

DATE: SEPTEMBER 15, 2008

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
GLENN E. GAMBER, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 117 - 2008

BY: HEALTH, WELFARE & BUILDING REGULATIONS COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to sign the Master Equipment Lease-Purchase Agreement with Tax-Exempt Leasing Corporation for the Early Warning Siren System located throughout the city, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON,  
STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby determines it to be necessary in the public health, safety and welfare to sign the Master Equipment Lease-Purchase Agreement with Tax-Exempt Leasing Corporation for the Early Warning Siren System located throughout the city.

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized and directed to sign the Master Equipment Lease-Purchase Agreement with Tax-Exempt Leasing Corporation for the Early Warning Siren System located throughout the city. This project is fully funded by a grant from the Aultman Health Foundation.

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and welfare of the community and for the additional reason that it is necessary that the lease-purchase agreement is signed so the new early warning siren system can be installed throughout the City of Massillon. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS 15<sup>th</sup> DAY OF September, 2008

ATTEST:

Mary Beth Bailey  
MARY BETH BAILEY, CLERK OF COUNCIL

Glenn E. Gamber  
GLENN E. GAMBER, PRESIDENT

APPROVED:

September 16, 2008

Francis H. Cicchinelli, Jr.  
FRANCIS H. CICCHINELLI, JR., MAYOR

I hereby certify that the foregoing ordinance is a true copy of the original, as passed by the Council of the City of Massillon, Ohio, and approved as noted thereon:

Mary Beth Bailey  
Clerk of Council

Date 9/15/08

## MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT

1. **Agreement.** Subject to the terms and conditions contained in this Master Equipment Lease-Purchase Agreement No. 081508OH dated August 15, 2008 (this "Agreement"), Tax-Exempt Leasing Corp., as lessor ("Lessor"), whose mailing address is 940 N. Milwaukee Ave. Suite 3, Libertyville, IL 60048, hereby agrees to sell, transfer and lease to City of Massillon, as lessee ("Lessee"), whose mailing address is 151 Lincoln Way East Massillon, OH 44646, and Lessee agrees to acquire, purchase and lease from Lessor, the items of personal property (together with any replacement parts, additions, substitutions, repairs or accessories now or hereafter incorporated in or affixed to it, hereinafter referred to collectively as the "Equipment") described in each Equipment Schedule (hereinafter referred to as an "Equipment Schedule") that may from time to time be executed by Lessor and Lessee that specifically incorporates the terms and conditions of this Agreement by reference (any such Equipment Schedule hereinafter referred to as a "Lease"). Each Equipment Schedule (including the terms and conditions incorporated therein by reference) executed and delivered by Lessor and Lessee pursuant to this Agreement shall be considered a separate and independent Lease.

This Agreement is not a commitment by Lessor to enter into any Lease not currently in effect, and nothing in this Agreement shall impose, or be construed to impose, any obligation upon Lessor to enter into any proposed Lease, it being understood that whether Lessor enters into any proposed Lease shall be a decision solely within Lessor's discretion.

2. **Term.** The term of this Agreement begins as of the date hereof and shall continue so long as any amounts remain unpaid under a Lease. The term of each Lease shall commence on, and interest shall accrue from, the date identified in the related Equipment Schedule (the "Commencement Date") and shall continue for the number of months stated in such Equipment Schedule (the "Scheduled Term"), unless Lessee shall have terminated such Lease pursuant to Paragraph 3 or Paragraph 10 of this Agreement or Lessor shall have terminated such Lease pursuant to Paragraph 16 of this Agreement (the Scheduled Term upon its expiration or as so terminated is herein referred to as the "Lease Term"). Lessee authorizes Lessor to insert the applicable Commencement Date in each Equipment Schedule.

2.5. **Escrow Agreement.** On the Commencement Date of each Lease, Lessor and Lessee shall enter into an escrow agreement (an "Escrow Agreement") relating to such Lease, dated the Commencement Date of such Lease, among Lessor, Lessee and Old National Bank, as escrow agent, relating to the escrow fund (an "Escrow Fund") created thereunder. On the Commencement Date of each Lease, Lessor shall deposit funds into the related Escrow Fund for the payment of the costs of acquiring the Equipment under such Lease.

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

Lessee, being a state or political subdivision thereof, is dependent upon receiving continued appropriations or other legally available funds to continue a Lease for its Scheduled Term. Notwithstanding any provision to the contrary in this Agreement, Lessee may terminate a Lease at the end of any fiscal period of Lessee as identified in the applicable Equipment Schedule (a "Fiscal Period") if sufficient funds are not appropriated by Lessee's governing body to pay rental payments and other amounts due under such Lease during the next succeeding Fiscal Period (an "Event of Nonappropriation"). Lessee hereby agrees to notify Lessor at least 30 days prior to the last day of its then current Fiscal Period of the occurrence of an Event of Nonappropriation under any Lease or, if nonappropriation has not occurred by that date, promptly upon the occurrence of an Event of Nonappropriation.

<b>ACCEPTED BY LESSOR:</b>  TAX-EXEMPT LEASING CORP., Lessor  By: x _____ Print Name: _____ Title: _____ Date: August 15, 2008	THE UNDERSIGNED HEREBY AGREES TO ALL OF THE TERMS AND CONDITIONS AS SET FORTH ON THIS PAGE AND THE FOLLOWING 6 PAGES (7 pages in total) OF THIS MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT  City of Massillon, Lessee  By: x _____ Print Name: _____ Title: _____ Date: August 15, 2008  Lessee's signatory warrants that he/she is duly authorized to execute this Master Equipment Lease-Purchase Agreement for and on behalf of the above named Lessee.
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Lessee represents and warrants that: (a) it has made sufficient appropriations or has other legally available funds to pay all rental payments under a Lease due during the first Fiscal Period under such Lease; (b) Lessee currently intends to do all things lawfully within its power to obtain appropriated funds for the payment of rental payments and other amounts required to be paid under each Lease in each next succeeding Fiscal Period for its Scheduled Term; and (c) Lessee acknowledges that Lessor has relied upon these representations as an inducement to enter into this Agreement and each Lease. If an Event of Nonappropriation under a Lease shall occur, Lessee agrees, at Lessee's sole cost and expense, peaceably to deliver the corresponding Equipment to Lessor at such location in the continental United States as is specified by Lessor, in the condition required by Paragraph 7 of this Agreement, on or before the effective date of termination.

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

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

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

6. **Delivery and Acceptance; Quiet Enjoyment.** Lessee shall accept the Equipment for which disbursement is requested from the related Escrow Fund upon its delivery and authorizes Lessor to insert on the Equipment Schedule the serial numbers and any additional description of the items of Equipment so delivered. As evidence of said acceptance, Lessee shall execute and deliver to Lessor a Certificate of Acceptance and Payment Request in the form attached as Exhibit A-1 to each Equipment Schedule. During the Lease Term of each Lease, Lessee shall be entitled to quiet enjoyment of the Equipment identified therein, subject to the terms of this Agreement.

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



8. **Title to Equipment; Security Interest.** During the Lease Term of each Lease, title to the Equipment shall be vested in Lessee, subject to the rights of Lessor under such Lease. In the event Lessor terminates a Lease pursuant to Paragraph 16 of this Agreement or an Event of Nonappropriation occurs under a Lease, title to the related Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee. Lessee, at its expense, will protect and defend Lessee's title to the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. Lessor shall have the right during normal hours, upon reasonable prior notice to Lessee, to enter upon the premises where the Equipment is located in order to inspect the Equipment.

To secure the performance of all of Lessee's obligations under each Lease, Lessee hereby grants to Lessor, and Lessor shall have and retain, a security interest constituting a first lien on the Equipment delivered under each respective Lease and on any proceeds therefrom. Lessor may file such documents, including, without limitation, financial statements as it deems necessary to perfect such security interest under applicable law. Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of each Lease and Lessor's rights thereunder.

As further security therefor, Lessee hereby grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time comprising each Escrow Fund and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party under the applicable Uniform Commercial Code.

