

EQUIPMENT LEASE-PURCHASE AGREEMENT

THIS EQUIPMENT LEASE-PURCHASE AGREEMENT (the “Agreement”), is dated as of _____, 2021, by and between _____, a [national banking association] organized and existing under the laws of the United States of America, as Lessor (“Lessor”), and CITY OF SANTA FE, NEW MEXICO, a charter municipality with home-rule powers duly organized and existing existing under the laws of the State of New Mexico, as Lessee (the “City” or the “Lessee”), wherein the parties hereby agree as follows:

Section 1. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“Act” means the general laws of the State, including the home-rule charter of the City, Sections 3-1-2 and 3-31-1 through 3-31-12 NMSA 1978, as amended, and enactments of the Governing Body relating to the Lease-Purchase Agreement, including the Ordinance.

“Agreement” means this Equipment Lease-Purchase Agreement and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, together with any amendments to this Agreement.

“Closing Date” the date of execution, delivery and funding of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended.

“Conservation Measures” mean, collectively or individually, as the context may require, the energy savings equipment and improvements of which the Energy Savings Project is comprised.

“Costs of Issuance” means all costs relating to the execution and delivery of the of the Lease-Purchase Agreement and the Energy Savings Agreements, including, without limitation, costs of advertising and publication, costs of fees and expenses of the financial advisor, bond counsel, the Paying Agent, and other reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the execution and delivery of the Lease-Purchase Agreement and the Energy Savings Agreements.

“Dalkia Agreement” means the Global Management Performance Contract by and between the City and Dalkia Energy Solutions, LLC, a Massachusetts limited liability company for implementation of the Dalkia Project Component, which is collaterally assigned to the Lessor pursuant to this Agreement.

“Dalkia Project Component” means means the Project Component comprised of the installation, implementation and maintenance of street light LED upgrades to street light improvements owned and operated by the Lessee.

“Energy Savings Agreements” means, collectively, the Yearout Agreement and the Dalkia Agreement.

“Energy Savings Project” means, collectively, the Yearout Project Component and the Dalkia Project Component.

“Equipment” means the Conservation Measures described on the Equipment Schedule attached hereto as Exhibits A-1 and A-2, and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.

“Event of Default” means an Event of Default described in Section 35 hereof.

“Lease Term” means the period commencing on the Closing Date and ending on the occurrence of the earliest event specified in Section 6 hereof.

“Lessee” means the entity described as such in the first paragraph of this Agreement, and its permitted successors and its assigns.

“Lessor” means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

“Net Proceeds” means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including reasonable attorneys’ fees) incurred in the collection of such claim or award.

“Ordinance” means Ordinance No. _____ adopted by the Governing Body of the City on February ___, 2021, as supplemented by the Pricing Certificate.

“Payment Schedule” means the schedule of Rental Payments and Purchase Price set forth in Exhibit B to this Agreement.

“Pledged Energy Cost Savings Revenues” or “Pledged Revenues” means amounts generated by utility cost savings pursuant to the Energy Savings Agreements, which constitute net revenues of the Energy Savings Project.

“Pricing Certificate” means the certificate executed and delivered by the any of the Mayor, City Manager or Finance Director of the Lessee subsequent to the date of adoption of the Ordinance, which shall specify the exact principal amount and other final terms of this Agreement.

“Purchase Price” means the amount set forth in the Payment Schedule that Lessee may, at its option, pay to Lessor to purchase the Equipment.

“Rental Payment Dates” means the dates set forth in the Payment Schedule on which Rental Payments are due.

“Rental Payment Fund” means the special fund established by Lessee in the Ordinance for the deposit of Pledged Energy Cost Savings Revenues and such other authorized revenues as are permitted by the Act and pledged in the Ordinance for Rental Payments, subject to Sections 6 through 8 and Section 10 hereof.

“Rental Payments” means the basic rental payments payable by Lessee pursuant to Section 9 from the Rental Payment Fund.

“State” means the State of New Mexico

“Vendors” means Dalkia Energy Solutions, LLC and Yearout Energy Services Company, LLC, as the counterparties to the Energy Savings Agreements from whom Lessor purchased or is purchasing the Equipment, as listed in Exhibit A-1 and A-2.

