

Introduced \_\_\_\_\_  
Public Hearing \_\_\_\_\_  
Council Action \_\_\_\_\_  
Executive Action \_\_\_\_\_  
Effective Date \_\_\_\_\_

## County Council Of Howard County, Maryland

2011 Legislative Session

Legislative Day No. 1

### Bill No. 2 -2011

Introduced by: The Chairperson at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a multi-year Equipment Lease-Purchase Agreement between Howard County, Maryland and TD Equipment Finance, Inc., for the acquisition of certain equipment to be used at the Alpha Ridge Landfill.

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Introduced and read first time \_\_\_\_\_, 2011. Ordered posted and hearing scheduled.

By order \_\_\_\_\_  
Stephen LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on \_\_\_\_\_, 2011.

By order \_\_\_\_\_  
Stephen LeGendre, Administrator

This Bill was read the third time on \_\_\_\_\_, 2011 and Passed \_\_\_\_, Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order \_\_\_\_\_  
Stephen LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this \_\_\_ day of \_\_\_\_\_, 2011 at \_\_\_ a.m./p.m.

By order \_\_\_\_\_  
Stephen LeGendre, Administrator

Approved by the County Executive \_\_\_\_\_, 2011

\_\_\_\_\_  
Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1           **WHEREAS**, Howard County, Maryland (the “County”) wishes to lease a 2011  
2 Caterpillar 329DL Hydraulic Excavator, with listed options including (i) the five (5) year/12,500  
3 hour warranty, (ii) the five (5) year/12,500 hour maintenance plan, and (iii) vendor repurchase  
4 price (at the end of five years or 12,500 hours) of \$118,250.00 and a 2011 Caterpillar 950H  
5 Wheel Loader, with listed options including (i) the five (5) year/12,500 hour warranty, (ii) the  
6 five (5) year/12,500 hour maintenance plan, and (iii) repurchase price (at the end of five years or  
7 12,500 hours) of \$144,300.00 (collectively, the “Equipment”) for use at the Alpha Ridge  
8 Landfill; and  
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10           **WHEREAS**, the County issued Invitation to Bid 2011-27 (the “IFB”) wherein the  
11 County seeks to finance and lease the Equipment for a term of five years beginning on the  
12 execution of the Equipment Lease-Purchase Agreement (the “Lease”), substantially in the form  
13 of Exhibit 1 attached to this Resolution; and  
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15           **WHEREAS**, the total cost of the Equipment is \$742,377.00 to be paid over the term of  
16 the Lease; and  
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18           **WHEREAS**, TD Equipment Finance, Inc., responded to the IFB and was chosen by the  
19 County to provide and finance the Equipment pursuant to the Lease; and  
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21           **WHEREAS**, the Lease requires the payment by the County of funds from an  
22 appropriation in a later fiscal year and therefore requires County Council approval as multi-year  
23 agreement pursuant to Section 612 of the Howard County Charter.  
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25           **NOW, THEREFORE,**  
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27           *Section 1. Be It Enacted by the County Council of Howard County, Maryland that in*  
28 *accordance with Section 612 of the Howard County Charter, it approves the terms of the*  
29 *Equipment Lease-Purchase Agreement between Howard County and TD Equipment Finance,*  
30 *Inc., which shall be in substantially the same form as Exhibit 1 attached to this Act.*

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**Section 2. And Be It Further Enacted** by the County Council of Howard County, Maryland that the County Executive is hereby authorized to execute and deliver the Equipment Lease-Purchase Agreement for such term in the name of and on behalf of the County.

**Section 3. And Be It Further Enacted** by the County Council of Howard County, Maryland that the County Executive, prior to execution and delivery of the Equipment Lease-Purchase Agreement, may make such changes or modifications to the Agreement as he deems appropriate in order to accomplish the purpose of the transactions authorized by this Act, provided that such changes or modifications shall be within the scope of the transactions authorized by this Act; and the execution of the Agreement by the County Executive shall be conclusive evidence of the approval by the County Executive of all changes or modifications to the Agreement, and the Agreement shall thereupon become binding upon the County in accordance with its terms.

**Section 4. And Be It Further Enacted** by the County Council of Howard County, Maryland that this Act shall be effective immediately upon its enactment.

## EQUIPMENT LEASE-PURCHASE AGREEMENT

**THIS EQUIPMENT LEASE-PURCHASE AGREEMENT** is dated as of \_\_\_\_\_, 2011 (the "Lease"), by and between **TD EQUIPMENT FINANCE, INC.**, having a principal place of business at 2070 Chain Bridge Road, Suite 145, Vienna, Virginia 22182 (the "Lessor") and **HOWARD COUNTY, MARYLAND** (the "County").

### WITNESSETH

**WHEREAS**, County has determined that a present need exists for the acquisition of certain Equipment (hereinafter defined), and that County is authorized under the Constitution and laws of the State and its Charter to enter into this Lease for the purposes hereinafter set forth; and

**WHEREAS**, Lessor has agreed to finance the acquisition of the Equipment and to lease such Equipment to County upon the terms and conditions set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and County agree as follows:

1. **Agreement to Lease.** Upon the terms and conditions contained in (a) this Lease, (b) the Invitation For Bid 2011-27 (the "IFB"), which is incorporated by reference herein and made a part hereof, and (c) Lessor's response for IFB dated December 21, 2010 (the "Lessor's Bid"), which is incorporated by reference herein and made a part hereof, Lessor shall provide funds in the aggregate amount of \$742,377.00 to permit County's acquisition of Equipment in accordance with the Lease. The Bid Sheet portion of the Lessor's Bid and the Equipment Purchase Agreement specifications are attached hereto as Exhibit A. Lessor agrees to lease to County, and County agrees to lease from Lessor for the Lease Term (hereinafter defined), the **(a) 2011 Caterpillar 329DL Hydraulic Excavator** (the "Excavator"), with listed options including (i) the five (5) year/12,500 hour warranty (the "Excavator Warranty"), (ii) the five (5) year/12,500 hour maintenance plan (the "Excavator Maintenance Plan"), and (iii) vendor repurchase price (at the end of five years or 12,500 hours) of \$118,250.00 and **(b) 2011 Caterpillar 950H Wheel Loader** (the "Loader," and collectively with the Excavator, the "Equipment"), with listed options including (i) the five (5) year/12,500 hour warranty (the "Loader Warranty," and collectively with the Excavator Warranty, the "Equipment Warranties"), (ii) the five (5) year/12,500 hour maintenance plan (the "Loader Maintenance Plan," and collectively with the Excavator Maintenance Plan, the "Equipment Maintenance Plans"), and (iii) vendor repurchase price (at the end of five years or 12,500 hours) of \$144,300.00 as such terms are more particularly described in Exhibit A.