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

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

11. **Risk of Loss.** Lessee shall bear the entire risk of loss, theft, destruction of or damage to the Equipment or any part thereof from any cause whatsoever during the Lease Term of each Lease and thereafter until redelivery to a location designated by Lessor, and shall not be relieved of the obligation to pay rental payments or any other obligation thereunder because of any such occurrence. If (a) the Equipment or any portion thereof under a Lease is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof under a Lease is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the net proceeds of any insurance claim or condemnation award to be applied, at Lessor's option, to (i) the prompt repair, restoration, modification or replacement of the Equipment so affected or (ii) the payment in full of the then applicable Concluding Payment. Any balance of net proceeds remaining after completion of such work or payment of such Concluding Payment shall be paid promptly to Lessee. If the net proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Concluding Payment in full, Lessee shall, at Lessor's direction, either complete the work or pay the then applicable Concluding Payment in full and in either case pay any cost in excess of the amount of net proceeds, but only from legally available funds.

12. **Insurance.** Lessee shall, at its expense, keep the Equipment fully insured against loss, fire, theft, damage or destruction from any cause whatsoever in an amount not less than the greater of (a) the total rental payments for the Scheduled Term of the applicable Lease, or (b) the full replacement cost of the Equipment without consideration for depreciation. Lessee shall also provide such additional insurance against injury, loss or damage to persons or property arising out of the use or operation of the Equipment as is customarily maintained by the owners of like property, with companies satisfactory to Lessor. Each policy shall provide that, as to the interest or coverage of Lessor or Lessor's assignee, the insurance afforded thereby shall not be suspended, forfeited or in any manner prejudiced by any default or by any breach of warranty, condition or covenant on the part of Lessee. If Lessee shall fail to provide any such insurance required under a Lease or, within ten (10) days after Lessor's request therefor, shall fail to deliver the policies or certificates thereof to Lessor, then Lessor, at its option, shall have the right to procure such insurance and to add the full cost thereof to the rental payment next becoming due, which Lessee agrees to pay as additional rent.

All such insurance shall be in form, issued by such insurance companies and be in such amounts as shall be satisfactory to Lessor, and shall provide that losses, if any, shall be payable to Lessor as "loss payee," and all such liability insurance shall include Lessor as an "additional insured." Lessee shall pay the premiums for such insurance and deliver to Lessor satisfactory evidence of the insurance coverage required under each Lease. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payments of and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy.

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

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

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

Lessor may, at any time and from time to time, assign, transfer or otherwise convey all or any part of its interest in the Equipment, this Agreement, any Escrow Agreement (including the Escrow Fund created thereunder) and one or more Leases, including, but not limited to, Lessor's rights to receive the rental payments under a Lease or any part thereof (in which event Lessee agrees to make all rental payments thereafter to the assignee designated by Lessor) without the necessity of obtaining Lessee's consent, *provided, however*, Lessor will deliver to Lessee prior written notice of an assignment. No such assignment, transfer or conveyance shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee. During the term of this Agreement, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments with respect to each Lease in form necessary to comply with Section 149 of the Internal Revenue Code of 1986, as amended (the "Code"). Lessee agrees (unless otherwise stated), if so requested, to acknowledge each such assignment in writing within 15 days after request therefor in the form attached as Exhibit A-3 to each Equipment Schedule. Lessee further agrees that any moneys or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

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

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

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

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

**17. Late Payments.** Whenever any rental payment or other amount payable to Lessor by Lessee under a Lease is not paid within ten (10) days after such due date, Lessee agrees to pay Lessor a late charge on the delinquent amount at the rate of one percent (1%) per month, or the maximum amount permitted under applicable law, whichever is less. Such amount(s) shall be payable solely from legally available funds in addition to all amounts payable by Lessee as a result of the exercise of any of the remedies herein provided.

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

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

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



such Lease will not be used in a manner that will cause such Lease to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code.

If Lessee breaches the covenants contained in this Paragraph 19 as provided in a Lease, the interest component of rental payments under such Lease may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, Lessee agrees to pay promptly after any such determination of taxability and on each rental payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error).

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

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

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

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

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

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

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

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

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

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

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

(j) Lessee has entered into, or will enter into, each Lease for the purpose of purchasing, acquiring and leasing the Equipment and not for the purpose of refinancing any outstanding obligation of Lessee more than 90 days in advance of its payment or prepayment date. The purchase price for the Equipment has been or will be paid directly by Lessor to the Vendor,

and no portion of the purchase price for the Equipment has been or will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the execution and delivery of the applicable Lease.

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

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

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

(n) Lessee has not previously failed (for whatever reason) to appropriate amounts sufficient to pay its obligations that are subject to annual appropriation.

(o) Lessee shall pay the excess (if any) of the actual costs of acquiring the Equipment under a Lease over the amount deposited by Lessor in the related Escrow Fund and interest earnings thereon.

(p) Lessee has experienced no material change in its financial condition since December 31, 2006.

**21. Execution in Counterparts; Chattel Paper.** This Agreement and each Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided, however*, that only Counterpart No. 1 of each Lease (including the terms and conditions of this Agreement incorporated therein by reference) shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

**22. Applicable Law.** This agreement and each lease shall be construed under the laws of the State of Ohio.

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

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



## EXHIBIT A

### TAX-EXEMPT LEASING CORP.

#### EQUIPMENT SCHEDULE

MASTER EQUIPMENT LEASE-PURCHASE  
AGREEMENT No.: 081508OH

DATE OF MASTER EQUIPMENT  
LEASE-PURCHASE AGREEMENT: AUGUST 15, 2008

EQUIPMENT SCHEDULE No.: 01

EQUIPMENT SCHEDULE DATE: AUGUST 15, 2008

LESSEE: City of Massillon

COMMENCEMENT DATE: AUGUST 15, 2008

SCHEDULED TERM (NUMBER OF MONTHS): 60

1. DESCRIPTION OF THE EQUIPMENT:

Qty.	Model	Description
9	T-128-DC	Rotating Siren 128 db 48v DC UL Listed
9	TEMPEST™ AC/DC	AC/DC Motor Control 112 / 121 / 128 - UL Listed NEMA 4 Painted Steel
9	HTR-T1	T128 Siren Head Heater Kit
9	PM-4	Pole Mount/Hdwr - Tempest 128 & 121 & 112
9	KIT-FSK-32-DC	FSK, Format Card, for DC Mechanical Sirens
9	RTU-2001-DC Door Mt.	RTU, Universal Controller, Panel Mount Tempest-MC's
9	SENSORS - Current	Current Sensor, Tempest-Series
9	MCM-200-V	Motorola CM200 VHF 25 Watt
9	KIT-RRM	Motorola 'Radio Interface, VHF & UHF (All)
9	KIT-YAGI-ANT-8	Antenna, VHF, 25' coax Directional
9	BATT-1	Battery, 12V, Deep cycle Group 24 - (Set of 4)
9	BATT-HTR-2	Kit, Battery, Heater, TEMPEST™ DC Control (1 blanket per 2 batteries) Set of Two
9	Pole	55' Class II wood Pole
1	CSC-960-FSK	Central Station Controller-960, FSK Format
1	CP-3000	CompuLert™ Version 6.0 WIN 95/98/ME/NT
1	CDM-750	Motorola CDM 750 VHF Base Radio
1	KIT-RRM	Motorola 'Radio Interface, VHF & UHF (All)
1	KIT-ARR-2	Lightning Arrestor, BA Feed, VHF, PL-259
1	KIT-OMNI-ANT-7	Antenna, VHF, 25' coax Omni-Directional
1	Com/ptr	Pentium grade computer and printer

together with all accessories, attachments, substitutions and accessions.