“Yearout Agreement” means the Energy Savings Performance Contract with Yearout Energy Services Company, LLC for implementation of the Yearout Project Component[, which is collaterally assigned to the Lessor pursuant to this Agreement].

“Yearout Project Component” means the installation, implementation, monitoring and maintenance of energy savings measures and water conservation measures throughout Lessee-owned facilities.

Section 2. Representations and Covenants of Lessee. Lessee represents, warrants and covenants, for the benefit of Lessor as follows:

(a) Lessee is a charter municipality with home-rule powers duly organized and existing under the constitution and laws of the State. Lessee will do or cause to be done all things to preserve and keep in full force and effect its existence as a charter municipality. So long as the Agreement continues in effect, Lessee shall use its best efforts to comply with its enabling legislation and other laws to which it is subject. Lessee has a substantially each of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.

(b) Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

(c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at meetings duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.

(d) This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally.

(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the Closing Date.

(f) Lessee has, in accordance with the requirements of law, pledged to and granted to Lessor a security interest in the Pledged Energy Cost Savings Revenues for the

payment of amounts due under this Agreement, subject to the uses thereof permitted by and the priorities set forth in the Ordinance. The Agreement constitutes an irrevocable and first lien on the Pledged Energy Cost Savings Revenues.

(g) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder.

(h) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, 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 or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Lessee.

(i) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.

(j) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party 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 on any assets of Lessee or the Equipment 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, except as herein provided.

(k) The Equipment described in this Agreement is essential to the function of Lessee or to the service Lessee provides to its citizens. Lessee has an immediate need for, and expects to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority.

(l) Neither the payment of the Rental Payments hereunder nor any portion thereof is (i) secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments in respect of such property or (ii) derived from payments in respect of property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code). No portion of the Equipment will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code).

(m) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

(n) Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purpose for which this Agreement has been entered into. No part of the proceeds of this Agreement will be invested in any securities, obligations or other investments or used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of this Agreement, would have caused any portion of this Agreement to be or become “arbitrage bonds” within the meaning of Section 103(b)(2) or Section 148 of the Code and the applicable regulations of the Treasury Department.

(o) Lessee has never failed to pay payments coming due under any bond issue, lease purchase agreement or other indebtedness obligation of Lessee.

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

(q) The application, statements and credit or financial information submitted by Lessee to Lessor are true and correct and made to induce Lessor to enter into this Agreement and the escrow agreement, and Lessee has experienced no material change in its financial condition since the date(s) of such information.

(r) Lessee has provided Lessor with audited financial statements through June 30, _____. Lessee has experienced no material change in its financial condition or in the revenues expected to be utilized to meet Rental Payments due under the Agreement since June 30, _____.

(s) Lessee will pay the excess (if any) of the actual costs of acquiring the Equipment under the Agreement over the amount deposited by Lessor in the escrow fund, if any, established under any related escrow agreement and interest earnings thereon.

(t) Lessee has established or will have established as of the Closing Date, the Rental Payment Fund in accordance with the Act for the purpose of paying the Rental Payments.

Section 3. Certification as to Arbitrage. Lessee hereby represents as follows:

(a) The estimated total costs of the Equipment, together with any costs of entering into this Agreement that are expected to be financed under this Agreement, will not be less than the total principal portion of the Rental Payments.

(b) The Equipment has been ordered or is expected to be ordered within six months of the Closing Date, and the Equipment is expected to be delivered and installed, and the Vendors fully paid, within eighteen months of the Closing Date.

(c) The Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments, except for ordinary repair and replacement.

(d) To the best of our knowledge, information and belief, the above expectations are reasonable.

Section 4. Lease of Equipment. Lessor hereby demises, leases and lets the Equipment to Lessee, and Lessee rents, leases and hires the Equipment from Lessor, in accordance with the provisions of this Agreement, for the Lease Term.

Section 5. Lease Term. The term of this Agreement will commence on the Closing Date and will terminate when all amounts due and payable under this Agreement have been paid in full, unless Lessee has terminated this Agreement pursuant to Section 6 or Section 31 hereof.