2. **Lease Term.** This Lease will become effective upon the execution hereof by County and Lessor as of the date first above written. Lessor shall provide the required financing in the amount of \$742,377.00 and complete the acquisition of the Equipment no later than September 1, 2011. The term of this Lease (the "Lease Term") will commence on the date the Equipment is accepted pursuant to Section 3, and unless earlier terminated as expressly provided for in this Lease, will continue for five (5) consecutive years thereafter. The Lease Term will terminate (a) if applicable, upon the

purchase of the Equipment by the County; (b) upon payment by County of the Lease Payments (hereinafter defined) required to be paid by County hereunder with respect to the Equipment; or (c) as otherwise provided in this Lease. Upon termination of the Lease Term as a result of the occurrence of either of the events specified in (a) or (b), above, the Lease will terminate with respect to such Equipment, the security interest, if any, of the Lessor in such Equipment shall terminate, and County will acquire full and unencumbered title to such Equipment free and clear of all liens and encumbrances created by or arising through or under Lessor and upon request by County, Lessor agrees to execute and deliver to County such documents, in form and substance satisfactory to Lessee, to evidence such transfer of title and the termination of Lessor's security interest or other interest in the Equipment related to such Lease.

**3. Acquisition of Equipment; Delivery of Equipment; and Payment of Equipment Costs.** The County hereby assigns to Lessor, its rights to purchase the Equipment pursuant to the Purchase Agreement with Alban Tractor Inc. Lessor agrees to finance the acquisition of the Equipment at the terms in the amortization schedule. The Equipment shall be delivered to the County at the Alpha Ridge Landfill, 2350 Marriottsville Road, Marriottsville, Maryland 21104. County will accept the Equipment after the County's inspection and a determination by the County, in its sole discretion, of the satisfactory condition and operation of the Equipment. County will evidence its acceptance of the Equipment by executing and delivering to Lessor a certificate indicating such acceptance (the "Acceptance Certificate") in the form attached hereto as Exhibit B. Lessor agrees to make moneys available to pay the acquisition cost of the Equipment when required.

**4. Lease Payments.**

(a) Subject to the execution of the Acceptance Certificate and Section 5 hereof, County agrees to pay to Lessor or its assignee pursuant to Section 19 hereof, the Lease Payments, equal to the amounts specified in Exhibit C. A portion of each semi-annual Lease Payment is paid as, and represents payment of, interest. The Lease Payments will be payable without notice or demand, except for the invoices hereinafter provided, at the office of Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first Lease Payment due date (the "Due Date") as set forth in Exhibit C. Lessor shall prepare and submit to the Director of Finance at the address set forth herein, semi-annual invoices for the Lease Payments reflected on Exhibit C. Each invoice submitted for payment shall include on its face the Lessor's Federal Tax Identification Number, the Lessor's complete address, and the date and amount of the total invoice.

(b) Lessor and County understand and intend that the obligation of County to pay the Lease Payments required hereunder shall constitute a current expense of County, subject to appropriated funds, and shall not in any way be construed to be a debt of County in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by County, nor shall anything contained in this Lease constitute a pledge of the general tax revenues, funds, or

moneys of County beyond those appropriated for the purpose of acquiring the Equipment.

(c) The County Executive reasonably believes that legally available funds can be obtained sufficient to make all Lease Payments during each Lease Term, and hereby covenants that he will do all things lawfully within his power to obtain, maintain, and pursue funds from which the Lease Payments may be made, including making provision for such payments to the extent necessary in each budget proposed for the purpose of obtaining funding, and that he will use his bona fide best efforts to obtain appropriation of the necessary funds to avoid termination pursuant to Section 5 hereof by taking all reasonable action to seek adequate budgeted funds to maintain each Lease in force. It is the intent of the County Executive to make the Lease Payments for the full Lease Term of the Lease if funds are legally available therefore, and in that regard, County represents that the use of the Equipment is essential to its proper, efficient, and economic operation.

**5. Non-appropriation of Funds; Substitution.** In the event sufficient funds are not appropriated in any fiscal period for Lease Payments due hereunder, then County will immediately notify the Lessor or its assignee of such occurrence and the Lease Term for the Equipment shall terminate on the last day of the fiscal period for which appropriations were authorized, without penalty or expense to County of any kind whatsoever. In the event of such termination, County agrees to peaceably surrender possession of such Equipment to Lessor or its assignee on the date of such termination. Lessor will have all legal and equitable rights and remedies to take possession of such Equipment upon such termination.

**6. Limitation on Warranties.**

(a) County acknowledges and agrees, that the Equipment has been selected by the County; that County is satisfied that the Equipment is suitable for its purpose; that Lessor is neither a manufacturer nor a vendor of the Equipment; and that LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF COUNTY, OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, AND LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ANY ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO COUNTY OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF.

(b) Lessor hereby assigns to County during the Lease Term, so long as no Event of Default (as hereinafter defined) has occurred and is continuing, all manufacturers' warranties, if any, express or implied, with respect to the Equipment,

and Lessor authorizes County to obtain the customary services furnished in connection with such warranties at County's expense, and shall cooperate fully with County with respect to the resolution of any claims against such warranties.

**7. Representations and Warranties.**

(a) County represents and warrants as of the date hereof, and at all times during the respective Lease Term that (i) the County is a duly constituted political subdivision of the State of Maryland and is a Charter County and a Maryland body corporate and politic created pursuant to Article XI-A of the Constitution of the State of Maryland and Article 25A of the Annotated Code of Maryland, as amended; (ii) the execution, delivery, and performance by the County of this Lease, and all other documents executed in connection herewith by County (all such documents shall be collectively referred to herein as the "Lease Documents"), have been duly authorized by all necessary action on the part of the County; (iii) the Lease documents constitute legal, valid, and binding obligations of the County enforceable in accordance with their respective terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws and equitable principles affecting the enforcement of creditor's rights generally; (iv) the execution and performance of the Lease Documents will not materially violate any judgment, order, law, or regulation applicable to County or result in the creation of any lien, charge, security interest, or other encumbrance upon the Equipment (other than as contemplated by this Lease), or any assets of the County that would result in a material breach of, or constitute a material default under any indenture, mortgage, deed of trust, bank loan, credit agreement, or other instrument to which County is a party or by which it or its assets may be bound; (v) there are no actions, suits, or proceedings pending or, to the knowledge of the County, threatened against or affecting County in any court or before any governmental commission, board, or authority, which, if adversely determined, will have a material, adverse effect on the ability of County to perform its obligations under the Lease Documents; and (vi) no more than 10% of the total use of any portion of the Equipment leased shall be used, on an average yearly basis, directly or indirectly in any trade or business carried on by any person other than County or be used by an organization described in Section 501(c)(3) of the Code, provided that such private business use, if any, that is not related or disproportionate to the governmental use shall not exceed 5% of the total use of such Equipment on an average yearly basis.

(b) As a condition precedent to the funding thereof by Lessor, County shall deliver to Lessor: (1) an opinion of County's counsel in form and substance reasonably acceptable to Lessor as to the validity of the statements made in subsections (i) through (v), above; and (2) such other documents and certificates as shall be reasonably requested by the Lessor. In addition, County shall deliver to Lessor: (1) a certificate of a duly authorized officer of County respecting the validity of the statements made in subsection (vi) above; and (2) an opinion of bond counsel in form and substance reasonably acceptable to Lessor as to the excludability from gross income of the interest component of the Lease payments under the laws of the United States and the State and other related matters.

8. **Title.** Upon County's acceptance of the Equipment, title to the Equipment will vest in County; provided, however, that (i) in the event of termination pursuant to Section 5 hereof; or (ii) upon the occurrence of an Event of Default hereunder, as long as such Event of Default is continuing beyond the Cure Period, title to the Equipment will immediately vest in Lessor or its assignee.