2. EQUIPMENT LOCATION: WITHIN THE CITY LIMITS OF THE CITY OF MASSILLON, OH

3. RENTAL PAYMENT SCHEDULE:

The rental payments shall be made for the Equipment as follows:

Interest Rate: 4.59%

Payment Number	Payment Date	Payment	Interest	Principal	Concluding Payment*
1	8/15/2009	\$ 44,547.11	\$ 8,953.77	\$ 35,593.34	\$164,262.30
2	8/15/2010	\$ 44,547.11	\$ 7,320.04	\$ 37,227.07	\$125,918.42
3	8/15/2011	\$ 44,547.11	\$ 5,611.32	\$ 38,935.79	\$ 85,814.55
4	8/15/2012	\$ 44,547.11	\$ 3,824.16	\$ 40,722.95	\$ 43,869.91
5	8/15/2013	\$ 44,547.11	\$ 1,954.96	\$ 42,592.15	\$ -
Totals		\$222,735.55	\$ 27,664.25	\$195,071.30	

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

4. Lessee's current Fiscal Period extends from January 1 to December 31.

5. For purposes of this Schedule, "State" means the State of Ohio.

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

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

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

City of Massillon,  
as Lessee

Tax-Exempt Leasing Corp.,  
as Lessor

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

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

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

EXHIBIT A-1

(TO EQUIPMENT SCHEDULE NO. 01)

CERTIFICATE OF ACCEPTANCE AND PAYMENT REQUEST

Old National Bank (the "Escrow Agent"), as escrow agent under that certain Escrow Agreement dated August 15, 2008 (the "Escrow Agreement"), by and among City of Massillon ("Lessee"), Tax-Exempt Leasing Corp. ("Lessor") and the Escrow Agent, is hereby requested to pay from the Escrow Fund established and maintained thereunder, the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee). The equipment described below is part or all of the Equipment listed on Equipment Schedule No. 01 dated August 15, 2008 (the "Equipment Schedule") to that certain Master Equipment Lease-Purchase Agreement No. 081508OH dated August 15, 2008 (the "Agreement"), between Lessor and Lessee:

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

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

The following documents are attached hereto and made a part hereof: (a) Original Invoice(s); and/or (b) Copies of Certificate(s) of Origin, when applicable, designating Lessor as lienholder if any part of the Equipment consists of motor vehicles, and evidence of filing.

IF REQUEST IS FOR REIMBURSEMENT, CHECK HERE ☐. Lessee paid an invoice prior to the commencement date identified in the Equipment Schedule and is requesting reimbursement for such payment, a copy of evidence of such payment together with a copy of Lessee's Declaration of Official Intent and other evidence that Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. 1.150-2 is hereby attached..

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

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

Approved:

Tax-Exempt Leasing Corp., as Lessor

City of Massillon, Lessee

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

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

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

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

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

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

**EXHIBIT A-2**

**(TO EQUIPMENT SCHEDULE NO. 01)**

**[ATTACH I.R.S. FORM 8038-G OR 8038-GC, AS APPROPRIATE]**

**EXHIBIT A-3**

**(TO EQUIPMENT SCHEDULE NO. 01)**

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

Tax-Exempt Leasing Corp. ("*Lessor*") and City of Massillon ("*Lessee*") have entered into a Master Equipment Lease-Purchase Agreement No. 081508OH dated August 15, 2008, and Equipment Schedule No. 01 dated August 15, 2008 (collectively the "*Lease*"), under which Lessee has, or will have prior to its execution hereof, leased equipment (the "*Equipment*") described in such Equipment Schedule and for the acquisition of which an Escrow Fund has been created under an Escrow Agreement (the "*Escrow Agreement*") as provided in the Lease.

Lessee is hereby notified that Lessor has assigned its right, title and interest in and to the Lease, the leased Equipment, the rental payments and the Escrow Agreement (including the Escrow Fund created thereunder) as permitted by the Lease.

Lessee is hereby directed to pay any and all rental payments and other amounts due with respect to which Lessor's assignee ("*Assignee*") renders an invoice, at the address set out immediately below or as otherwise directed in said invoice:

"ASSIGNEE"

OLD NATIONAL BANK  
P.O. Box 766  
INDIANAPOLIS, IN 6206-0766

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

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

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

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

City of Massillon,  
as Lessee

By:

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



EXHIBIT A-4

(TO EQUIPMENT SCHEDULE NO. 01)

Tax-Exempt Leasing Corp.  
940 N. Milwaukee Ave. Suite 3  
Libertyville, IL 60048

August 15, 2008

Re: Master Equipment Lease-Purchase Agreement No. 081508OH  
dated August 15, 2008 and Equipment Schedule No. 01 thereto

In connection with the above-referenced Equipment Schedule No. 01, City of Massillon as lessee (the "Lessee") certifies that it has instructed the insurance agent named below (please fill in name, address, and telephone number):

Name of Agent: \_\_\_\_\_

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

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

to issue:

~~X~~ *Liability Insurance.* Lessee is required to maintain public liability insurance, personal injury and property damage with policy limits of \$1,000,000.00. The policy should be endorsed to name Tax-Exempt Leasing Corp. ("Tax-Exempt Leasing Corp.") and/or its assigns as an additional insured.

X *Casualty Insurance.* Lessee is required to maintain all risk extended coverage, malicious mischief and vandalism insurance for the Equipment described in the above-referenced Equipment Schedule in the amount not less than the full replacement cost of the Equipment. Such insurance shall be endorsed to name Tax-Exempt Leasing Corp. and/or its assigns as a co-loss payee with respect to such Equipment.

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

Proof of insurance coverage will be provided to Tax-Exempt Leasing Corp. prior to the time that the Equipment is delivered to Lessee.

Very truly yours,

City of Massillon

By:

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

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

**EXHIBIT A-5**

**(TO EQUIPMENT SCHEDULE NO. 01)**

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**EXHIBIT A-6**

**(TO EQUIPMENT SCHEDULE NO. 01)**

**ESSENTIAL USE CERTIFICATE**

Tax-Exempt Leasing Corp.  
940 N. Milwaukee Ave. Suite 3  
Libertyville, IL 60048

August 15, 2008

Re: Master Equipment Lease-Purchase Agreement No. 081508OH  
dated August 15, 2008 and Equipment Schedule No. 01 thereto

I, \_\_\_\_\_, a duly elected, appointed, or designated representative of City of Massillon as lessee (the "Lessee"), is qualified to answer the questions set forth below regarding the Equipment to be acquired by Lessee in connection with the above-referenced Equipment Schedule No. 01:

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

Very truly yours,

City of Massillon

By:

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

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

**EXHIBIT A-7**

**(TO EQUIPMENT SCHEDULE NO. 01)**

**BANK-QUALIFIED DESIGNATION**

City of Massillon, as lessee (the "*Lessee*"), under Equipment Schedule No. 01 to which this Designation is attached, hereby designates Equipment Schedule No. 01 as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including Equipment Schedule No. 01) that exceed the aggregate principal amount of \$10,000,000 during the calendar year in which Equipment Schedule No. 01 is executed and delivered and interest commences to accrue thereunder.

This Designation is attached to and made a part of Equipment Schedule No. 01.

EXECUTED on August 15, 2008.

City of Massillon, as Lessee

Signature: \_\_\_\_\_

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

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

**EXHIBIT B**

**INCUMBENCY CERTIFICATE**

I, \_\_\_\_\_, do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of City of Massillon, a City organized under the laws of the State of OH, that I have custody of the records of such entity.

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

- (i) The signatures set opposite their respective names and titles are their true and authentic signatures, and
- (ii) Such officers have the authority on behalf of such entity to:
  - a. Enter into that certain Master Equipment Lease-Purchase Agreement No. 081508OH dated August 15, 2008 (the "*Agreement*") and Equipment Schedule No. 01 thereto dated August 15, 2008 (the "*Schedule*"), each between City of Massillon and Tax-Exempt Leasing Corp., as lessor, and that certain Escrow Agreement dated August 15, 2008 (the "*Escrow Agreement*"), among City of Massillon, Tax-Exempt Leasing Corp. and Old National Bank, as escrow agent, and
  - b. Execute Certificates of Acceptance and Payment Requests and other documents relating to the Agreement, the Schedule and the Escrow Agreement.

NAME	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I have duly executed this Certificate and affixed the seal of City of Massillon hereto on August 15, 2008.

