

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

Between

CITY OF ALBUQUERQUE

and

CITELUM US, INC.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

THIS GLOBAL MANAGEMENT PERFORMANCE CONTRACT (together with the schedules, appendices and exhibits attached hereto, this "Agreement") is made this 28th day of September, 2017, ("Effective Date") by and between Citelum US, Inc. and its successors and permitted assigns ("CONTRACTOR") and the City of Albuquerque, a political subdivision of the State of New Mexico ("CLIENT"). (CONTRACTOR and CLIENT being sometimes referred to herein as a "Party" or collectively as the "Parties").

WITNESSETH

WHEREAS, CLIENT desires to engage CONTRACTOR to among other things: finance, install, operate and maintain certain high-efficiency Infrastructure (as defined herein) for the purpose of reducing energy consumption, increase Energy Savings (as defined herein), improve public and traffic safety, enhance economic development, and achieve other budget savings for the System (as defined herein); all of which shall be subject to the terms and conditions of this Agreement;

WHEREAS, CONTRACTOR provides technical, engineering, and physical infrastructure works and management performance services (to perform energy efficient, sustainable lighting system solutions on a global basis) and designs, installs and operates Artistic Lighting (as defined herein) and Smart City Instruments (as defined herein);

WHEREAS, CLIENT awarded CONTRACTOR the solicitation titled 'Evaluation and Implementation of Energy Efficiency and Reduced Maintenance on City Owned and Maintained Street Lighting' Request for Proposals: P201600023 ("Request for Proposal" or "RFP") and desires to activate Phase IV thereunder pursuant to this Agreement (the RFP and Phase I & II Deliverables of the RFP are incorporated herein by reference);

WHEREAS, CLIENT and CONTRACTOR seek to enter into this Agreement and set out the terms and conditions by which CONTRACTOR will finance, develop, install and construct, operate and maintain the Infrastructure and the System, develop and install Artistic Lighting and Smart City Instruments projects and provide the Works (as defined herein) and Services (as defined herein) for CLIENT; and

WHEREAS, the "Agreement for the Evaluation and Implementation of Energy Efficiency and Reduced Maintenance on City Owned and Maintained Street Lighting," executed on July 22, 2016, by and between CLIENT and CONTRACTOR is superseded and replaced by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, CLIENT and CONTRACTOR hereby covenant and agree as follows:

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**The exhibits are subject to revision and modification upon mutual agreement of the Parties.

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ARTICLE 1: DEFINITIONS; COMMENCEMENT AND TERM

1.1 Definitions

Capitalized terms used in this Agreement, the Schedules or the exhibits and not otherwise defined shall have the meanings given to such terms in Schedule 1 (Definitions).

1.2 Commencement and Duration

The term of this Agreement shall be for a period of fifteen (15) years ("Term"), commencing on the Commencement Date (as defined below), unless terminated earlier or extended in accordance with the provisions hereof. The term "Commencement Date" shall mean thirty (30) days after the date the CONTRACTOR achieves Financial Closing; provided, however, the Commencement Date shall be no earlier than sixty (60) days after the Effective Date of the Agreement. Notwithstanding the foregoing, the Agreement shall be effective and binding upon the Parties on the Effective Date.

1.3 Term Extensions

This Agreement may be extended for the period and under the circumstances that follow:

- (a) Upon mutual agreement in writing by the Parties to extend the Term of this Agreement for a period described therein.
- (b) If the Acceptance Date is delayed past 12 months from the Commencement Date, the Term of this Agreement will be extended on a month to month basis for such delay, to ensure that all scheduled payments in Section 1.4 to Schedule 4 (Payment Mechanism) can be made within the Term.
- (c) If a Supervening Event occurs, the CONTRACTOR shall, in addition to any other rights which it may have under this Agreement, be entitled to an extension of time for the performance of its obligations hereunder, which extension shall be determined as set forth below.

(1) The CONTRACTOR shall give notice in writing to CLIENT within a reasonable time of the occurrence of a Supervening Event, but in any event not later than ten (10) Business Days after the CONTRACTOR becomes aware of the occurrence of the Supervening Event, which shall include the following: (i) a statement of the nature of the Supervening Event; (ii) details of the circumstances from which the Supervening Event arises; (iii) details of the consequences, whether direct or indirect, financial or non-financial, which such Supervening Event may have, including any estimate of the required extension of time for the performance by the CONTRACTOR of its obligations hereunder (the "Extension Estimate"); and (iv) details of any measures which the CONTRACTOR proposes to adopt to mitigate the consequences of such Supervening Event.