Section 6. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

(a) the exercise by Lessee of the option to purchase the Equipment under the provisions of Section 31 and payment of the Purchase Price and all amounts payable in connection therewith;

(b) a default by Lessee and Lessor's election to terminate this Agreement under Section 36 hereof; or

(c) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Lease Term.

Section 7. Reserved.

Section 8. Reserved.

Section 9. Rental Payments. Lessee will pay Rental Payments, exclusively from legally available Pledged Energy Cost Savings Revenues deposited in the Rental Payment Fund and any funds received from any financial guaranty delivered in connection with any or all of the Energy Savings Agreements as is necessary to pay applicable Rental Payments, in lawful money of the United States of America to Lessor in the amounts and on the dates set forth on the Payment Schedule. Rental Payments will be in consideration for Lessee's use of the Equipment during the fiscal year in which such payments are due. Any Rental Payment not received on or before its due date will bear interest at the rate of 10% per annum or the maximum amount permitted by law, whichever is less, from its due date. Lessee hereby pledges the amount in the Rental Payment Fund to the payment of all amounts due hereunder.

In the event that it is determined that any of the interest components of Rental Payments may not be excluded from gross income for purposes of federal income taxation, Lessee agrees to pay to Lessor from legally available Pledged Energy Cost Savings Revenues promptly after any such determination and on each Rental Payment Date thereafter an additional amount determined by Lessor to compensate Lessor 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.

Section 10. Energy Cost Savings Constitute Special Funds of Lessee; Rental Payment Fund.

(a) This Agreement, together with Rental Payments and other obligations of the Lessee hereunder, constitutes a special, limited obligation of the Lessee, payable solely from the Pledged Energy Cost Savings Revenues as provided in the Ordinance; and this Agreement shall not constitute a general obligation of the Lessee or the State, and the Lessor may not look to any general or other fund of the Lessee for payment of the obligations hereunder. Nothing contained in this Agreement or the Ordinance, or any other instruments, shall be construed as obligating the Lessee (except with respect to the application of the Pledged Energy Cost Savings Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Lessee or against its taxing power, nor shall a breach of any agreement contained in this Agreement, the Ordinance or any other instrument impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power. This Agreement shall never constitute an indebtedness of the Lessee within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Lessee or a charge against its general credit or taxing power. Nothing herein shall prevent the Lessee from applying other funds of the Lessee legally available therefor to payments required hereunder, in its sole and absolute discretion.

(b) Notwithstanding anything in this Agreement to the contrary, in any fiscal year amounts in the Rental Payment Fund equal the aggregate Rental Payments due in such fiscal year, Lessee may withdraw any excess amounts which may be used for any lawful purpose of Lessee.

Section 11. Interest Component. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest. Interest shall be computed on the basis of a 360 day year and 90 day quarters at _____% percent per annum.

Section 12. Rental Payments to be Unconditional. Except as provided in Section 10 hereof, the obligations of Lessee to make Rental Payments (but only from and to the extent of legally available Pledged Energy Cost Savings Revenues) and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the equipment or any accident, condemnation or unforeseen circumstances.

Section 13. Delivery, Installation and Acceptance of the Equipment. Lessee will order the Equipment, cause the Equipment to be delivered and installed at the locations specified in Exhibits A-1 and A-2, pursuant to the Energy Savings Agreements, and pay any and all delivery and installation costs in connection therewith. When the Equipment has been delivered and installed, Lessee will immediately accept the Equipment, subject to the provisions of the Energy Savings Agreements, and evidence said acceptance by executing and delivering to Lessor an acceptance certificate in form and substance acceptable to Lessor. After the it has been installed, the Equipment will not be moved from the locations specified in Exhibits A-1 and A-2 without Lessor's consent, which consent will not be unreasonably withheld.

Section 14. Enjoyment of Equipment. Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Equipment during the Lease Term, and Lessee will peaceably and

quietly have and hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.

Section 15. Right of Inspection. Lessor will have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

Section 16. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee will obtain all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided, however, that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under this Agreement.