[SEAL]

\_\_\_\_\_  
(Secretary/Clerk)  
(other than the person signing the documents)



# PERICLES G. STERGIOS

## Massillon Director of Law

### Assistant Law Directors And Prosecutors

JOHN H. SIMPSON, CHIEF  
TIMOTHY G. ANDREWS  
ROBERT A. ZEDELL

### MASSILLON LAW DEPARTMENT

Two James Duncan Plaza  
Massillon, Ohio 44646  
330-830-1718  
Fax: 330-833-7144

### Assistant Law Directors And Prosecutors

ANTHONY La PENNA  
LAURA A. SCHURER  
KEITH A. WARSTLER, JR.  
MALYNDA M. REED

### EXHIBIT C

### OPINION OF LESSEE'S COUNSEL

August 15, 2008

Tax-Exempt Leasing Corp.  
940 N. Milwaukee Ave. Suite 3  
Libertyville, IL 60048

Re: Master Equipment Lease-Purchase Agreement No. 081508OH dated August 15, 2008 and Equipment Schedule No. 01 thereto

Ladies and Gentlemen:

As counsel for the City of Massillon ("Lessee"), I have examined the Master Equipment Lease-Purchase Agreement No. 081508OH duly executed by Lessee and dated August 15, 2008 (the "Master Lease"), which has been incorporated by reference into Equipment Schedule No. 01 dated August 15, 2008 ("Equipment Schedule No. 01"), each between Lessee and Tax-Exempt Leasing Corp., as lessor ("Lessor"), the form of the Certificate of Acceptance and Payment Request (the "Certificate of Acceptance") attached to Equipment Schedule No. 01, the Escrow Agreement dated August 15, 2008 (the "Escrow Agreement"), among Lessor, Lessee and Old National Bank, as escrow agent, and the proceedings taken by the governing body of Lessee to authorize on behalf of Lessee the execution and delivery of the Master Lease, Equipment Schedule No. 01, the Certificate of Acceptance and the Escrow Agreement. The Master Lease, Equipment Schedule No. 01, the Escrow Agreement and the related Certificate of Acceptance are herein collectively referred to as the "Transaction Documents." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a City duly organized and legally existing as a political subdivision, municipal corporation or other local government unit under the Constitution and laws of the State of Ohio with full power and authority to enter into the Transaction Documents.
2. The Transaction Documents have each been duly authorized, executed and delivered by Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.
3. The Equipment to be leased pursuant to the Lease constitutes personal property and when subjected to use by Lessee will not be or become a fixture under applicable law.
4. Lessee has complied with any applicable public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. The resolution adopted by Lessee's governing body authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.
5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery or performance by Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of Lessee or its governing body or the authority or ability of Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment (as such term is defined in the Master Lease) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound.
6. The correct legal name of Lessee for purposes of the Ohio Commercial Code is City of Massillon.

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



Respectfully submitted,

*Pericles G. Stergios*  
Attorney



# PERICLES G. STERGIOS

## Massillon Director of Law

### Assistant Law Directors And Prosecutors

JOHN H. SIMPSON, CHIEF  
ROBERT H. CYPERSKI  
ROBERT A. ZEDEL

### MASSILLON LAW DEPARTMENT

Two James Duncan Plaza  
Massillon, Ohio 44646  
330-830-1718  
Fax: 330-833-7144  
www.massillonohio.com

August 15, 2008

### Assistant Law Directors And Prosecutors

ANTHONY LaPENNA  
LAURA A. DARROW  
KEITH A. WARSTLER, JR.  
MALYNDA M. REED

Tax-Exempt Leasing Corp.  
940 N. Milwaukee Ave. Suite 3  
Libertyville, IL 60048

Re: Master Equipment Lease-Purchase Agreement No. 081508OH dated August 15, 2008 and Equipment Schedule No. 01 thereto

Ladies and Gentlemen:

As counsel for the City of Massillon ("Lessee"), I have examined the Master Equipment Lease-Purchase Agreement No. 081508OH duly executed by Lessee and dated August 15, 2008 (the "Master Lease"), which has been incorporated by reference into Equipment Schedule No. 01 dated August 15, 2008 ("Equipment Schedule No. 01"), each between Lessee and Tax-Exempt Leasing Corp., as lessor ("Lessor"), the form of the Certificate of Acceptance and Payment Request (the "Certificate of Acceptance") attached to Equipment Schedule No. 01, the Escrow Agreement dated August 15, 2008 (the "Escrow Agreement"), among Lessor, Lessee and Old National Bank, as escrow agent, and the proceedings taken by the governing body of Lessee to authorize on behalf of Lessee the execution and delivery of the Master Lease, Equipment Schedule No. 01, the Certificate of Acceptance and the Escrow Agreement. The Master Lease, Equipment Schedule No. 01, the Escrow Agreement and the related Certificate of Acceptance are herein collectively referred to as the "Transaction Documents." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a City duly organized and legally existing as a political subdivision, municipal corporation or other local government unit under the Constitution and laws of the State of Ohio with full power and authority to enter into the Transaction Documents.
2. The Transaction Documents have each been duly authorized, executed and delivered by Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.
3. The Equipment to be leased pursuant to the Lease constitutes personal property and when subjected to use by Lessee will not be or become a fixture under applicable law.
4. Lessee has complied with any applicable public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. The resolution adopted by Lessee's governing body authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.
5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery or performance by Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of Lessee or its governing body or the authority or ability of Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment (as such term is defined in the Master Lease) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound.
6. The correct legal name of Lessee for purposes of the Ohio Commercial Code is City of Massillon.

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

Respectfully submitted,



Attorney

## EXHIBIT C

### OPINION OF LESSEE'S COUNSEL

(PLEASE FURNISH THIS TEXT ON ATTORNEY'S LETTERHEAD)

August 15, 2008

Tax-Exempt Leasing Corp.  
940 N. Milwaukee Ave. Suite 3  
Libertyville, IL 60048

Re: Master Equipment Lease-Purchase Agreement No. 081508OH dated August 15, 2008 and Equipment Schedule No. 01 thereto

Ladies and Gentlemen:

As counsel for the City of Massillon ("Lessee"), I have examined the Master Equipment Lease-Purchase Agreement No. 081508OH duly executed by Lessee and dated August 15, 2008 (the "Master Lease"), which has been incorporated by reference into Equipment Schedule No. 01 dated August 15, 2008 ("Equipment Schedule No. 01"), each between Lessee and Tax-Exempt Leasing Corp., as lessor ("Lessor"), the form of the Certificate of Acceptance and Payment Request (the "Certificate of Acceptance") attached to Equipment Schedule No. 01, the Escrow Agreement dated August 15, 2008 (the "Escrow Agreement"), among Lessor, Lessee and Old National Bank, as escrow agent, and the proceedings taken by the governing body of Lessee to authorize on behalf of Lessee the execution and delivery of the Master Lease, Equipment Schedule No. 01, the Certificate of Acceptance and the Escrow Agreement. The Master Lease, Equipment Schedule No. 01, the Escrow Agreement and the related Certificate of Acceptance are herein collectively referred to as the "Transaction Documents." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a City duly organized and legally existing as a political subdivision, municipal corporation or other local government unit under the Constitution and laws of the State of Ohio with full power and authority to enter into the Transaction Documents.
2. The Transaction Documents have each been duly authorized, executed and delivered by Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.
3. The Equipment to be leased pursuant to the Lease constitutes personal property and when subjected to use by Lessee will not be or become a fixture under applicable law.
4. Lessee has complied with any applicable public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. The resolution adopted by Lessee's governing body authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.
5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery or performance by Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of Lessee or its governing body or the authority or ability of Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment (as such term is defined in the Master Lease) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound.
6. The correct legal name of Lessee for purposes of the Ohio Commercial Code is City of Massillon.