9. **Security Interest.** In order to secure all of its obligations hereunder, County hereby (i) grants to Lessor a first priority security interest in any and all right, title, and interest of County in: (a) the Equipment, and in all additions, attachments, and accessions thereto and substitutions thereof; and (b) to the extent allowed by applicable law, any proceeds (including the proceeds of any insurance policy) of the foregoing; (ii) agrees that this Lease may be filed by Lessor at its expense as a financing statement evidencing such security interests; and, (iii) agrees to execute and deliver all financing statements, certificates of title, and other instruments reasonably necessary to evidence such security interest.

10. **Personal Property.** The Equipment is and will remain personal property.

11. **Use; Repairs.** County will use the Equipment in a careful manner consistent with the use generally contemplated by the manufacturer of the Equipment and will comply with material laws, ordinances, insurance policies, and regulations relating to, and will pay all valid costs, claims, damages, fees, and charges arising out of, its possession, use, or maintenance of the Equipment. The Lease includes the acquisition of the Equipment Warranties and the Equipment Maintenance Plans for the Equipment to be performed by Alban Tractor Co. Inc., which the County agrees to utilize during the term of the Lease.

12. **Alterations.** County will not make any alterations or additions to the Equipment that will result in a material reduction in its value without Lessor's prior written consent or unless such alteration or addition may be readily removed without damage to the Equipment.

13. **Inspection.** Upon not less than three (3) business days written notice to the County (to the attention of Wayne Souder, Superintendent; Alpha Ridge Landfill; 2350 Marriottsville Road; Marriottsville, Maryland 21104 and Fleet Administration, 9250 Bendix Road, Columbia, Maryland 21044), the Lessor will be entitled to inspect the Equipment or observe its use and operation during normal business hours. Any such inspection shall be in compliance with County's security procedures. County shall not be responsible for any injury to any person or property during any such inspection unless directly caused by County's gross negligence or willful conduct.

14. **Liens and Taxes.** County shall keep the Equipment free and clear of all levies, liens, and encumbrances except those created under this Lease. The parties contemplate that the Equipment will be used for a governmental purpose of County and that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession, or acquisition of the

Equipment is found to be subject to taxation, County shall pay when due during the Lease Term, to the extent of available appropriated funds, all charges and taxes (local, State, and federal), that now or hereafter may be imposed upon the ownership, leasing, rental, sale, purchase, possession, or use of the Equipment, excluding, however, all federal and State taxes on or measured by Lessor's or its assignee's income and any federal, state or local income, succession, transfer, franchise, profit, excess profit, capital stock, gross receipts, corporate, or other similar tax payable by Lessor, its successors or assigns, unless such tax is made as substitute for any tax, assessment or charge which is the obligation of County under this Section. If County fails to pay said charges and taxes when due, and after delivery of written notice to County, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes for which County is liable under this Lease, County shall reimburse Lessor therefor, subject only to the availability of appropriated funds.

**15. Risk of Loss; Damage, Destruction, and Condemnation; Use of Net Proceeds.**

(a) Until County executes the Acceptance Certificate, Lessor assumes all risk of loss of, or damage to, the Equipment from any cause whatsoever. After the date of the Acceptance Certificate, County assumes all risk of loss of, or damage to, the Equipment from any cause whatsoever, and no such loss of, or damage to, the Equipment, defect therein, or unfitness or obsolescence thereof shall relieve County of its obligation to make Lease Payments or to perform any other obligation hereunder. Notwithstanding the foregoing, Lessor shall be responsible for any loss of, or damage to, the Equipment that is proximately caused by Lessor's actions during any inspection.

(b) If, prior to the termination of the Lease Term, (i) the Equipment or any portion thereof is destroyed (in whole or in part), or is damaged by fire or other casualty; or (ii) title to, or the temporary use of, the Equipment or any part thereof or the estate of County or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm, or corporation acting under governmental authority; or (iii) for any other reason, the Equipment or any portion thereof is no longer in the possession and control of County; County shall, at its option and subject to appropriation, repair, restore, or replace the affected Equipment with equipment of equivalent value, or purchase the affected Equipment on the Due Date (as set forth in Exhibit C) next succeeding the date of such loss at the Principal Outstanding amount applicable on such Due Date, plus the Lease Payment due on such date, plus any past due amounts then payable by County hereunder with respect to such items of Equipment. Upon any such payment, the Lease Term with respect to such Equipment shall terminate, and County will acquire full and unencumbered title to such Equipment. Within sixty (60) days of the happening of any of the events described in clauses (i), (ii), and (iii) of the first sentence of this paragraph, County shall give notice to Lessor and any assignee with respect to such Equipment of such event and how County proposes to comply with the provisions of the first sentence of this paragraph.

(c) If appropriated funds are not available to permit County to repair, restore, replace, or purchase such Equipment in accordance with subsection (b) of this Section 15, County shall cause, to the extent allowed by applicable laws, the Net Proceeds (defined herein) of any commercial insurance claim or condemnation award to be applied to the payment of County's obligations under this Lease. Any portion of the Net Proceeds in excess of the amount required to pay in full County's obligations as set forth in this subsection shall be for the account of County. County agrees that if the Net Proceeds are insufficient to pay in full County's obligations hereunder, County shall, to the extent of appropriated funds, make such payments to the extent of any deficiency.

**16. Insurance.** At its own expense, subject to appropriated funds, County shall self-insure, or at its option, commercially insure, the Equipment against loss or damage that is not otherwise covered by the Equipment Maintenance Plan or the Equipment Warranties. County is self-insured for sudden and accidental property loss for \$100,000 per occurrence. Losses in excess of \$100,000 per occurrence are subject to excess coverage through the Local Government Insurance Trust, a governmental pool, and the limits and conditions set forth therein. All excess coverage for loss or damage shall provide, to the extent allowed by applicable law, that losses, if any, shall be payable to Lessor and County, as their interests may appear, and in the event that the Equipment suffering a loss or damage is not repaired, restored, replaced, or purchased pursuant to Section 15 hereof, the Net Proceeds of the commercial insurance required hereby shall be, to the extent allowed by applicable law, applied as provided in Section 15 hereof. As used herein, "Net Proceeds" means, to the extent allowed by applicable law, the amount remaining from the gross proceeds of any insurance claim or condemnation award after deduction of expenses (including reasonable attorney fee) incurred in the collection of such claim or award. At the request of Lessor, but in no event more than once per calendar year, County shall provide written evidence of coverage.

**17. Indemnification.** To the extent of the provisions of the Maryland Local Government Tort Claims Act ("LGTC"), Section 5-301 et seq. of the Courts and Judicial Proceedings Article, Maryland Annotated Code, and subject to the availability of funds in the County's Risk Management Fund and in an amount not to exceed the value of the Equipment, County will indemnify Lessor and save it harmless from and against any and all claims, judgments, damages, settlements and costs, including reasonable attorney's fee, if applicable, actually incurred at rates normally charged to Lessor by its attorneys for similar work, arising from or relating to the negligent act or omission of County, or its officers, agents, volunteers and employees arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, possession, use, operation, rejection, or return, and the recovery of claims under insurance policies thereon, unless any such action is based upon the negligence, illegal act, breach of duty, or intentional tort committed by the Lessor its officers, agents, volunteers or employees. For any claim that otherwise would fall within the scope of the LGTC, if the claim had been asserted against the County directly pursuant to the LGTC, the County's obligations shall not be greater than the liability that might be determined under the LGTC.