Section 17. Maintenance of Equipment. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition. Lessor will have no responsibility to maintain, or repair or to make improvements or additions to the Equipment.

Section 18. Title to the Equipment. During the Lease Term, title to the Equipment and any and all additions, repairs, replacements or modifications will vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title will thereafter immediately and without any action by Lessee vest in Lessor, and Lessee will immediately surrender possession of the Equipment to Lessor upon (a) any termination of this Agreement other than termination pursuant to Section 31 or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section will occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee will, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee's true and lawful attorney (and agent-in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's or such assignee's name, to endorse the name of Lessee 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 transfer possession to Lessor.

Section 19. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement and to the extent permitted by law, Lessor retains a security interest constituting a first lien on the Equipment and on all additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom. Lessee agrees to execute such additional documents in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest. Lessee agrees that financing statements may be filed with respect to the security interest in the Equipment.

As further security therefor, Lessee grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time comprising the escrow fund, if any, established under any related escrow agreement 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.

Section 20. Personal Property. Lessor and Lessee agree that the Equipment is and will remain personal property. The Equipment will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to such real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

Section 21. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee will keep the Equipment free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all property taxes and other similar charges. If the use, possession or acquisition of the Equipment is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Lessee will pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee will pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee will be obligated to pay only such installments that accrue during the Lease Term.

Section 22. Insurance. At its own expense, Lessee will maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Equipment, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). Lessee shall also cause each Vendor to provide to Lessor a payment and performance bond naming Lessor as a dual obligee with Lessee and issued by a surety company rated "A" or better by AM Best. All insurance proceeds from casualty losses will be payable as hereinafter provided. Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

All such casualty and liability insurance will be with insurers that are acceptable to Lessor, will name Lessor as a loss payee and an additional insured and will contain a provision to the effect that such insurance will not be cancelled or modified materially without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance will contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

Section 23. Advances. In the event Lessee fails to maintain the insurance required by this Agreement, pay taxes or charges required to be paid by it under this Agreement or fails to keep the Equipment in good repair and operating condition, Lessor may (but will be under no obligation to) purchase the required policies of insurance and pay the cost of the premiums on the thereof, pay such taxes and charges and make such Equipment repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor will become additional rent. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 10% per annum or the maximum permitted by law, whichever is less.

Section 24. Financial Information. Within 270 days after the end of each fiscal year, Lessee will provide Lessor with current financial statements, budgets and such other financial information relating to the ability of Lessee to continue this Agreement as may be requested by Lessor.

Section 25. Release and Indemnification. From and to the extent of legally available Pledged Energy Cost Savings Revenues, to the extent permitted by law, Lessee will indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement, (b) the ownership of any item of the Equipment, (c) the manufacturing, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph will continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 26. Risk of Loss. Lessee assumes, from and including the Closing Date, all risk of loss of or damage to the Equipment from any cause whatsoever. No such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof will relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement, from and to the extent of Pledged Energy Cost Savings Revenues.

Section 27. Damage, Destruction, Condemnation; Use of Proceeds. If (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof or the interest of Lessee or Lessor in the Equipment or any part thereof will 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, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment, unless Lessee has exercised its option to purchase the Equipment pursuant to Section 31 hereof. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Lessee.

Section 28. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 27 hereof, Lessee will either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Lessor's interest in the Equipment pursuant to Section 31 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Equipment will be retained by Lessee. If Lessee will make any payments pursuant to this Section, Lessee will not be entitled to any reimbursement therefor from Lessor nor will Lessee be entitled to any diminution of the amounts payable under Section 9 hereof.

Section 29. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE EQUIPMENT OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OR MAINTENANCE OF ANY EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

Section 30. Vendors' Warranties. Lessee may have rights under the Energy Savings Agreements evidencing the purchase of the Equipment; Lessee is advised to contact each Vendor for a description of any such rights. Lessee hereby assigns to Lessor during the Lease Term all warranties running from Vendor to Lessee. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee will not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Equipment that Lessor may have against the Vendor. Lessee's sole remedy for the breach of any such warranty, indemnification or representation will be against the applicable Vendor, and not against Lessor. Any such matter will not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of such warranties by any of the Vendors.