(2) CLIENT shall indicate whether it agrees or not with the Extension Estimate as soon as reasonably practicable and, in any event, within twenty (20) Business Days of receipt of any notice issued by the CONTRACTOR. If CLIENT does not agree with the Extension Estimate, the Parties may refer the matter for determination in accordance with the applicable dispute resolution procedure as set forth herein. If CLIENT so agrees, or any extension is settled pursuant to the dispute resolution procedure the term of the Agreement shall be extended by a period equal to such agreed/settled extension.

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ARTICLE 2: GENERAL OBLIGATIONS

2.1 Engagement. CLIENT hereby engages and CONTRACTOR hereby accepts the engagement to perform and/or to provide the Works and the Services, each in accordance with the terms and conditions of this Agreement.

2.2 Independent Contractor. CONTRACTOR shall provide the Infrastructure, Smart City Instruments and Artistic Lighting at its sole cost and expense, perform the Works and provide the Services, as an independent CONTRACTOR with exclusive control of the manner and means of performing the Works and Services in accordance with the requirements of this Agreement. CONTRACTOR has no authority to act or make any agreements or representations on behalf of CLIENT. This Agreement is not intended, and shall not be construed to create, between CLIENT and CONTRACTOR, the relationship of principal and agent, joint-venturers, copartners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of CONTRACTOR shall be, or shall be deemed to be, an employee or agent of CLIENT.

2.3 Conditions Precedent. This Agreement and all obligations of the CONTRACTOR hereunder or in respect hereof are subject to and conditioned upon: (a) all necessary approvals of this Agreement and all terms and conditions hereof by CLIENT and/or applicable executive board, commission, council or other governing body or Governmental Authority with jurisdictional authority over CLIENT, if any, and (b) the achievement by CONTRACTOR of Financial Closing.

2.4 Financing and Contingency Deadline. CLIENT authorizes CONTRACTOR to obtain financing in its sole discretion for purposes of funding the Project and CLIENT agrees to cooperate with CONTRACTOR in connection therewith. CONTRACTOR shall have until the Contingency Deadline to achieve Financial Closing. The Contingency Deadline shall be thirty (30) days after the Effective Date of this Agreement. If the CONTRACTOR fails to achieve Financial Closing for the Project by the Contingency Deadline, such Contingency Deadline may be extended as mutually agreed in writing by the Parties or either Party may terminate this Agreement upon thirty (30) days' notice, whereupon the Parties shall have no further obligation or liability to the other under this Agreement unless otherwise provided.

2.5 CLIENT General Obligations. The CLIENT, without cost to CONTRACTOR, shall:

(a) Designate a contact person with authority to make decisions for CLIENT regarding the Works and Services and provide CONTRACTOR with information sufficient to contact such person in an emergency;

(b) Coordinate the aspects of the Works and Services under CLIENT's sole control so as not to disrupt the performance of the Works and Services proceeding in an efficient manner;

(c) Provide CONTRACTOR reasonable and scheduled access to the System and the Smart City Instruments and Artistic Lighting project sites where Works or Services are to be performed so that Works or Services may proceed in an efficient manner;

(d) Permit CONTRACTOR to control and/or operate all Infrastructure, Artistic Lighting, Smart City Instruments, System, apparatus, and related machinery necessary to perform the Works or Services, including granting the CONTRACTOR all necessary rights and licenses therein;

(e) Furnish CONTRACTOR with all blueprints, surveys, legal descriptions and documentation, and all other available information pertinent to the Works as the same may be reasonably requested by CONTRACTOR that is in the control of the CLIENT. Such plans, blueprints, surveys and all other pertinent information, along with an executed copy of this Agreement, with its schedules and exhibits, shall be kept and maintained in CLIENT's and CONTRACTOR's files from the Commencement Date until at least five (5) years after the termination of this Agreement;

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(f) Furnish or assist CONTRACTOR with all approvals, permits and consents from Governmental Authorities and others as may be required for performance of the Works and Services;

(h) Make available to CONTRACTOR any safety requirements and other policies, plans or programs that are in the CLIENT's possession and relate to the System, Smart City Instruments and Artistic Lighting and that could reasonably be determined to affect the Works or Services, as applicable;

(i) Coordinate with the local utility all needed servicing for utility owned facilities needed for System operation. Any costs therein shall be borne by CLIENT.

2.6 Confidential and Proprietary Information. Subject to Applicable Law, CLIENT acknowledges that the technical and pricing information contained in Schedule 2 & Schedule 3 and conspicuously marked therein is confidential and proprietary to CONTRACTOR and agrees not to disclose it or otherwise make it available to others unless required by Applicable Law. In the event that such disclosure is required by Applicable Law, CLIENT shall make best effort to provide timely written notice of the demand for such disclosure to CONTRACTOR and work with CONTRACTOR to limit disclosure of confidential and proprietary information.