As a condition of indemnification, Lessor agrees to notify County, of any suits, claims or potential claims within ten (10) days of its own notice of such suits, claims or potential claims. Further, County may, at its sole discretion, provide legal defense for the Lessor in lieu of providing indemnification for reasonable attorney's fee for counsel selected by the Lessor. The forgoing indemnification is not to be deemed as a waiver of any immunity that may exist in any action against County or its officers, agents, volunteers and employees.

**18. Intentionally Deleted.**

**19. Assignment.**

(a) Without Lessor's prior written consent, County will neither (i) assign, transfer, pledge, hypothecate, grant any security interest in, or otherwise dispose of this Lease, any Equipment, or any interest in this Lease or the Equipment; nor (ii) sublet or lend the Equipment.

(b) With County's prior written consent which in its sole discretion may be withheld, Lessor may assign, in whole, or in part, its rights, title, and interest in and to this Lease, including the Equipment, and any other documents executed with respect to this Lease, grant or assign a security interest in this Lease and the Equipment. Any such assignee shall have all of the rights but none of the obligations of Lessor under this Lease other than the obligation to provide funds to County in the aggregate amount specified herein. Subject to the preceding sentence, the term Lessor as used herein shall include any such assignees. Subject to the foregoing, this Lease shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto. Before assignment of any portion of Lessor's interest in this Lease, Lessor will cause written notice of such assignment to be sent to County which will be sufficient if it discloses the name of the assignee and the address to which further payments hereunder should be made. No further action will be required by Lessor or by County to evidence the assignment of rights hereunder, but County will acknowledge any such permitted assignment in writing if so requested. County shall retain notice of such assignment and maintain a record that identifies the owners of Lessor's interest in this Lease. Upon County's receipt of written notice of Lessor's assignment of any portion of its interest in this Lease, County agrees to attorn to and recognize such assignee as the owner of such portion of Lessor's interest in this Lease, and County thereafter shall make such payments, including without limitation, such Lease Payments as are indicated in the notice of assignment, directly to such assignee; provided, however, that any such permitted assignment of a right to receive payment hereunder shall be accomplished in accordance with County's instructions, if any, regarding invoicing or other processing of Lease Payments.

(c) The County has not prepared an official statement or other offering materials in connection with this Lease and does not intend to prepare such materials. The Lessor shall not use certificates of participation or other fractional shares of the Lease Payments in connection with the Lease.

**20. Event of Default.** If County fails to make any Lease Payment as it becomes due in accordance with the terms of this Lease (except as such failure results from nonappropriation by the County of funds for such purposes) such nonpayment shall be an "Event of Default" if and only if the Lessor shall have given the County prior written notice of the default (the "Notice of Default") and thirty (30) days (the "Cure Period") to cure the default specified in such notice, or cause such default to be cured, unless the Lessor and County shall agree to an extension of such time prior to its expiration:

**21. Remedies.** Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing beyond the Cure Period, Lessor, at its option, may declare this Lease to be in default by written notice to such effect to the County, and thereafter Lessor may exercise any one or more of the following remedies:

(a) by written notice to County, declare an amount equal to all amounts then due or to become due during the then current fiscal year of County under this Lease to be immediately due and payable, whereupon the same shall become immediately due and payable;

(b) request County to (and County agrees that it will), promptly return the Equipment to which the Event of Default applies to Lessor, and to the extent allowed by applicable laws, Lessor may enter upon the premises where such Equipment is located and take immediate possession of and remove all or any portion of the same;

(c) exercise any other right, remedy, or privilege that may be available to it under applicable laws of the State of Maryland or any other applicable law, or proceed by legal action to enforce the terms of this Lease or to recover damages for the breach of this Lease, or to rescind this Lease as to the Equipment.

Any assignee of Lessor shall only have the right to declare the Lease in default and exercise the remedies described in paragraphs (a) through (d) above to the extent of the Equipment which Lessor has assigned to such assignee and the Lease Payments and Equipment described thereon.

In addition, County will remain liable, to the extent permitted by law and to the extent of then currently available appropriated funds, for all covenants and indemnities under this Lease and for all reasonable legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor. Except as specifically provided herein, the remedies conferred upon or reserved to Lessor shall not be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. Lessor's remedies hereunder may be exercised separately with respect to items of Equipment. No delay or omission to exercise any right or power accruing upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver thereof, but

any such right or power may be exercised from time to time and as often as may be deemed expedient.

**22. Lessor's Right To Perform for County.** Except as provided in Sections 5, 26 and 27, if County fails to perform or comply with any of its material covenants contained herein, Lessor shall have the right, but shall not be obligated, to effect such performance or compliance of its material covenants, and the amount of any reasonable out-of-pocket expenses or other reasonable expenses of Lessor incurred in connection with the performance of, or compliance with, such material covenant, together with interest thereon at the lesser of (i) the highest lawful rate permitted by applicable State law on the date of payment by Lessor; or (ii) the same rate on the underlying Lease Payments shall be payable by County to the extent of then currently available appropriated funds, upon demand. County shall execute, endorse, and deliver to Lessor any conveyance, assignment, or other instrument in writing as may be reasonably required to vest in Lessor any right, title, or power that by the terms hereof is intended to be conveyed or conferred upon Lessor, including without limitation, (a) Uniform Commercial Code Financing Statements (including continuation statements); (b) to the extent allowed by applicable law, documents and checks or drafts relating to or received in payment for any loss or damage on the insurance required hereunder, but only to the extent that same relates to the Equipment; and (c) at such time of default or nonappropriation, upon any bill of sale, document, instrument, invoice, freight bill, bill of lading, or similar document relating to the Equipment in order to vest title in Lessor and to transfer possession to Lessor within ten (10) days upon receipt of same.

**23. Quiet Enjoyment of Equipment.** Lessor hereby covenants to provide to County during the term of this Lease quiet use and enjoyment of the Equipment and County shall during the term of this Lease peaceably and quietly have and hold and enjoy the Equipment without suit, trouble, or hindrance from Lessor except upon the occurrence of an Event of Default.

**24. Delivery of Related Documents.** County will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transactions contemplated by this Lease. At the request of the Lessor, County will furnish current audited financial statements of County within thirty (30) days after the date such statements become available to the public; provided, however, to the extent County makes such audited financial statements generally made available to the public, this requirement shall be satisfied. During the Lease Term and upon annual request of the Lessor, County will provide to Lessor the applicable budget, or relevant portions thereof at County's election, with proof of appropriation for the ensuing fiscal year, and such other financial information relating to the ability of County to continue this Lease as reasonably may be requested by Lessor.