Section 31. Purchase Option. Lessee will have the option to purchase the Equipment, upon giving written notice to Lessor at least 30 days before the date of purchase, at the following times and upon the following terms:

(a) On any Rental Payment Date on and after _____, upon payment in full of the Rental Payment then due hereunder plus all other amounts due hereunder plus the then-applicable Purchase Price to Lessor;

(b) In the event of substantial damage to or destruction or condemnation (other than by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Equipment, on the day Lessee specifies as the purchase date in Lessee's

notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payment and all other amounts then due hereunder plus (i) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (ii) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360-day year of four ninety (90) day quarters; or

(c) In the event monies remain in any escrow fund established under an escrow agreement, upon receipt by the escrow agent under such escrow agreement of a duly executed certificate of acceptance and payment request identified as the final such request, the remaining monies in such escrow fund shall, first be applied to all reasonable fees and expenses incurred by such escrow agent, if applicable, in connection with such escrow fund as evidenced by its statement forwarded to Lessor and Lessee; and, second be paid to Lessor, for application against the outstanding principal components of Rental Payments, including prepayment of Rental Payments hereunder, unless Lessor directs that payment of such amount be made in such other manner that, in the opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is applied against the outstanding principal components of Rental Payments, the Payment Schedule attached hereto will be revised accordingly.

Upon the exercise of the option to purchase set forth above, title to the Equipment will be vested in Lessee, free and clear of any claim by or through Lessor.

Section 32. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder represent the fair value of the use of the Equipment and that the amount required to exercise Lessee's option to purchase the Equipment pursuant to Section 31 hereof represents, as of the date of exercise of such option, the fair purchase price of the Equipment. Lessee hereby determines that the Rental Payments do not exceed a reasonable amount so as to place Lessee under a practical economic compulsion to renew this Agreement or to exercise its option to purchase the Equipment hereunder. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Equipment, (b) the uses and purposes for which the Equipment will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Equipment and the use of the Equipment pursuant to the terms and provisions of this Agreement, and (d) Lessee's option to purchase the Equipment. Lessee hereby determines and declares that the acquisition and installation of the Equipment and the leasing of the Equipment pursuant to this Agreement will result in equipment of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Equipment were performed by Lessee other than pursuant to this Agreement. Lessee hereby determines and declares that the Lease Term does not exceed 120% the useful life of the Equipment.

Section 33. Assignment by Lessor. Lessor's interest in, to and under this Agreement and the Equipment may be assigned and reassigned in whole or in part to one or more assignees

by Lessor without the necessity of obtaining the consent of Lessee; provided that any assignment will not be effective against Lessee until (a) Lessee has received written notice of the name and address of the assignee and (b) in the event that such assignment is made to a bank or trust company for holders of certificates representing interests in this Agreement, such bank or trust company agrees to maintain, or cause to be maintained, a register by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Lessee, to furnish such information to Lessee. Lessee will retain all such notices as a register of all assignees and will make all payments to the assignee or assignees designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interest in the Equipment and in this Agreement and agrees to the filing of financing statements with respect to the Equipment and this Agreement. Lessee will not have the right to and will not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may have against Lessor.

Section 34. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and the Equipment may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Equipment if Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Equipment will be subject to this Agreement and the rights of Lessor in, to and under this Agreement and the Equipment.

Section 35. Events of Default Defined. Any of the following will be "Events of Default" under this Agreement:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) of this Section 35, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor will agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance will prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Any provision of this Agreement will at any time for any reason cease to be valid and binding on Lessee, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Lessee or any governmental agency or authority if the

loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee will deny that it has any further liability or obligation under this Agreement;

(e) Lessee will (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(f) An order, judgment or decree will be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree will continue unstayed and in effect for any period of 30 consecutive days.

Section 36. Remedies on Default. Whenever any Event of Default exists, Lessor will have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the Lease Term to be due;

(b) With or without terminating this Agreement, Lessor may enter the premises where the Equipment is located and retake possession of the Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at a place specified by Lessor, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder plus the applicable Purchase Price, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Lessee's liability under this subparagraph (a) shall not exceed the Rental Payments and other amounts otherwise due hereunder plus the remaining Rental Payments and other amounts payable by Lessee to the end of the Lease Term; and

(c) Lessor may take whatever other action at law or in equity, including mandamus, as may appear necessary or desirable to enforce its rights as the owner of the Equipment.

