6) of the definition of Qualified Investments.

Section 2. Deposit to Acquisition Fund. In accordance with the Lease, the Lessor shall, on the date of commencement of the term of the Lease, cause to be deposited in the Acquisition Fund the amount of $___________.

Section 3. Acquisition of Equipment. (a) The County shall arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment with moneys available in the Acquisition Fund. The County represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. The County shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof. The Lessor shall have no liability under any contract for the acquisition, equipping and installation of the Equipment or any part thereof.

(b) Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to County for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Amounts shall be disbursed from the Acquisition Fund from time to time upon delivery by the County to the Custodian of a properly completed and executed Disbursement Request in the form attached hereto as Exhibit A, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due.

Section 4. Application upon Payment Default. Upon receipt by the Custodian of (a) a written certification from the Lessor that the County has failed to pay all or a portion of a Rental Payment as and when required to be paid pursuant to the Lease, which written certification shall specify the amount that the County has so failed to pay, and (ii) a written direction from the Lessor to transfer such amount from the Acquisition Fund to the Lessor in payment of such Rental Payment, or portion thereof, the Custodian shall, within three business days of the receipt of such written certification and written direction, so transfer from the Acquisition Fund such amount (or such lesser amount as is on deposit therein) to the Lessor. The Lessor and the County agree that any amount so transferred by the Custodian to the Lessor shall be applied to such unpaid Rental Payment, or portion thereof, and, to the extent so transferred shall discharge the County’s liability with respect thereto.
Section 5. Deposit to Acquisition Fund. Upon satisfaction of the conditions specified in Section 3.04 of the Lease, the Lessor will cause the Lease Proceeds to be deposited in the Acquisition Fund. The County agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Acquisition Fund.

Section 6. Excess Proceeds in Acquisition Fund. Following the final disbursement from the Acquisition Fund at the end of the Acquisition Period, or termination of the Acquisition Fund as otherwise provided herein, the Acquisition Fund Custodian shall transfer any remainder from the Acquisition Fund to Lessor for application to amounts owed under the Lease in accordance with Section 4.05 of the Lease.

Section 7. Security Interest. The Custodian and the County acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by the Custodian for disbursement as set forth herein. The County hereby grants to the Lessor a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth in this Control Agreement, such investments shall be made in the name of the Custodian and the Custodian hereby agrees to hold such investments as bailee for the Lessor so that the Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

Section 8. Control of Acquisition Account. In order to perfect the Lessor’s security interest by means of control in (a) the Acquisition Fund established hereunder, (b) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (c) all of the County’s rights in respect of the Acquisition Fund, such securities entitlements, investment property and other financial assets, and (d) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the “Collateral”), the Lessor, the County and the Custodian further agree as follows:

(i) All terms used in this Section which are defined in the Commercial Code of the State of California (the “Commercial Code”) but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Control Agreement.

(ii) The Custodian shall comply with all entitlement orders originated by the Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by the County.

(iii) The Custodian hereby represents and warrants (A) that the records of the Custodian show that the County is the sole owner of the Collateral, (B) that the Custodian has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than the Lessor’s claim pursuant to this Control Agreement, and (C) that the Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that the Custodian is obligated to accept from the Lessor under this Control Agreement and entitlement orders that the Custodian, subject to the provisions of paragraph (v) below, is obligated to accept from the County.
(iv) Without the prior written consent of the Lessor, the Custodian will not enter into any agreement by which the Custodian agrees to comply with any entitlement order of any person other than the Lessor or the County, with respect to any portion or all of the Collateral. The Custodian shall promptly notify the Lessor if any person requests the Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(v) The Custodian hereby agrees to comply with any and all written instructions delivered by the Lessor to the Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by the Lessor, the amount of any obligations of the County to the Lessor, the validity of any of the Lessor’s claims against or agreements with the County, the existence of any defaults under such agreements, or any other matter.

(vi) The County hereby irrevocably authorizes the Custodian to comply with all instructions and entitlement orders delivered by the Lessor to the Custodian.

(vii) The Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and the Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(viii) The Custodian and the County hereby agree that any property held in the Acquisition Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which the Custodian may be a party.

(ix) The Custodian is hereby authorized and instructed, and hereby agrees, to send to the Lessor at its address set forth in Section 9 hereof, concurrently with the sending thereof to the County, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to the County with respect to the Acquisition Fund.

Section 9. The Custodian. (a) The Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Custodian, and for the disposition of the same in accordance herewith.

(b) Unless the Custodian is guilty of negligence or willful misconduct with regard to its duties hereunder, the County, to the extent permitted by law, agrees to and does hereby release and indemnify the Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other reasonable expenses, fees or
charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Custodian under this Control Agreement.

(c) If the County and the Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Custodian hereunder, the Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Custodian shall be reimbursed by the County for all costs, including reasonable attorneys’ fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(d) The Custodian may consult with counsel of its own choice and, so long as the Custodian is acting in good faith, shall have full and complete authorization and protection with the opinion of such counsel. The Custodian shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind, made by it in good faith unless caused by its negligence or willful misconduct.

(e) The County shall reimburse the Custodian for all reasonable costs and expenses, including those of the Custodian’s attorneys and employees incurred for extra-ordinary administration of the Acquisition Fund and the performance of the Custodian’s powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between the County and the Lessor concerning the Acquisition Fund.