**25. Covenants.** County and Lessor each specifically covenants that they shall comply with the provisions of the Code, including, without limitation, compliance with any provisions of such law regarding the timing of the expenditure of the proceeds of this Lease, the use of such proceeds, the restriction of investment yields, the filing of

information with the Internal Revenue Service, and the rebate of certain earnings resulting from the investment of the proceeds of this Lease. County and Lessor each further covenants that it shall make such use of the proceeds of this Lease, regulate the investment of the proceeds thereof, and take such other and further actions as may be required to maintain exclusion from gross income for federal tax purposes of the interest portion of the Lease Payments. Both County and Lessor shall each provide such certification of facts and estimates regarding the amount and use of the proceeds of this Lease as may be necessary from time to time to comply with, or to evidence its compliance with, the covenants set forth in this Section.

**26. Termination for Cause.** If Lessor (a) fails to fulfill its obligation under this Lease to provide funds sufficient to pay the Equipment Cost as described in Section 3 hereof properly and on time, County may terminate this Lease by written notice to Lessor; or (b) otherwise violates any provision of the Lease, County may terminate this Lease by written notice to Lessor. The notice shall specify the acts or omissions relied upon as cause for termination. Lessor shall pay County the actual amount of damages caused by Lessor's breach. Lessor will remain liable after termination of this Agreement and County can affirmatively collect damages.

**27. Termination for Convenience.** The performance of this Lease may be terminated by County in accordance with this clause, in whole or in part, whenever the County shall determine that such termination is in the best interest of County.

**28. Contingent Fee Prohibition.** Lessor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for Lessor, to solicit or secure this Lease, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on the making of this Lease.

**29. No Conflict of Interest.** Lessor certifies that this Lease does not constitute a conflict of interest in accordance with the provisions of Section 901(a) of the Howard County Charter and Section 22.204 of the Howard County Code regarding conflicts of interest, attached hereto as Exhibit D and made a part of this Agreement.

**30. Political Contribution Disclosure.** The Lessor shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year,

throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

**31. Retention of Records.** If requested by County, Lessor shall deliver to the County background material prepared or obtained by Lessor incident to the performance of this Lease. "Background Material" shall include, but not be limited to, work papers, notes, completed questionnaires, other printed materials, pamphlets, maps, drawings, and books acquired by Lessor during the term of this Lease and directly related to the services provided under this Lease. Any proprietary computer programs of Lessor are expressly excluded from the definition of "Background Material" as used in this Section. Lessor shall maintain records and documents relating to the performance of this Lease for three years following final payment under any Lease Term or any applicable statute of limitations, whichever is longer, and shall make such records available for inspection and audit by the authorized representatives of County.

**32. Nondiscrimination in Employment.** The Lessor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**33. Compliance with Laws.** Lessor hereby represents and warrants that

- (a) it is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified;
- (b) it is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or Howard County, Maryland, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Lease;
- (c) it shall comply with all federal, State, and local laws applicable to its activities and obligations under this Lease; and
- (d) it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Lease.

**34. Administration.** This Lease shall be performed under the direction of the Thomas B. Howard, Jr., Director of Government Finance, TD Equipment Finance, Inc. (the "Contract Officer"). All matters relating to administration and performance of this Lease shall be referred to the Contract Officer for determination.

**35. Governing Law.** This Lease shall be construed, interpreted, and enforced in accordance with the laws of the State of Maryland.

**36. Notices.** All notices (excluding invoices and communications in the ordinary course of business) to be given under this Lease shall be in writing and mailed by certified mail, return receipt requested, at the address below or at such address as the party may provide in writing from time to time:

Lessor:  
TD Equipment Finance, Inc.,  
2070 Chain Bridge Road  
Vienna, VA 22182  
Attn: Thomas B. Howard, Jr.

County:  
3430 Court House Drive  
Ellicott City, Maryland 21043  
Attn: Director of Finance

With a copy to:  
Fleet Administration  
9250 Bendix Road  
Columbia, Maryland 21044

**37. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**38. Entire Agreement; Modification; Severability.** This Lease, including the Invitation for Bids and Lessor's Bid, together with all other Lease Documents, constitute the entire agreement between the parties with respect to the lease of the Equipment, and neither the Lease nor any of the Lease Documents shall be modified, amended, altered, or changed except with the written consent of Lessor and County. If any terms contained in any earlier writing, agreement, or proposal conflict with the terms and conditions of this Lease, the terms and conditions of this Lease shall control. Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease. This Lease may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Lease shall become effective when each of the Lessor and the County shall have received counterparts thereof signed by the other party.

**39. Representations.** Each party to this Lease represents and warrants to the other that it has full right, power, and authority to execute this Lease.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed as of the day and year first above written.

**ATTEST:**

\_\_\_\_\_

**LESSOR:**

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

**ATTEST:**

\_\_\_\_\_  
Lonnie R. Robbins  
Chief Administrative Officer

**HOWARD COUNTY, MARYLAND**

By: \_\_\_\_\_(SEAL)  
Ken Ulman  
County Executive

**APPROVED:**

**APPROVED** as to form and legal sufficiency  
This \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
James M. Irvin, Director  
Department of Public Works

\_\_\_\_\_  
Margaret Ann Nolan  
County Solicitor

**APPROVED FOR SUFFICIENCY OF FUNDS:**

\_\_\_\_\_  
Sharon F. Greisz, Director  
Department of Finance

DOCUMENT G

ORIGINAL

PRICE PAGE NO. 1

TITLE: HEAVY EQUIPMENT LEASE-PURCHASE FINANCING

TO: HOWARD COUNTY OFFICE OF PURCHASING  
6751 Columbia Gateway Drive, Suite 501  
Columbia, MD 21046

The undersigned agrees to furnish and deliver the above goods and/or services in accordance with the specifications issued for same, and subject to all terms, conditions, and requirements in the solicitation, and in the various bid documents:

COMPANY NAME: TD EQUIPMENT FINANCE, INC.

FEDERAL TAX IDENTIFICATION NO./SOCIAL SECURITY NO.: 01-0381677

ADDRESS: 2070 CHAIN BRIDGE ROAD  
VIENNA, VIRGINIA 22182  
(City) (State) (Zip Code)

TELEPHONE: 703-663-4398 FAX: 703-663-4981

E-MAIL ADDRESS: THOMAS.HOWARD@YESBANK.COM

Is the company a certified Minority-, Women-, or Disabled-Owned Business Enterprise?  YES  NO  
If yes, indicate the type of minority ownership:

- African American
- Asian American
- Disabled
- Eskimo
- Female
- Hispanic
- Native American

If yes, indicate the certification(s) held:  
 Howard County Government  MD Dept. of Transportation  City of Baltimore  Other

Certification Number(s) and Expiration Date(s): \_\_\_\_\_

Does the company have a written non-discrimination policy which includes race, creed, religion, handicap, color, sex, national origin, age, occupation, marital status, political opinion, sexual orientation, gender identity and expression, personal appearance, familial status or source of income?

YES  NO

The County Purchasing Agent or Designee reserves the right to request such documentation, if desired, at a later date.

Payment Terms: \_\_\_\_\_

(The payment terms shall be considered net 30 days unless otherwise indicated. The payment terms will be considered in determining the award.)

We wish to submit a "NO BID" at this time, but request that our company remain on the Contractors list for future solicitations.