In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all 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.

Section 37. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Agreement it will not be necessary to give any notice, other than such notice as may be required in this Agreement.

Section 38. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN RESOLVING ANY CLAIM OR COUNTERCLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT.

Section 39. Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto will designate in writing to the other for notices to such party), to any assignee at its address as it appears on the register maintained by Lessee.

Section 40. Binding Effect. This Agreement will inure to the benefit of and will be binding upon Lessor and Lessee and their respective successors and assigns.

Section 41. Severability. In the event any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 42. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 43. Amendments. This Agreement may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Agreement or any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

Section 44. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 45. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 46. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State.

Section 47. Electronic Transactions. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 48. Role of Lessor. Lessor has not acted and will not act as a fiduciary for Lessee or as Lessee's agent or municipal advisor. Lessor has not and will not provide financial, legal, tax, accounting or other advice to Lessee or to any financial advisor or placement agent engaged by Lessee with respect to this Agreement. Lessee, its financial advisor, placement agent or municipal advisor, if any, shall each seek and obtain its own financial, legal, tax, accounting and other advice with respect to this Agreement from its own advisors (including as it relates to structure, timing, terms and similar matters).

[SIGNATURE PAGES FOLLOW.]

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

LESSOR:

By: _____

Name:

Title:

Address:

CITY OF SANTA FE, NEW MEXICO

By: _____

Name: _____

Title: _____

Address: 200 Lincoln Avenue
Santa Fe, NM 87501

**EXHIBIT A-1 TO
EQUIPMENT LEASE-PURCHASE AGREEMENT**

EQUIPMENT SCHEDULE

Description of Equipment and Related Labor, Equipment and Materials Costs (exclusive of gross receipts and compensating tax):

FIM No.	FIM Name	Labor, Equipment and Material Costs
1.00	LED Lighting	\$2,222,159
2.00	Renewable Energy	\$7,167,913
3.00	Water Conservation	\$ 173,807
4.00	Building Envelope	\$ 206,170
5.00	HE Transformers	\$ 199,171
6.00	Utility Management	\$ 0
7.00	GCCC Solar Carport Repairs	\$ 155,730
8.00	Roof Replacement	\$ 199,918

Commented [PLF1]: Are these limited to solar panels and related equipment? More detailed description needed.

Locations:

The Equipment will be located at the following locations:

Location of Installation of Equipment Item	Equipment Item
Bicentennial / Alto Park Complex	LED Lighting
	Renewable Energy
	Water Conservation
	Building Envelope
	HE Transformers
Fire Station No. 8	LED Lighting
	Renewable Energy
	Water Conservation
	Building Envelope
Fort Marcy Recreation Complex	LED Lighting
	Water Conservation
	Building Envelope
Genoveva Chavez Community Center	LED Lighting
	Water Conservation

Commented [PLF2]: Detail re: quantities and more specific locations within Complex needed

Commented [PLF3]: More description of equipment, and specific location of installation within/on Complex needed

Commented [PLF4]: More description of equipment, and specific location of installation within/on Complex needed

Commented [PLF5]: More detailed description of equipment/repairs, and specific locations in Complex needed

Commented [PLF6]: More detail re: specific locations in Complex needed

Commented [PLF7]: Detail re: quantities and more specific locations within Complex needed

Commented [PLF8]: More description of equipment, and specific location of installation within/on Complex needed

Commented [PLF9]: More description of equipment, and specific location of installation within Complex needed

Commented [PLF10]: More detailed description of equipment/repairs, and specific locations in Complex needed

Commented [PLF11]: Detail re: quantities and more specific locations within Complex needed

Commented [PLF12]: Detail re: quantities and more specific locations within Complex needed

Commented [PLF13]: More detailed description of equipment/repairs, and specific locations in Complex needed

Commented [PLF14]: Detail re: quantities and more specific locations within Complex needed