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

Respectfully submitted,

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Attorney

## EXHIBIT C

### OPINION OF LESSEE'S COUNSEL

(PLEASE FURNISH THIS TEXT ON ATTORNEY'S LETTERHEAD)

August 15, 2008

Tax-Exempt Leasing Corp.  
940 N. Milwaukee Ave. Suite 3  
Libertyville, IL 60048

Re: Master Equipment Lease-Purchase Agreement No. 081508OH dated August 15, 2008 and Equipment Schedule No. 01 thereto

Ladies and Gentlemen:

As counsel for the City of Massillon ("Lessee"), I have examined the Master Equipment Lease-Purchase Agreement No. 081508OH duly executed by Lessee and dated August 15, 2008 (the "Master Lease"), which has been incorporated by reference into Equipment Schedule No. 01 dated August 15, 2008 ("Equipment Schedule No. 01"), each between Lessee and Tax-Exempt Leasing Corp., as lessor ("Lessor"), the form of the Certificate of Acceptance and Payment Request (the "Certificate of Acceptance") attached to Equipment Schedule No. 01, the Escrow Agreement dated August 15, 2008 (the "Escrow Agreement"), among Lessor, Lessee and Old National Bank, as escrow agent, and the proceedings taken by the governing body of Lessee to authorize on behalf of Lessee the execution and delivery of the Master Lease, Equipment Schedule No. 01, the Certificate of Acceptance and the Escrow Agreement. The Master Lease, Equipment Schedule No. 01, the Escrow Agreement and the related Certificate of Acceptance are herein collectively referred to as the "Transaction Documents." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a City duly organized and legally existing as a political subdivision, municipal corporation or other local government unit under the Constitution and laws of the State of Ohio with full power and authority to enter into the Transaction Documents.
  2. The Transaction Documents have each been duly authorized, executed and delivered by Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.
  3. The Equipment to be leased pursuant to the Lease constitutes personal property and when subjected to use by Lessee will not be or become a fixture under applicable law.
  4. Lessee has complied with any applicable public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. The resolution adopted by Lessee's governing body authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.
  5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery or performance by Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of Lessee or its governing body or the authority or ability of Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment (as such term is defined in the Master Lease) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound.
  6. The correct legal name of Lessee for purposes of the Ohio Commercial Code is City of Massillon.
- This opinion may be relied upon by purchasers and assignees of Lessor's interests in the Lease.

Respectfully submitted,

---

Attorney



## EXHIBIT D

### FORM OF AUTHORIZING RESOLUTION

A RESOLUTION OF THE GOVERNING BODY OF City of Massillon AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT, AN ESCROW AGREEMENT AND SEPARATE EQUIPMENT SCHEDULES WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, City of Massillon (the "Lessee"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of OH, is authorized by the laws of the State of OH to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Master Equipment Lease-Purchase Agreement (the "Agreement") and separate Equipment Schedules from time to time as provided in the Agreement with Tax-Exempt Leasing Corp. (the "Lessor") and that certain Escrow Agreement with the Lessor and Old National Bank, as escrow agent, the forms of which have been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the separate Equipment Schedules as provided in the Agreement for the purchase, acquisition and leasing of the equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the governing body of City of Massillon as follows:

*Section 1. Approval of Documents.* The form, terms and provisions of the Agreement, the Escrow Agreement and the separate Equipment Schedules as provided in the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the \_\_\_\_\_ of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the \_\_\_\_\_ of the Lessee is hereby authorized and directed to execute, and the \_\_\_\_\_ of the Lessee is hereby authorized and directed to attest and countersign, the Agreement, the Escrow Agreement and each Equipment Schedule and any related Exhibits attached thereto and to deliver the Agreement, the Escrow Agreement and each Equipment Schedule (including such Exhibits) to the respective parties thereto, and the \_\_\_\_\_ of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

*Section 2. Other Actions Authorized.* The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement, the Escrow Agreement and each Equipment Schedule to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Certificates of Acceptance and Payment Requests and any tax certificate and agreement, each with respect to separate Equipment Schedules, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement, the Escrow Agreement and each Equipment Schedule.

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

*Section 4. Appointment of Authorized Lessee Representatives.* The \_\_\_\_\_ and \_\_\_\_\_ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement, the Escrow Agreement and each Equipment Schedule until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement, the Escrow Agreement and each Equipment Schedule.



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

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

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

ADOPTED AND APPROVED by the governing body of the Lessee this \_\_\_\_ day of \_\_\_\_\_, 2008.

City of Massillon,  
as Lessee

[SEAL]

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

ATTEST:

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

APPROVED as to form:

\_\_\_\_\_  
Attorney

## EXHIBIT E

### ESCROW AGREEMENT

THIS ESCROW AGREEMENT, made and entered into as of this August 15, 2008 by and among Old National Bank, a corporation duly organized and existing under laws of the State of Indiana, as escrow agent ("Escrow Agent") and Tax-Exempt Leasing Corp., a corporation duly organized and existing under laws of the State of Illinois, as lessor ("Lessor") under a Master Lease Agreement dated as of August 15, 2008, and City of Massillon ("Lessee") a political subdivision of the State of Ohio ("State"), duly organized and existing under the Constitution and laws of the State.

#### WITNESSETH

WHEREAS, Lessee and Lessor have entered into the Master Lease Agreement described above, a duplicate original of which has been furnished to each of the parties, whereby Lessor has agreed to acquire certain equipment described on Acceptance Certificate No. 1 thereto, and to lease and sell such equipment to the Lessee, and Lessee has agreed to lease and purchase such equipment from Lessor, in the manner and on the terms set forth in the Agreement; and

WHEREAS, such equipment has or will be ordered from the Vendor, and there is expected to be a delay in delivery of such equipment to Lessee; and

WHEREAS, in order to ensure that moneys will be available to pay the cost of such equipment when due, Lessee has requested Lessor to set aside in escrow, pursuant to the terms hereof, the anticipated purchase price of such equipment; and

WHEREAS, Lessee, as agent for Lessor, will cause such equipment to be acquired from Vendor in accordance with the purchase orders or contracts therefore, and neither Lessor nor the Escrow Agent shall be obligated to assume or perform any obligation of the Lessee or Vendor with respect thereto or under the Agreement;

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

#### ARTICLE I

##### DEFINITIONS; APPOINTMENT OF ESCROW AGENT

Section 1.01. **Definitions.** The terms defined in this Section shall, for all purposes of this Escrow Agreement have the meanings specified below. Any capitalized term not defined below shall have the meaning ascribed in the Agreement.

"Agreement" means the Master Equipment Lease/Purchase Agreement dated August 15, 2008, by and between Lessee and Lessor, Acceptance Certificate No. 1 and any duly authorized and executed amendment thereto, the terms of which are incorporated herein by reference.

"Acquisition Costs" means, with respect to the Equipment Group, the contract price paid or to be paid to Vendor therefore upon acquisition or delivery of any portion of the Equipment Group in accordance with the purchase order or contract therefore. Acquisition Costs include the administrative, engineering, legal, financial and other costs incurred by the Lessee in connection with the acquisition, delivery and financing by Lessor of the Equipment Group.

"Acquisition Fund" means the fund by that name established and held by the Escrow Agent pursuant to Article II of this Escrow Agreement.

"Closing Date" means the day when Lessor deposits with the Escrow Agent the moneys required to be deposited pursuant to Article II.

"Equipment Group" means the personal property described the Essential Use Letter and the Acceptance Certificate executed pursuant to the Agreement, together with any and all modifications, additions and alterations thereto, to be acquired from the moneys held in the Acquisition Fund.

"Escrow Agent" means Old National Bank or any successor thereto acting as Escrow Agent Pursuant to this Escrow Agreement.

"Escrow Agreement" means this Escrow Agreement and any duly authorized and executed amendment thereto.

"Independent Counsel" means an attorney duly admitted to the practice of law before the highest court of the State in which he maintains an office and who is not an employee of Lessor, the Escrow Agent or the Lessee.

"Acceptance Certificate" means an Acceptance Certificate in the form attached to the Agreement.

"Lessee Representative" means the representative of Lessee or a person authorized by the Lessee to act on its behalf under or with respect to this Agreement.

"Lessor Representative" means the President, any Vice President or Assistant Vice President of Lessor, or any person authorized to act on behalf of Lessor under or with respect to this Agreement, as evidenced by a certificate conferring such authorization executed by the President, any Vice President or Assistant Vice President of Lessor, given to the Lessee or the Lessee Representative.

"Payment Date" means the date upon which any Rental Payment with respect to the Equipment Group under the Agreement is due and payable, as set forth in the Schedule of Payments.

"Payment Request Form/Acceptance Certificate" means a Payment Request Form/Acceptance Certificate substantially in the form attached hereto as Exhibit A to be executed by Lessee and Lessor and submitted to Escrow Agent to authorize payment of Acquisition Costs and evidence acceptance of the Equipment described therein.

"Prepayment Date" means any date on which the Lessee may exercise its option to purchase the Equipment Group pursuant to the terms of the Agreement.