Section 10. Miscellaneous. (a) Capitalized undefined terms used herein shall have the meanings ascribed thereto in the Lease.

(b) This Control Agreement may not be amended except in writing signed by all parties hereto.

(c) Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to the Lessor: Banc of America Public Capital Corp
c/o Bank of America, N.A.
555 California Street, 4th Floor
San Francisco, CA 94104
Attention: Contract Administration
Fax: (415) 343-0533

If to the County: County of Monterey
First Floor
168 West Alisal Street
Salinas, California 93901
Attention: ____________
If to the Custodian: Deutsche Bank National Trust Company
101 California Street, 47th Floor
San Francisco, CA 94111
Attn: Raafat Albert Sarkis
Phone: (415) 617-2801
Fax: (414) 617-4280

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

(e) This Control Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of California as the same from time to time exist.

(f) This Control Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Control Agreement. It is also agreed that each party hereto may execute a separate counterpart of this Control Agreement, all with the same force and effect as though all had executed the same counterpart.
IN WITNESS WHEREOF, the parties have executed this Control Agreement as of the date first above written.

BANC OF AMERICA PUBLIC CAPITAL CORP

By: ____________________________

COUNTY OF MONTEREY

By: ____________________________

Attest:

______________________________
Clerk of the Board of Supervisors

DEUTSCHE BANK NATIONAL TRUST COMPANY

By: ____________________________
EXHIBIT A

FORM OF DISBURSEMENT REQUEST

Re: Acquisition Fund and Account Control Agreement, dated as of __________, 2010, by and among Banc of America Public Capital Corp, the County of Monterey and Deutsche Bank National Trust Company

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of __________, 2010 (the “Control Agreement”), by and among Banc of America Public Capital Corp (the “Lessor”), the County of Monterey (the “County”) and Deutsche Bank National Trust Company (the “Custodian”), the County hereby requests the Custodian pay the following persons the following amounts from the Acquisition Fund created under the Control Agreement (the “Acquisition Fund”) for the following purposes.

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<th>Payee’s Name and Address</th>
<th>Invoice Number</th>
<th>Dollar Amount</th>
<th>Purpose</th>
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The County hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by the County, and the same is a proper charge against the Acquisition Fund for costs relating to the Equipment, and has not been paid. Attached hereto is the original invoice with respect to such obligation.

(ii) The undersigned, as Authorized Representative, has no notice of any vendor’s, mechanic’s or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iii) This requisition contains no item representing payment on account, or any retained percentages which County is, at the date hereof, entitled to retain.

(iv) The Equipment is insured in accordance with the Lease.

(v) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vi) The disbursement shall occur during the Acquisition Period set forth in the Schedule applicable to such Equipment.
(vii) No material adverse change in County’s or any guarantor’s financial condition shall have occurred since the date of the Lease.

Capitalized undefined terms used herein have the meanings ascribed thereto in the Master Equipment Lease/Purchase Agreement (the “Agreement”) dated as of _____ 1, 2010 by and by and between Banc of America Public Capital Corp and the County of Monterey.

Dated: ______________________

COUNTY OF MONTEREY

By: ______________________

Authorized Representative
EXHIBIT B
DEFINITION OF QUALIFIED INVESTMENTS

“Qualified Investments” means any of the following obligations:

(1) Direct obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America;

(2) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:
   - Export-Import Bank
   - Rural Economic Community Development Administration
   - U.S. Maritime Administration
   - Small Business Administration
   - U.S. Department of Housing & Urban Development (PHAs)
   - Federal Financing Bank;

(3) Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:
   - Senior debt obligations issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC)
   - Obligations of the Resolution Funding Corporation (REFCORP)
   - Senior debt obligations of the Federal Home Loan Bank System
   - Obligations of Federal Farm Credit Banks (FFCB)

(4) U.S. dollar denominated deposit accounts, federal funds and bankers’ acceptances with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase of “P-1” by Moody’s and “A-1” or “A-1+” by S&P and maturing not more than three hundred sixty (360) calendar days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);

(5) Commercial paper which is rated at the time of purchase, “P-1” by Moody’s and “A-1” or better by S&P and which matures not more than two hundred seventy (270) calendar days after the date of purchase;
(6) Investments in a money market fund rated “AAAm” or “AAAm-G” or better by S&P;

(7) Municipal obligations rated at the time of purchase “Aaa/AAA” or general obligations of states with a rating at the time of purchase of at least “A2/A” or higher by both Moody’s and S&P;

(8) Investments in the State of California’s Local Agency Investment Fund (LAIF);

(9) Investment agreements with, or guaranteed by, a domestic or foreign bank, financial institution or corporation or other entity (other than a life or property casualty insurance company) the long-term debt of which is rated at the time of execution at least “AA” by S&P and “Aa” by Moody’s; and

(10) Shares of beneficial interest issued by a joint powers authority organized pursuant to Government Code Section 6509.7 that invests in securities and obligations authorized in subdivisions (a) to (o) of Government Code Section 53601. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:

(A) the adviser is registered or exempt from registration with the Securities and Exchange Commission;

(B) the adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (o) of Government Code Section 53601; and

(C) the adviser has assets under management in excess of five hundred million dollars ($500,000,000).