2.7 Receipt of Title. CLIENT acknowledges that it shall receive and take title to the Infrastructure, Smart City Instruments and Artistic Lighting on the Acceptance Date for each Segment of the Works and it shall receive title to repaired or replaced System assets upon installation.

2.8 Addressing Safety Issues During Works and Services. CONTRACTOR may voluntarily address suspected health or safety issues observed, but not caused by CONTRACTOR while at a facility during the course of CONTRACTOR's performance of the Works or the Services on the System, Smart City Instruments and Artistic Lighting. In the event CONTRACTOR does address such issues by making observations, reports, and suggestions or otherwise, CLIENT shall not hold, or attempt to hold, CONTRACTOR liable or responsible on account thereof.

ARTICLE 3: WORKS PHASE

3.1 *Performance of the Works*

(a) Commencing no later than the Commencement Date, CONTRACTOR shall perform the Works pursuant to and in accordance with Schedule 2 (Scope of Works). The activities of CONTRACTOR related to its performance of the Works shall be limited solely to those duties and obligations set forth in Schedule 2 (Scope of Works) including but not limited to the operation and maintenance of the Existing System and installation of the Infrastructure, Smart City Instruments and/or Artistic Lighting solutions.

(b) The Works will be performed in Segments and each Segment of the Works will be accepted independently upon completion of the Segment in accordance with the procedures set forth in Section 3.7 below. The Segments of the Works may be performed simultaneously.

(c) At the written request of either Party and under the terms of a separate Change Order and if both CONTRACTOR and CLIENT agree to the terms of the Change Order, CONTRACTOR will perform additional Works which are not detailed in this Agreement.

3.2 *CONTRACTOR's Works Phase Obligations*

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In furtherance of Section 3.1 above, CONTRACTOR undertakes and covenants to CLIENT that it shall:

- (a) be responsible for performing the Works, which shall include constructing and installing the Infrastructure, Smart City Instruments and Artistic Lighting in a manner consistent with the work schedule set forth in Schedule 2 (Scope of Works), Exhibits A, C & D, Applicable Law, and Prudent Industry Practice; provided, however, that CONTRACTOR is not required to conduct safety, acceptance or other tests, install new devices or Infrastructure, Smart City Instruments and Artistic Lighting or make modifications to any part of the System unless included as a part of the Works identified in the Schedule 2 (Scope of Works);
- (b) perform all Works Phase activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Agreement;
- (c) subject to the provisions of this Agreement, comply with and assist CLIENT to ensure compliance with all Applicable Law;
- (d) exercise commercially reasonable efforts not to interrupt the operation of the System during its performance of the Works. In cases where an interruption is necessary to complete any installation of Infrastructure, the CLIENT and CONTRACTOR shall make reasonable efforts to agree on the timeframe and dates of the service interruption in order to limit citizen inconvenience; and
- (e) use its best efforts to not impede, impair or interrupt CLIENT's electrical service to the System during the performance of the Works; provided however, the Works Phase will cause periodic electrical service interruptions and CONTRACTOR will make a reasonable effort to notify CLIENT of any interruptions and to minimize the interruptions.
- (f) require all of its subcontractors to comply with Applicable Law and carryout the subcontracted Works in accordance with Prudent Industry Practices.

3.3 CLIENT's Works Phase Obligations.

In addition to all duties and obligations identified in Article 2, CLIENT undertakes and covenants to CONTRACTOR that it shall:

- (a) comply with all Applicable Law;
- (b) provide such reasonable assistance to and not unreasonably impede CONTRACTOR in the performance of the Works under this Agreement;
- (c) perform all CLIENT responsibilities related to the Works, as the same is set forth in Schedule 2 (Scope of Works) and Schedule 5 (Acceptance Procedures); and
- (d) review and check, or have an agent or contractor review and check, the Works for each Segment performed by CONTRACTOR from time to time as set forth in the Commissioning Plan and Quality Assurance Plan and provide any related comments in writing to CONTRACTOR.