EXHIBIT A - Page 2 of 11  
DOCUMENT G

PRICE PAGE NO. 2

COMPANY NAME: TD Equipment Finance, Inc.  
NIGP Code/Product Code: 94654

			(a)	(b)	(c)	(d)
Type of Lease	Equipment	Term	Amount Expected to be Financed	Fixed Rate	Total	Weighted Average
Tax-exempt	Loader, Caterpillar 950H	5 Years	\$393,814.00	% 2.27	8,139.58	
Tax-exempt	Excavator, Caterpillar 329DL	5 Years	\$348,563.00	% 2.27	7,912.38	
		<b>Total</b>	\$742,377.00		16,051.96	

Instructions to complete the bid table above:

Column (b) To be completed by bidder.

Column (d) Calculate the weighted average of the rates in column (b):

Multiply column (a) by column (b). Put answer in c  
Total column (c).

Divide the Total of column (c) by the Total of column (a).

Handwritten calculations:  
 $0.0227 \times 742,377 = 16,851.96$   
 $16,851.96 / 742,377 = 0.0227$

The weighted average in column (d) is 2.27%.

In addition to the rates, each bidder shall attach an amortization schedule in a format similar to that shown in Appendix 2 for the amounts and terms specified in 1.1 using their bid rates. The first payment will be interest only and will be calculated based on the actual number of days from the financing date to the first Payment Date. Thereafter, there will be level debt service.

There will be no changes, other than the rates, amounts, and Equipment descriptions, to the standard Lease documents to be prepared by the County for this financing, which are attached to the solicitation as Appendix 3

Howard County is exempt from all local, state, and federal taxes, and prices stipulated by the Contractor are considered maximum and are not subject to any increase due to any taxes, or any other reason. The County's Tax Exemption Number is 30001219.

**THE PERSON SIGNING THE PRICE PAGE MUST INITIAL ANY ALTERATIONS IN FIGURES IN INK.**

SIGNATURE: [Signature] DATE: 12/21/10

Handwritten notes: 11-220

PRINTED NAME: THOMAS B HOWARD JR. TITLE: DIRECTOR OF GOVERNMENT FINANCE  
DOCUMENT G

### CONTRACTOR'S QUALIFICATION INFORMATION

COMPANY NAME: TD EQUIPMENT FINANCE, INC.

1. FINANCIAL ADEQUACY: The Contractor shall demonstrate the financial ability to carry out this Contract by providing copies of or links to:

- For privately-held companies, a Compilation Report by a Certified Public Accountant of the most recent Financial Statements of the bidder. If the compiled statements are more than six months old, the bidder shall also provide interim statements which include a certification by the Chief Financial Officer (or equivalent officer) that the interim statements are accurate and reliable.
- For publicly-held enterprises, an Audited Report by a Certified Public Accountant of the most recent Financial Statements of the bidder. If the audited statements are more than six months old, the bidder shall also provide interim statements which include a certification by the Chief Financial Officer (or equivalent officer) that the interim statements are accurate and reliable.

2. QUALIFICATION CONDITIONS: The Contractor shall, in the County's reasonable judgment:

- a. possess the ability, capacity and skill to perform its obligations under the Lease and the documents to be executed in connection therewith;
- b. possess the appropriate character, integrity, reputation, judgment, and experience to fully perform all of its obligations under the Lease;
- c. possess sufficient financial resources to perform fully its obligations under the Lease;
- d. have not been terminated for default or failed to provide funding when due under any lease-financing program within the last three years; and
- e. if a Contractor does not possess sufficient financial resources of its own, provide an unconditional, irrevocable commitment from Lessor's Designee (a third-party lessor providing the required financial resources) to provide funding for this Lease using the Lease documentation, without modification. This commitment must be provided with the bid. The selection and use of Lessor's Designee is subject to approval of the County.

- Contractors shall provide such information and certifications, upon the advice of counsel, as the County shall deem sufficient to establish compliance with the conditions enumerated in subparagraphs (a) through (e) above.
- If the Lease is to be assigned, the bidder must also provide similar financial statements for the assignee.
- The County may, at its discretion, obtain a financial report from Dun and Bradstreet for the bidder and any assignee. The County may also confirm the status of the firm with the Maryland State Department of Assessments and Taxation.

3. SIMILAR ENGAGEMENTS/CLIENT REFERENCES

- Each bidder must submit with its bid a brief description (including terms and amounts) of similar financings that were successfully performed for other clients or for the County in the past three years. At least three such clients must be identified by name, address, telephone number, and contract reference. The County reserves the right to contact these and any other known clients.

- Each bidder must disclose any lease financings that were terminated by either the Contractor or the County within the last three years and state the reason for the termination. This disclosure should include the client name, address and telephone number, and contract reference. *NONE*
- Each bidder must disclose any instances of its failure to provide funding when due under any lease financing within the last three years and state the reason for such failure. *NONE*

4. REFERENCES: Give name, address, and telephone number of owner or manager of three accounts for which Contractor has provided equipment financing services during the past three years. *SEE ATTACHED LISTING*

4.1.	Account Name	Contract Completion Date
	_____	_____
	Owner/Manager	Telephone
	_____	_____
	Address	Email
	_____	_____
	_____	_____
4.2.	Account Name	Contract Completion Date
	_____	_____
	Owner/Manager	Telephone
	_____	_____
	Address	Email
	_____	_____
	_____	_____
4.3.	Account Name	Contract Completion Date
	_____	_____
	Owner/Manager	Telephone
	_____	_____
	Address	Email
	_____	_____
	_____	_____

5. The Contractor has provided the above services for 8 years. (Note: three year minimum)

Please identify three current references for whom similar line of credit programs have been administered, preferably to other public entities. Include the municipal name, person to contact with title, address or **email** & telephone number.

State of Maryland References

Anne Jewell  
Procurement Officer  
Maryland State Treasurer's Office  
Louis L. Goldstein Treasury Building  
80 Calvert Street, Room 109  
Annapolis, Maryland 21401  
Tel: 410-260-7903  
"Anne Jewell" <AJewell@treasurer.state.md.us>

Pat Rembold, Financial Analyst  
Fairfax County Public Schools  
Department of Facilities & Transportation Services  
10640 Page Avenue, Suite 300  
Fairfax, VA 22030  
Ph. 703-246-6918 / Fax 703-246-6907  
pbrembold@fcps.edu

Jennifer L. Maguire, CPA  
Director of Financial Services  
Manassas City Public Schools  
9000 Tudor Lane  
Manassas, VA 20110  
Phone: 703-257-8827  
Fax: 703-257-8825  
jmaguire@mail.manassas.k12.va.us

Debora Green  
Public Finance Analyst  
Department of the Treasury  
Commonwealth of Virginia  
101 North 14<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Richmond, VA 23219  
Debora.Green@trs.virginia.gov  
Phone: 804-371-6235  
Fax: 804-225-3187

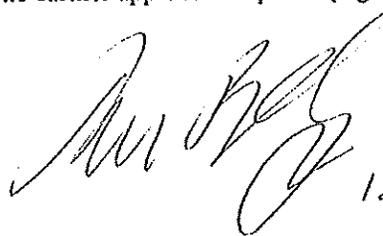
COMPANY NAME: TD EQUIPMENT FINANCE, INC.