Commented [PLF15]: See immediately preceding comment

	Building Envelope	Commented [PLF16]: More detailed description of equipment/repairs, and specific locations in Complex needed
	Solar Repair	Commented [PLF17]: More detail re: locations of repairs in GCCC needed.
La Familia Medical Center	LED Lighting	Commented [PLF18]: Detail re: quantities and more specific locations within Complex needed
	Water Conservation	Commented [PLF19]: Detail re: quantities and more specific locations within Complex needed
	Building Envelope	Commented [PLF20]: More detailed description of equipment/repairs, and specific locations in Complex needed
Police Department- Admin.	LED Lighting	Commented [PLF21]: Detail re: quantities and more specific locations within Complex needed
	Renewable Energy	Commented [PLF22]: More description of equipment, and specific location of installation within/on Complex needed
	Water Conservation	Commented [PLF23]: More description of equipment, and specific location of installation within/on Complex needed
	Building Envelope	Commented [PLF24]: More detailed description of equipment/repairs, and specific locations in Complex needed
Public Library- Main	LED Lighting	Commented [PLF25]: Detail re: quantities and more specific locations within Complex needed
	Water Conservation	Commented [PLF26]: More description of equipment, and specific location of installation within/on Complex needed
	Building Envelope	Commented [PLF27]: More detailed description of equipment/repairs, and specific locations in Complex needed
Public Library- Southside	LED Lighting	Commented [PLF28]: Detail re: quantities and more specific locations within Complex needed
	Renewable Energy	Commented [PLF29]: More description of equipment, and specific location of installation within/on Complex needed
	Water Conservation	Commented [PLF30]: More description of equipment, and specific location of installation within/on Complex needed
	Building Envelope	Commented [PLF31]: More detailed description of equipment/repairs, and specific locations in Complex needed
	HE Transformers	Commented [PLF32]: More detail re: specific locations in Complex needed
Salvador Perez Swimming Pool	LED Lighting	Commented [PLF33]: Detail re: quantities and more specific locations within Complex needed
	Water Conservation	Commented [PLF34]: More description of equipment, and specific location of installation within/on Complex needed
	Building Envelope	Commented [PLF35]: More detailed description of equipment/repairs, and specific locations in Complex needed
Sandoval Parking Garage	Water Conservation	Commented [PLF36]: More description of equipment, and specific location of installation within/on Complex needed
Santa Fe Convention Center	LED Lighting	Commented [PLF37]: Detail re: quantities and more specific locations within Complex needed
	Water Conservation	Commented [PLF38]: More description of equipment, and specific location of installation within/on Complex needed
	Building Envelope	Commented [PLF39]: More detailed description of
Santa Fe Regional Airport	LED Lighting	Commented [PLF40]: Detail re: quantities and more specific locations within Complex needed
	Renewable Energy	Commented [PLF41]: More description of equipment, and specific location of installation within/on Complex needed
	Building Envelope	Commented [PLF42]: More detailed description of
Siler Complex	LED Lighting	Commented [PLF43]: Detail re: quantities and more specific
	Water Conservation	Commented [PLF44]: More description of equipment, and
	Building Envelope	Commented [PLF45]: More detailed description of
Siringo Complex	LED Lighting	Commented [PLF46]: Detail re: quantities and more specific