"Qualified Investments" means (i) direct general obligations of the United States of America; (ii) obligations guaranteed by the United States; (iii) general obligations of the agencies and instrumentalities of the United States; (iv) certificates of deposit, time deposits or demand deposits with a bank or savings institution qualified as a depository of public funds of Lessee, provided that such certificates of deposit, time deposits or demand deposits, if not insured by the Federal Deposit Insurance Corporation of the Federal Savings and Loan Insurance Corporation, are fully secured by obligations described in Clauses (i), (ii) or (iii); (v) money market funds, the assets of which are obligations of or guaranteed by the United States of America and which funds are rated "Aaa" by Moody's Investors Service or "Am" or "Am-G" by Standard & Poor's Corporation.

"Rental Payments" means the basic payments payable by Lessee to Lessor pursuant to the provisions of the Agreement with respect to the Equipment Group during the term thereof which are payable in conjunction of the right of Lessee to use the Equipment Group during the then current portion of the term of the Agreement.

"Term of the Agreement" means the time during which the Agreement is in effect with respect to the Equipment Group, as provided in Article III of the Agreement.

"Unpaid Principal Balance" means the unpaid principal amount of all Rental Payments.

"Vendor" means the manufacturer of the Equipment Group as well as the agents or dealers of the manufacturer.

Section 1.02. Appointment of Escrow Agent. Lessee hereby appoints and employs Escrow Agent, to receive, hold, invest and disburse the moneys to be paid to it pursuant to this Escrow Agreement and the Agreement, and to perform certain other functions, all as hereinafter provided. By executing and delivering this Escrow Agreement, Escrow Agent accepts the duties and obligations of Escrow Agent provided herein, but only upon the terms and conditions set forth.

Section 1.03. Authorization. Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Agreement, and has taken all actions necessary to authorize the execution of this Agreement by the officers and person signing it.

## ARTICLE II

### ACQUISITION FUND

Section 2.01. Acquisition Fund. Escrow Agent shall establish a special fund designated as the "Acquisition Fund"; shall keep such Fund separate and apart from all other funds and moneys held by it; and shall administer such Funds as expressly provided hereunder.

Section 2.02. Deposit of Moneys by Lessor. At the Closing Date, Lessor shall deposit with the Escrow Agent the amount of \$ 195,071.30 Dollars. Escrow Agent shall credit said amount to the Acquisition Fund established and to be held, applied and disbursed as herein provided.

Section 2.03. Purpose of Account: Payment of Acquisition Costs. Amounts in the Acquisition Fund shall be expended for the Acquisition Costs of the Equipment Group. Escrow Agent shall pay from the Acquisition Fund the Acquisition Cost of the Equipment Group, upon receipt from Lessee and Lessor the following items:

- (a) in the case of payment of any Acquisition Cost to Vendor pursuant to a contract or purchase order, (1) a duly executed Payment Request Form/Acceptance Certificate, with a true copy of the Vendor's statement attached, (2) where applicable, a duplicate original of any change order approved by Lessee and Lessor increasing Acquisition Costs in an

amount in excess of the original purchase order or contract price, (3) receipts from the Vendor showing proper application of prior requisitions, and (4) bills of sale for any component of the Equipment Group for which a bill of sale may be delivered;

(b) in the case of an Acquisition Cost previously paid by Lessee for which it is seeking reimbursement, (1) a duly executed Payment Request Form/Acceptance Certificate, (2) a true copy of Vendor's statement for such Acquisition Costs, and (3) evidence of Payment; or

(c) in the case of payment of any other Acquisition Cost, a duly executed Payment Request Form/Acceptance Certificate.

Section 2.04. Escrow Agent's Compensation. As compensation for the services to be rendered hereunder, Lessee agrees to pay the Escrow Agent \$450.00. The Escrow Agent's fee shall be payable from interest earnings on the Acquisition Fund and will be paid upon closing of the Acquisition Fund under Section 2.05 hereof.

Section 2.05. Transfers Upon Completion. Upon the first to occur of (a) payment of all Acquisition Costs with respect to the Equipment Group; or (b) the one year anniversary of the Closing Date, Escrow Agent shall apply all remaining moneys in the Acquisition Fund to the reduction of the principal portion of the Rental Payments relating to the Equipment Group under the Agreement by paying such moneys directly to the Lessor or its assignees. In the case of a reduction of the principal portion of the Rental Payments, the remaining Rental Payments and Purchase Prices relating to the Equipment Group shall be recomputed and the Schedule of Payments shall be amended to reflect such prepayment of principal.

Section 2.06. Termination. If this Escrow Agreement is terminated by Lessor as authorized under Article VII, all moneys in the Acquisition Fund shall be paid to Lessor or its Assignee for application against moneys due to Lessor under the Agreement.

### ARTICLE III

#### MONEYS IN FUNDS: INVESTMENTS; TERMINATION

Section 3.01. Held in Trust. The moneys and investments held by the Escrow Agent under this Escrow Agreement are irrevocably held in trust for the benefit of the Lessee and for the purposes herein specified. Such moneys, and any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement, and shall not, to the extent permitted by applicable law, as otherwise expressly provided herein, be subject to levy or attachment or lien by or for the benefit of any creditor of either Lessor or Lessee.

Section 3.02. Investments Authorized. Moneys held by the Escrow Agent hereunder may be invested, and upon written order of the Lessee Representative shall, be invested by the Escrow Agent in Qualified Investments. Such investments shall be registered in the name of the Escrow Agent and held by Escrow Agent which may act as a purchaser or agent in making or disposing thereof. Such investments and reinvestments shall be made giving full consideration for the time when funds will be required to be available.

Section 3.03. Accounting. The Escrow Agent shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Escrow Agreement.

Section 3.04. Valuation and Disposition of Investments. For the purpose of determining the amount in the Acquisition Fund, all Qualified Investments credited to such fund shall be valued at cost (exclusive of accrued interest after the first interest payments following purchase). Escrow Agent may sell at the best price obtainable, or present for redemption, any Qualified Investment so purchased by Escrow Agent, whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the Acquisition Fund and Escrow Agent shall not be liable or responsible for any loss resulting from such investment.

Section 3.05. Deposit of Moneys in Acquisition Fund. All moneys held by the Escrow Agent in the Acquisition Fund established pursuant to this Agreement, except such moneys which are at the time invested as herein provided, shall be deposited in demand or time deposits (which may be represented by time certificates of deposit) in any bank or trust company authorized to accept deposits of public funds (including the banking department of the Escrow Agent), and, as and to the extent required by law, shall be secured at all times by obligations which are eligible by law to secure deposits of public moneys. Such obligations shall be deposited with such bank or banks as may be selected by Escrow Agent, and held by or for the account of the Escrow Agent as security for such deposits.

Section 3.06. Termination. Unless earlier terminated pursuant to Article VII, this Escrow Agreement shall terminate upon the final distribution of all moneys in the Acquisition Fund.

## ARTICLE IV

### THE ESCROW AGENT

Section 4.01. Removal of Escrow Agent. The Lessee and Lessor, by written agreement between themselves, may by written request, at any time and for any reason, remove the Escrow Agent and any successor thereto, and shall thereupon appoint a successor or successors thereto, but any such successor shall have capital (exclusive of borrowed capital) and surplus of at least Ten Million Dollars (\$10,000,000), and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to statute or to the requirements of any federal or state supervising or examining authority, to, then for the purposes of this Section the combined capital and surplus of such bank or trust company may be conclusively established for the purposes hereby in its most recent report of condition so published.

Section 4.02. Resignation of Escrow Agent. The Escrow Agent or any successor may at any time resign by giving written notice to the Lessee and Lessor of its intention to resign and of the proposed date of resignation, which shall be a date not less than 60 days after such notice, unless an earlier resignation date and the appointment of a successor Escrow Agent shall have been or are approved by Lessee and Lessor. Upon receiving such notice of resignation, the Lessee and Lessor shall promptly appoint a successor Escrow Agent by an instrument in writing; provided however, that in the event the Lessee and Lessor fail to appoint a successor Escrow Agent within 30 days following receipt of such written notice of resignation, Lessor may appoint a successor Escrow Agent, and in the event that Lessor fail to appoint a successor Escrow Agent within 30 days following the expiration of such initial 30-day period, the resigning Escrow Agent may petition the appropriate court having jurisdiction to appoint a successor Escrow Agent. Any resignation or removal of the Escrow Agent shall become effective only upon acceptance of appointment by the successor Escrow Agent.