6. Please check off each item "Yes" or "No":

<u>YES</u>	<u>NO</u>	
✓		1. We have completed and attached the Price Page with fixed rates for each term and calculated the weighted average.
		2. We have completed and attached an amortization schedule.
✓		3. We agree to the terms and conditions in Document E of this solicitation.
✓		4. We agree to use the County's lease documentation without changes except for rates, amounts and equipment descriptions.
✓		5. We certify that we possess sufficient financial resources to perform the Lease obligations, OR we have provided a <u>current</u> , unconditional, irrevocable commitment from a third party to provide lease funding at the bid rates and to use the County's current Lease documentation without modification. (Document G, Number 2.)
✓		6. We have attached a copy of (or a link to) our most recent Audited Financial Statements, or a Compilation Report of our most recent Financial Statements as required by Document G number 1.
✓		7. We have attached the information required by Document G number 1 relating to similar engagements and client references.
✓		8. We have completed and attached the Bid/Proposal Affidavit.

Failure to properly respond and fully comply with the requirements for this Invitation for Bids may result in your bid being eliminated from consideration.

In compliance with the solicitation and with all terms and conditions set forth therein, the undersigned represents that he/she has full authority to submit the above bid and to bind his/her principal to the obligations contemplated thereunder with no further approvals required (e.g. by a Credit Committee)

 12/21/10

## Howard County Bid 2011-27

Compound Period ..... : Semiannual

Nominal Annual Rate .... : 2.270 %

## CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	01/31/2011	742,377.00	1		
2 Payment	08/01/2011	Interest Only	1		
3 Payment	02/01/2012	87,237.86	9	Semiannual	02/01/2016

## AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	01/31/2011				742,377.00
1	08/01/2011	8,472.67	8,472.67	0.00	742,377.00
2011 Totals		8,472.67	8,472.67	0.00	
2	02/01/2012	87,237.86	8,425.98	78,811.88	663,565.12
3	08/01/2012	87,237.86	7,531.46	79,706.40	583,858.72
2012 Totals		174,475.72	15,957.44	158,518.28	
4	02/01/2013	87,237.86	6,626.80	80,611.06	503,247.66
5	08/01/2013	87,237.86	5,711.86	81,526.00	421,721.66
2013 Totals		174,475.72	12,338.66	162,137.06	
6	02/01/2014	87,237.86	4,786.54	82,451.32	339,270.34
7	08/01/2014	87,237.86	3,850.72	83,387.14	255,883.20
2014 Totals		174,475.72	8,637.26	165,838.46	
8	02/01/2015	87,237.86	2,904.27	84,333.59	171,549.61
9	08/01/2015	87,237.86	1,947.09	85,290.77	86,258.84
2015 Totals		174,475.72	4,851.36	169,624.36	
10	02/01/2016	87,237.86	979.02	86,258.84	0.00
2016 Totals		87,237.86	979.02	86,258.84	
Grand Totals		793,613.41	51,236.41	742,377.00	

*Am B*  
12/21/10

Howard County Bid 2011-27

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Last interest amount decreased by 0.02 due to rounding.

APPENDIX 1

EQUIPMENT QUOTES



Alban Tractor Co. Inc.

November 22, 2010

Cindy Cameron  
 Howard County Central Fleet  
 2350 Marroltsville Road  
 Marroltsville, MD 21104

Ms. Cameron,

Alban Tractor Co. Inc. would like to offer the same terms and conditions as the Montgomery County Contract # 9367000254-CS for the purchase of (1) New 2011 Caterpillar 329DL Hydraulic Excavator

The following factory and dealer options are included:

- \* Regional Pkg, Regulated (NACD), 347-1732
- \* R-boom/ 10'6" Stick, 340-7745
- \* Cab-rops, Deluxe (70/30), 357-1061
- \* Track, 32" Tg (glt), 351-9700
- \* Mirrors, Cab, External, 347-0295
- \* Rear View, Mirrors(rh), 343-1182
- \* Starting, Cold Weather, 348-4888
- \* Guard, track Guide, Full Length, 228-5517
- \* Bumper, Side, Rubber, 337-1724
- \* ansul fire suppression,
- \* sentinel shutdown ,
- \* rubber pads, installed,
- \* coolant heater,
- \* boom mounted light,
- \* 5 lb fire extinguisher,
- \* am/fm radio,
- \* manuals,
- \* cwt contractors grapple, 275-6073

SALE PRICE	\$262,690.00
5 YEAR / 12,500 HOUR TM WARRANTY	20,300.00
<u>5 YEAR / 12,500 HOUR MAINTENANCE PLAN</u>	<u>65,573.00</u>
TOTAL SALE PRICE	\$348,563.00
5 YEAR / 12,500 HOUR REPURCHASE PRICE	\$110,250.00

Annapolis Jct., MD  
 Felton, DE

Baltimore, MD  
 Dumfries, VA

Delmar, MD  
 Manassas, VA

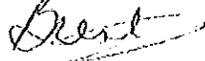
Edgewood, MD  
 Sterling, VA

La Plata, MD  
 Winchester, VA

Myersville, MD

We believe the equipment as quoted will exceed your expectations. On behalf of Alban Tractor Co. Inc., thank you for the opportunity to quote Caterpillar machinery.

Sincerely,



Brent D. Stewart  
Governmental Sales Manager



Alban Tractor Co. Inc.

November 22, 2010

Cindy Cameron  
 Howard County Central Fleet  
 2350 Marriottsville Road  
 Marriottsville, MD 21104

Ms. Cameron,

Alban Tractor Co. Inc. would like to offer the same terms and conditions as the Montgomery County Contract #9367000254-CS for the purchase of (1) New 2011 Caterpillar 950H Wheel Loader

The following factory and dealer options are included:

- \* Steering, Ccs, 244-3922
- \* Pp13: 3v, Rkle, Lsd Frnt, Qc, 334-0431
- \* Omlsion, Tires And Rims, 132-9336
- \* Pkg C : Communications, 328-9884
- \* Pkg D: Cold Start (120v), 334-0437
- \* Pkg I: Work Lighting, 328-9082
- \* Pkg Q: Power Traction Pkg, 335-5328
- \* Pkg N: Top Protection, 339-8185
- \* Pkg A: Comfort, 334-0434
- \* Pkg O: Industrial, 339-8182
- \* Joystick, 3 Valve, 243-1946
- \* ansul fire suppression,
- \* sentinel shutdown,
- \* rubber cutting edge,
- \* 23.5 x 25 flexport tires,
- \* manuals,
- \* amber strobo light,
- \* cwt 6.0 cyd gp bucket w/top clamp,
- \* am/fm radio,
- \* 5lb fire extinguisher,

<b>SALE PRICE</b>	<b>\$306,869.00</b>
<b>5 YEAR / 12,500 HOUR TM WARRANTY</b>	<b>16,790.00</b>
<b><u>5 YEAR / 12,500 HOUR MAINTENANCE PLAN</u></b>	<b><u>70,155.00</u></b>
<b>TOTAL SALE PRICE</b>	<b>\$393,814.00</b>
<b>5 YEAR / 12,500 HOUR REPURCHASE PRICE</b>	<b>\$144,300.00</b>

Annapolis Jct., MD  
 Felton, DE

Baltimore, MD  
 Dumfries, VA

Delmar, MD  
 Manassas, VA

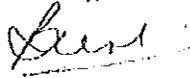
Edgewater, MD  
 Sterling, VA

La Plata, MD  
 Winchester, VA

Myersville, MD

We believe the equipment as quoted will exceed your expectations. On behalf of Alban Tractor Co. Inc., thank you for the opportunity to quote Caterpillar machinery.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brent D. Stewart".