	Water Conservation	Commented [PLF47]: More description of equipment, and specific location of installation within/on Complex needed
	Building Envelope	Commented [PLF48]: More detailed description of equipment/repairs, and specific locations in Complex needed
Southside Transit Center	Renewable Energy	Commented [PLF49]: More description of equipment, and specific location of installation within/on Complex needed
Transit Administration	LED Lighting	Commented [PLF50]: Detail re: quantities and more specific locations within Complex needed
	Water Conservation	Commented [PLF51]: More description of equipment, and specific location of installation within/on Complex needed
	Building Envelope	Commented [PLF52]: More detailed description of equipment/repairs, and specific locations in Complex needed
	HE Transformers	Commented [PLF53]: More detail re: specific locations in Complex needed
Canyon Road Water Treatment Plant	Water Conservation	Commented [PLF54]: More description of equipment, and specific location of installation within/on Complex needed
	Building Envelope	Commented [PLF55]: More detailed description of equipment/repairs, and specific locations in Complex needed
	HE Transformers	Commented [PLF56]: More detail re: specific locations in Complex needed
	Replace Roof	Commented [PLF57]: Detail re: quantities and more specific locations within Complex needed
Santa Fe Water Department Office	LED Lighting	Commented [PLF58]: More description of equipment, and specific location of installation within/on Complex needed
	Water Conservation	Commented [PLF59]: More detailed description of equipment/repairs, and specific locations in Complex needed
	Building Envelope	Commented [PLF60]: Detail re: quantities and more specific locations within Complex needed
Wastewater Treatment Plant	LED Lighting	Commented [PLF61]: More detail re: specific locations in Complex needed
	HE Transformers	Commented [PLF62]: Detail re: quantities and more specific locations within Complex needed
10M Gallon Tank	LED Lighting	Commented [PLF63]: More description of equipment, and specific location of installation within/on Complex needed
	Renewable Energy	Commented [PLF64]: Detail re: quantities and more specific locations within Complex needed
Buckman Booster Station #1	LED Lighting	Commented [PLF65]: More description of equipment, and specific location of installation within/on Complex needed
	Renewable Energy	Commented [PLF66]: More description of equipment, and specific location of installation within/on Complex needed
Buckman Booster Station #3 and Well #13	Renewable Energy	Commented [PLF67]: More description of equipment, and specific location of installation within/on Complex needed
Buckman Booster Station #4	Renewable Energy	Commented [PLF68]: Detail re: quantities and more specific locations within Complex needed
Buckman Well #1	LED Lighting	Commented [PLF69]: More description of equipment, and specific location of installation within/on Complex needed
Buckman Well #10	LED Lighting	Commented [PLF70]: Detail re: quantities and more specific locations within Complex needed
	Renewable Energy	Commented [PLF71]: More description of equipment, and specific location of installation within/on Complex needed
Camino La Canada	LED Lighting	Commented [PLF72]: Detail re: quantities and more specific locations within Complex needed
	Renewable Energy	Commented [PLF73]: More description of equipment, and specific location of installation within/on Complex needed
Cristo Rey Church	LED Lighting	Commented [PLF73]: Detail re: quantities and more specific locations within Complex needed

Dempsey Booster Station	LED Lighting	Commented [PLF74]: Detail re: quantities and more specific locations within Complex needed
Well Los Montoyas	LED Lighting	Commented [PLF75]: Detail re: quantities and more specific locations within Complex needed
	Renewable Energy	Commented [PLF76]: More description of equipment, and specific location of installation within/on Complex needed
BDD Main	LED Lighting	Commented [PLF77]: Detail re: quantities and more specific locations within Complex needed
BDD Booster Station #1A	LED Lighting	Commented [PLF78]: Detail re: quantities and more specific locations within Complex needed
	Renewable Energy	Commented [PLF79]: More description of equipment, and specific location of installation within/on Complex needed
BDD Booster Station #2A	LED Lighting	Commented [PLF80]: Detail re: quantities and more specific locations within Complex needed
BDD Lift Station	LED Lighting	Commented [PLF81]: Detail re: quantities and more specific locations within Complex needed
	Renewable Energy	Commented [PLF82]: More description of equipment, and specific location of installation within/on Complex needed

Vendor:

The Vendor for the Equipment is Yearout Energy Services, LLC.

This Equipment Schedule shall be deemed to be supplemented by the descriptions of the Equipment included in the Certificate of Acceptance and Payment Requests submitted to _____, as escrow agent, pursuant to the Escrow Agreement dated as of _____, 2021, among Lessor, Lessee and _____, as escrow agent, which descriptions shall be deemed to be incorporated herein.

**EXHIBIT B TO
EQUIPMENT LEASE-PURCHASE AGREEMENT**

PAYMENT SCHEDULE

Principal Amount: \$ _____

Interest Rate: _____%

Closing Date: _____, 2021

Rental payments will be made in accordance with **Section 9** and the attached Payment Schedule.