Section 4.03. Appointment of Agent. The Escrow Agent may appoint an agent acceptable to the Lessee and Lessor to exercise any of the powers, rights or remedies granted to the Escrow Agent under this Escrow Agreement, and to hold title to property or to take any other action which may be desirable or necessary.

Section 4.04. Merger or Consolidation. Any company into which the Escrow Agent may be merged or converted, or with which it may be consolidated, or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business (provided that such company shall be eligible under Section 4.01) shall be the successor to the Escrow Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

Section 4.05. Protection and Rights of the Escrow Agent. The Escrow Agent shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Escrow Agreement, and the Escrow Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Escrow Agent may consult with Independent Counsel who may be counsel to Lessor or Lessee, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

Whenever in the administration of its duties under this Escrow Agreement, the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), shall be deemed to be conclusively proved and established by the certificate of the Lessee Representative or the Lessor Representative and such certificate shall be full warranty to the Escrow Agent for any action taken or suffered under the provisions of this Escrow Agreement upon the faith thereof, but in its discretion the Escrow Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

The recitals, statements and representations by Lessee and Lessor contained in this Agreement shall be taken and construed as made by and on the part of the Lessee and Lessor, as the case may be, and not by the Escrow Agent, and the Escrow Agent does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

The Escrow Agent may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Escrow Agent shall not be answerable for the default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. The Escrow Agent shall not be answerable for the exercise of any discretion or power under this Escrow Agreement or for anything whatsoever in connection with the funds and accounts established hereunder, except only for its own willful misconduct or gross negligence.



## ARTICLE V

### ASSIGNMENTS; AMENDMENTS

Section 5.01. Assignment. Except as expressly herein provided to the contrary, the rights and duties of each of the parties under this Escrow Agreement shall not be assignable to any person or entity without the written consent of all of the other parties. Notwithstanding the above, Lessor may freely assign all or any part of its interest in this Agreement and the Acquisition Fund established hereunder in connection with an assignment by Lessor of the Agreement, subject to the provisions contained therein.

Section 5.02. Amendments. This Escrow Agreement may be amended in writing by agreement among all of the parties.

## ARTICLE VI

### FURTHER ASSURANCES

Section 6.01. Further Assurances. Lessor and Lessee will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Escrow Agreement, and for better assuring and confirming the rights and benefits provided herein.

## ARTICLE VII

### DEFAULT

Section 7.01. Default.

(a) Lessor shall have the right to terminate this Escrow Agreement upon an Event of Default under the Agreement, which right shall not be exercised less than 15 days after Lessor shall have given Lessee written notice of such default. Upon receipt of notice of termination from Lessor, Escrow Agent shall pay to Lessor, or its assignee, all moneys in the Acquisition Fund in accordance with Section 2.06.

(b) In the event of the failure by any party hereto to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Escrow Agreement, any non-defaulting party hereto shall have all of the rights and remedies now or hereafter existing at law or in equity against the defaulting party.

(c) No delay or omission to exercise any such right or power accruing upon any default 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.

## ARTICLE VIII

### LIMITATION OF LIABILITY

Section 8.01. Limited Liability of Escrow Agent. Escrow Agent shall have no obligation or liability to any of the other parties under this Escrow Agreement for the failure or refusal of any other party to perform any covenant or agreement made by any of it hereunder or under the Agreement, but shall be responsible solely for the business-like performance of the duties expressly imposed upon Escrow Agent hereunder. The recitals of facts, covenants and agreements herein contained pertaining to Lessee and Lessor shall be taken as statements, covenants and agreements of the Lessee or Lessor (as the case may be), and Escrow Agent assumes no responsibility for the correctness of the same, or makes any representation as to the validity or sufficiency of this Escrow Agreement, or shall incur any responsibility in respect thereof, other than in connection with the duties or obligations herein imposed upon it. Escrow Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default.

Section 8.02. Indemnification. To the extent permitted by applicable law, Lessee agrees to indemnify and save Escrow Agent harmless from and against all claims, suits and actions brought against it, or to which it is made a party, and from all losses and damages, including without limitation reasonable, attorney fees and court costs suffered by it as a result thereof, where such claim, suit or action arises in connection with this Escrow Agreement, the transactions described herein and in the Agreement or the Escrow Agent's employment as an escrow agent by Lessee and Lessor. Notwithstanding the foregoing, such indemnification shall not extend to claims, suits and actions brought against the Escrow Agent for failure to perform and carry out the duties specifically imposed upon and to be performed by it pursuant to this Escrow Agreement and claims, suits or actions arising from events solely and directly attributable to acts of Lessor. Escrow Agent shall have a lien on all property deposited hereunder, for reasonable attorneys' fees, court costs, for any suit, interpleader or otherwise, or any other expense, fees or charges of any character or nature, which may be incurred by Escrow Agent by reason of disputes arising between Lessor and Lessee as

to the correct interpretation of this Escrow Agreement and instructions given to Escrow Agent hereunder, or otherwise, with Escrow Agent having the right, regardless of the instructions received, to hold such property until and unless such additional expenses, fees and charges shall be paid. In the event the Lessee is required to indemnify Escrow Agent as herein provided, Lessee shall be subrogated to the rights of the Escrow Agent to recover such losses or damages from any other person or entity.

Section 8.03. Discretion of Escrow Agent to File Civil Action in the Event of Dispute. If Lessor or Lessee are in disagreement about the interpretation of this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by Escrow Agent hereunder, Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. Escrow Agent shall be indemnified by Lessee in accordance with Section 8.02 for all costs in connection with such civil action, and shall be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received.

Section 8.04. Opinion of Counsel. Before being required to take any action, the Escrow Agent may require (i) an opinion of Independent Counsel acceptable to the Escrow Agent, which counsel may be counsel to any of the parties hereto, and which opinion shall be made available to the other parties hereto, or (ii) a verified certificate of any party hereto, or (iii) both (i) and (ii), concerning the proposed action. Escrow Agent shall be absolutely protected in relying thereon if it does so in good faith.

Section 8.05. Limitation of Rights to Parties. Nothing in this Escrow Agreement, expressed or implied, is intended or shall be construed to give any person other than the Lessee, Lessor or the Escrow Agent any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and shall be for the sole and exclusive benefit of the Lessee, Lessor and Escrow Agent.

## ARTICLE IX

### MISCELLANEOUS

Section 9.01. Records. The Escrow Agent shall keep complete and accurate records of all moneys received and disbursed under this Escrow Agreement, which shall be available for inspection by the Lessee, Lessor, or the agent of either of them, at any time during regular business hours.

Section 9.02. Notices. All written notice to be given under this Escrow Agreement shall be given by mail to the party entitled thereto at its address set forth in the attached Exhibit B, or at such address as the party may provide to the other parties in writing from time to time. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail in registered or certified form, with postage fully prepaid.

Section 9.03. Governing Laws. This Escrow Agreement shall be construed and governed in accordance with the laws of the State of Lessee's domicile.

Section 9.04. Partial Invalidity. Any provision of this Escrow Agreement found to be prohibited by laws shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Escrow Agreement.

Section 9.05. Binding Effect. Successors. This Escrow Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Escrow Agreement any party hereto is named or referred to, such references shall be deemed to include permitted successors or assigns thereof, and all covenants and agreements contained in this Escrow Agreement by or on behalf of any party hereto shall bind and inure to the benefit of permitted successors and assigns thereof whether or not so expressed.