Brent D. Stewart  
Governmental Sales Manager

## EQUIPMENT LEASE-PURCHASE AGREEMENT

### Exhibit B

#### Form of Acceptance Certificate

### ACCEPTANCE CERTIFICATE

I, the undersigned, hereby certify that I am the duly qualified and acting officer of the Lessee identified below and, with respect to the Equipment referenced herein and the Equipment Lease-Purchase Agreement dated as of \_\_\_\_\_, 2011 (the "Lease"), by and between \_\_\_\_\_, having a principal place of business at \_\_\_\_\_ and HOWARD COUNTY, MARYLAND that

1. The Equipment described below has been delivered in accordance with Lessee's specifications and the Lease is in good working order and is fully operational and has been fully accepted by Lessee on the date indicated below.

1) One (1) 2011 (New) Caterpillar 950H Wheel Loader bearing Registration Mark \_\_\_\_\_ and manufacturer's serial number [INSERT SERIAL NUMBER], together with the Loader Warranty and the Loader Maintenance Plan (as such terms are defined in the Lease).

2) One (1) 2011 (New) 329DL Hydraulic Excavator bearing Registration Mark \_\_\_\_\_ and manufacturer's serial number [INSERT SERIAL NUMBER], together with the Excavator Warranty and the Excavator Maintenance Plan (as such terms are defined in the Lease).

2. Attached are (a) evidence of insurance with respect to the Equipment in compliance with Section 16 the Agreement, (b) Vendor invoice(s) and/or bill(s) of sale relating to the Equipment, and (c) financing statements executed by Lessee as debtor and/or the original certificate of title or manufacturer's certificate of origin and title application, if any, for any Equipment which is subject to certificate of title laws.

3. Rental Payments shall be due and payable by Lessee on the dates and in the amounts indicated in the Payment Schedule below. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current Fiscal Year of Lessee. Such moneys will be applied in payment of all such Rental Payments due and payable during such current Fiscal Year. Lessee anticipates that sufficient funds shall be available to make all Rental Payments due in subsequent Fiscal Years.

[Insert schedule of Payments]

4. Lessee hereby authorizes and directs Lessor to fund the Acquisition Cost of the Equipment at the time the Equipment becomes available by paying at such time the portion of the Acquisition Cost included as part of the invoice price to the Vendor.

5. This Acceptance Certificate constitutes final acceptance of the Equipment identified above. Lessee certifies that upon payment in accordance with paragraph 4 above and subject to vendor's repurchase of the Equipment at the end of the Lease term, Lessor shall have fully and satisfactorily performed all of its covenants and obligations under the Lease.

**HOWARD COUNTY, MARYLAND**

By its Department of Public Works

Approved:

\_\_\_\_\_  
Fleet Administrator

By: \_\_\_\_\_(SEAL)  
James M. Irvin, Director

\_\_\_\_\_  
Chief of Environmental Services

## **EQUIPMENT LEASE-PURCHASE AGREEMENT**

### **Exhibit C**

[Insert Equipment and lease payment terms]

Tax-exempt financing in the aggregate principal amount of \$742,377.00 for the acquisition of the following:

- 1) 2011 (New) Caterpillar 950H Wheel Loader plus a five (5) year/12,500 hour warranty, a five (5) year/12,500 hour maintenance plan, and vendor repurchase price (at the end of five years or 12,500 hours) of \$118,250.00.
- 2) 2011 (New) 329DL Hydraulic Excavator plus a five (5) year/12,500 hour warranty, a five (5) year/12,500 hour maintenance plan, and vendor repurchase price (at the end of five years or 12,500 hours) of \$144,300.00.

The Aggregate Principal Amount to be amortized semi-annually using the following terms on a tax-exempt basis:

Amount - \$742,377.00

Term – 5 Years

Interest Only Payment Date – 08/01/2011\* (actual date is 180 days after Acceptance of Equipment)

Number of Principal and Interest Payments – 9

First Principal and Interest Payment Date – 2/01/2012

Final Principal and Interest Payment – 2/01/2016

30/360 convention

## **EQUIPMENT LEASE-PURCHASE AGREEMENT**

### **Exhibit D**

#### **Howard County Charter Section 901. Conflict of Interest.**

(a) *Prohibitions.* No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) *Rules of construction; exceptions by Council.* The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) *Penalties.* Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of

this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

**Howard County Code**  
**Section 22.204. Prohibited Conduct and Interests.**

(a) *Participation Prohibitions:* County official and employees subject to this subtitle shall not:

(1) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate on behalf of the county in any matter which would, to their knowledge, have a direct financial impact as distinguished from the public generally, on them, their spouse, parent, child, sibling or upon any business interest with which they are affiliated;

(2) Except as exempted by the county council pursuant to Section 901(b) of the Howard County Charter, hold or acquire an interest in a business entity that has or is negotiating a contract with the county or is regulated by the official or employee;

(3) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate in any matter involving a business entity with which they, their spouse, parent, child or sibling are negotiating or have an arrangement concerning prospective employment.

(b) *Employment Prohibitions:* Except as exempted by the county council pursuant to section 901(b) of the Howard County Charter or when the employment or interest does not create an actual or apparent conflict of interest, officials and employees shall not:

(1) Be employed by:

(I) Any entity subject to their official authority;

(ii) Any entity subject to the authority of the Howard County agency, board or commission with which they are affiliated;

(iii) Any entity which is negotiating or has entered into a contract with the Howard County agency, board or commission with which they are affiliated.

(2) Represent any party for a fee, commission or other compensation before any county body;

(3) Within 1 year following termination of county service, act as a compensated representative of another in connection with any specific matter in which they participated substantially as a county official or employee.

The employment provisions listed above do not apply to:

(1) An official or employee who is appointed to a regulatory or licensing authority pursuant to a requirement that persons subject to its jurisdiction be represented in appointments to it;

(2) Subject to other provisions of law, a member of a board or commission who publicly disclosed a financial interest or employment to the appointing authority at the time of appointment;

(3) Employees or officials whose duties are ministerial, provided that the private employment or financial interest does not create a conflict of interest or the appearance of such a conflict.

(c) *Solicitation/Acceptance of Gifts or Compensation:* No employee or official shall solicit any gifts. No employee or official shall accept any gift or compensation, directly or indirectly from any person that he/she knows or has reason to know, has financial interests, distinguishable from the interest of the public, that would be affected by the actions of the employee or official.

(d) *Use of Prestige of Office:* No county officials or employees subject to this subtitle shall intentionally use the prestige of their office for their own gain or that of another. The performance of usual and customary constituent services without additional compensation does not constitute the use of prestige of office for an official or employee's private gain or that of another.

(e) *Disclosure of Confidential Information:* Other than in the discharge of official duties, officials or employees may not disclose or use, for their own gain or that of another, confidential information acquired by reason of public position and which is not available to the public.