Section 9.06. Execution in Counterparts. This Escrow Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 9.07. Headings. The headings or titles of the several Articles and Sections hereof, and any tables of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Escrow Agreement. All references herein to "Articles", "Sections", and other subdivisions are to the corresponding Articles, Sections, or subdivisions of this Escrow Agreement, and the words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

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

Old National Bank  
AS ESCROW AGENT

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Tax-Exempt Leasing Corp.  
AS LESSOR

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

City of Massillon  
AS LESSEE

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

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NOTE: LESSEE

KEEP THE FOLLOWING PAGE "Payment Request Form" - PLEASE  
COMPLETE AND FORWARD TO TAX-EXEMPT LEASING CORP.  
ALONG WITH THE FOLLOWING ITEMS WHEN THE  
EQUIPMENT HAS BEEN DELIVERED AND ACCEPTED  
AND LESSEE IS READY FOR THE VENDOR TO BE PAID:

- VENDOR INVOICE
- VENDOR PAYMENT INSTRUCTIONS
- CERTIFICATE OF INSURANCE FOR DELIVERED EQUIPMENT

## PAYMENT REQUEST FORM

The Escrow Agent is hereby requested to pay from the Acquisition Fund, herein referred to as the "Escrow Agreement" dated August 15, 2008 to the person or corporation designated below as Payee, the sum set forth below in payment (of all/of a portion) of the Acquisition Costs described below. The amount shown below is due and payable under a purchase order or contract with respect to the Equipment described below and has not formed the basis of any prior request for payment.

In addition, the undersigned acknowledges delivery, installation and receipt in good condition, and hereby accepts the Equipment described on the attached invoices.

PAYEE: \_\_\_\_\_

AMOUNT: \_\_\_\_\_

DESCRIPTION OF EQUIPMENT: \_\_\_\_\_

DATED: \_\_\_\_\_

Indicate Method for Payment Disbursement:

\_\_\_\_\_ Overnight Check\*    \_\_\_\_\_ Regular Mail Check\*\*    \_\_\_\_\_ Wire Funds

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

Wire Instructions:

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

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

ABA #: \_\_\_\_\_

Account #: \_\_\_\_\_

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

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

Lessee: City of Massillon

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

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

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

**EXHIBIT B**  
**ADDRESS OF PARTIES**

1. LESSOR: Tax-Exempt Leasing Corp.  
940 N. Milwaukee Ave. Suite 3  
Libertyville, IL 60048

2. LESSEE: City of Massillon  
151 Lincoln Way East  
Massillon, OH 44646

3. ESCROW AGENT: Old National Bank  
P.O. Box 658  
Evansville, IN 47704-0658

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## TAX COMPLIANCE AGREEMENT AND NO ARBITRAGE CERTIFICATE

This Tax Compliance Agreement and No Arbitrage Certificate is issued in connection with that certain Master Equipment Lease/Purchase Agreement dated as of August 15, 2008 by and between Tax-Exempt Leasing Corp., ("Lessor") and City of Massillon ("Lessee").

### 1. In General.

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment by Lessee as described in the Master Equipment Lease/Purchase Agreement dated as of August 15, 2008 (the "Lease") between Lessor and Lessee, Acceptance Certificate No. 1 thereunder and all related documents executed pursuant thereto and contemporaneously herewith with respect to the financing of the acquisition of \$195,071.30 of equipment (the "Equipment") by Lessor for Lessee (the Lease, such Acceptance Certificate and such other documents are hereinafter collectively referred to as the "Financing Documents").

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents.

1.3. To the best of the undersigned's knowledge, information and belief, the expectations contained in this Certificate are reasonable.

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

1.5. If any other governmental obligations were or are being issued by or on behalf of Lessee within fifteen (15) days of the date of issuance of the Financing Documents, such obligations either (i) were not or are not being issued or sold pursuant to a common plan of financing with, or (ii) will not be paid out of substantially the same source of funds as, the financing pursuant to the Financing Documents.

### 2. Purpose of the Financing Documents.

2.1. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee. The principal amount represented by the Financing Documents, or \$195,071.30, will be deposited in escrow by Lessor on or around August 15, 2008 and held by Old National Bank, as Escrow Agent (the "Escrow Agent") pending acquisition of the Equipment under the terms of that certain Escrow Agreement dated as of August 15, 2008 (the "Escrow Agreement"), by and among Lessor, Lessee and Escrow Agent.

2.2. No portion of the principal amount represented by the financing documents will be used as a substitute for other funds which were otherwise to be used as a source of financing for the Equipment, or will be used, directly or indirectly, to replace funds used by Lessee to acquire investments which produce a yield materially higher than the yield to Lessor under the Financing Documents.

2.3. Lessee does not expect to sell or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final rental payment due under the Financing Documents.

### 3. Source and Disbursement of Funds.

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

3.2. It is contemplated that the entire amount deposited in escrow will be used to pay the acquisition cost of Equipment to the vendors or manufacturers thereof, provided that a portion of the principal amount may be paid to Lessee within such period as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.3 below are satisfied.

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

(a) Lessee made a declaration of its reasonable intention to reimburse the acquisition cost payment sought to be reimbursed with the proceeds of a borrowing not later than sixty (60) days after the date on which it made the payment, which declaration satisfies the "Official Intent Requirement" set forth in Treas. Reg. Sec. 1.150-2;

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

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

(d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as a artifice or device under Treas. Reg. Sec. 1.148-10 by, virtue of, among other things, use to refund, or to create or increase a sinking, reserve or replacement fund with respect to, any other obligations issued by it.

#### 4. Temporary Period.

4.1. Lessee expects, within six months from the date of issuance of the Financing Documents, (a) to have had disbursed from escrow an amount in excess of the lesser 2 1/2% of the amount deposited by Lessor in escrow or \$100,000, or (b) to enter into binding obligations with third parties obligating Lessee to spend such amount.

4.2. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.3. The total acquisition cost of the Equipment is not required to be paid to the vendors or manufacturers thereof until the Equipment has been accepted by Lessee. It is anticipated that all Equipment will be delivered and accepted and all funds provided by Lessor and interest earnings thereon expended, prior to One year from the date on the escrow agreement.

#### 5. Escrow Account.

The Financing Documents provide that the monies deposited in escrow shall be invested until payments to the vendor(s) or manufacturer(s) of the Equipment are due. Lessee will ensure that such investment will not result in Lessee's obligations under the Financing Documents being treated as an "arbitrage bond" or a "federally guaranteed bond" within the meaning of Section 148(a) or Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code"), respectively. Any monies which are earned from the investment of these funds shall be labeled as interest earned. All such monies will be disbursed on or promptly after the date that Lessee accepts the equipment.

#### 6. Exempt Use.

6.1. No part of the proceeds of the Financing Documents or the Equipment will be used in any "private business use" within the meaning of Section 141(b)(6) of the Code.

6.2. No part of the proceeds of the Financing Documents will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

#### 7. No Federal Guarantee.

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

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

#### 8. Rebate.

8.1. Lessee agrees to comply with the rebate requirement set forth in Section 148(f) of the Code in the event that for any reason it is applicable to the financing pursuant to Financing Documents.

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

8.3. Lessee presently expects that one of the following conditions will be met:

(a) Lessee is a governmental unit with general taxing powers; the Financing Documents do not constitute a "private activity bond" as defined in the Code, and regulations promulgated thereunder (the "Regulations"); 95%

of the net proceeds of the Financing Documents are to be used for local governmental activities of Lessee; and the aggregate face amount of all tax-exempt obligations (other than such "private activity bonds") issued by Lessee in the current calendar year is not reasonably expected to exceed \$5,000,000 (subject to adjustment for public school capital expenditures as provided in Section 148(f)(4)(D)(vii) of the Code); or

(b) all gross proceeds of the Financing Documents will be spent for the governmental purposes for which the Financing Documents were issued no later than the day which is six months after the date of issuance of the Financing Documents; or

(c) At least 15% of the sum of the amount deposited in escrow and the reasonably anticipated interest earnings thereon will be used to pay the acquisition price of items of Equipment within six months from the date of issuance of the Financing Documents; at least 60% of the sum of the amount deposited in escrow and the reasonably anticipated interest earnings thereon will be used to pay the acquisition cost of items of Equipment within 12 months from the date of issuance of the Financing Documents; and 100% of the amount deposited in escrow and interest earnings thereon will be used to pay the acquisition cost of items of Equipment prior to 18 months from the date of issuance of the Financing Documents.

IN WITNESS WHEREOF, this Tax Compliance Agreement and No Arbitrage Certificate has been executed on behalf of Lessee as of the date set forth below.

DATE: August 15, 2008

LESSEE: City of Massillon

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_