3.4 Program for the Sequence and Timing of Works; Field Inspections

(a) CONTRACTOR shall record and maintain a Works schedule program or protocol as set forth in Schedule 2 (Scope of Works) and Exhibits A, C & D, and such Works schedule shall detail the Segments, sequence and timing of the activities necessary for the delivery and completion of the Works. CONTRACTOR shall record, update and maintain such Works schedule documentation and make such information available to CLIENT upon request. CONTRACTOR shall make commercially reasonable efforts to proceed with the Works in accordance with the Works schedule timeframes and shall give CLIENT reasonable notice of probable events or circumstances which may materially adversely affect or materially delay the execution of the Works in accordance with the Works schedule.

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(b) For the entire duration of the Works, the representatives of the CLIENT will be able to access the System, Smart City Instruments and Artistic Lighting project sites provided that they have informed the CONTRACTOR within a reasonable timeframe. CLIENT may perform such field tests as it deems necessary to verify that the Works meets the performance standards required herein. CONTRACTOR shall be permitted to witness such tests. All inspections and tests by CLIENT shall be performed in such manner as not to unnecessarily delay the Works. CLIENT shall not exercise any prerogatives of project management or of project supervision when on the work sites.

3.5 Time for Completion of the Works

The expected date of completion of all of the Works shall be 12 months from the Commencement Date (hereinafter the "Expected Completion Date").

3.6 Extension of Time

Notwithstanding Section 3.5, CONTRACTOR shall be entitled to a reasonable extension of time for the completion of the Works beyond the Expected Completion Date, equal to but not greater than the period of delay, if and to the extent that completion is or will be delayed by any of the following:

- (a) a Change Order; or
- (b) any CLIENT failure to perform a Material Obligation under this Agreement; or
- (c) any Supervening Event; or
- (d) any delay, restriction or prevention of CONTRACTOR from performing the Works caused by or attributable to the CLIENT, its employees or agents, or the CLIENT's other contractors; or
- (e) any delay, restriction or prevention of CONTRACTOR from performing the Works caused by or attributable to any relevant Governmental Authority, other than the CLIENT, from which a consent is necessary for execution of the Works provided CONTRACTOR has diligently, steadfastly and without delay pursued such consent in good faith.

If CONTRACTOR incurs or is likely to incur loss and/or expense as a result of an extension of time pursuant to subsection (a), (b) & (d) above, then subject to CONTRACTOR taking all reasonable steps to mitigate all losses and expenses, CLIENT shall reimburse CONTRACTOR directly for any such actual loss or expense, including all overhead, profit, additional System operation and maintenance costs, financing interest charges or expenses and other losses or costs incurred, which such amounts shall be set forth in the immediately succeeding monthly invoice issued to CLIENT in accordance with the terms and conditions contained in Schedule 4 (Payment Mechanism).

If CONTRACTOR incurs losses and expenses as a result of an extension of time pursuant subsection (c) & (e) above, then subject to CONTRACTOR taking all reasonable steps to mitigate the losses and expenses, the CLIENT and CONTRACTOR shall enter into negotiations to equitably allocate the losses and expenses between the Parties, unless agreed to otherwise in writing. If CLIENT and CONTRACTOR do not agree on an equitable allocation, the Parties may refer the matter for determination in accordance with the applicable dispute resolution procedure as set forth herein.

The obligations of CLIENT to pay any amounts described above are payable only from the available funds in the Revenue Fund and from the other security pledged under this Agreement, as set forth in Section 6.4 of the Main Body of the Agreement.

3.7 Acceptance

The Acceptance Date for each Segment of the Works shall occur when:

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(a) a Segment of the Works is complete, in accordance with Schedule 5 (Acceptance Procedures), the start-up and commissioning thereof is complete, and the Infrastructure, Smart City Instruments and Artistic Lighting (if applicable) included in the Segment of the Works, as detailed in Schedule 2 (Scope of Works), may be utilized for their intended use;

(b) CONTRACTOR shall have delivered to CLIENT, lien waivers, sworn statements, guarantees, full releases, discharges or other evidence reasonably satisfactory to CLIENT that there are no liens (other than Permitted Security Interest), claims, or notices in respect thereof pending, filed, or threatened against CLIENT, CONTRACTOR, or the Infrastructure, Smart City Instruments and Artistic Lighting whatsoever in respect to that Segment of the Works. CONTRACTOR may, if any subcontractor refuses to furnish a release, discharge or receipt in full, furnish a bond satisfactory to CLIENT to indemnify the CLIENT against any such lien;

(c) CONTRACTOR shall have delivered all certificates of inspection or approval in respect of the Segment of the Works to the extent required under Applicable Law from any Governmental Authority; and

(d) CLIENT has issued a Certificate of Acceptance for the Segment of the Works in accordance with Schedule 5 (Acceptance Procedures).

3.8 Title to Infrastructure, Smart City Instruments & Artistic Lighting

(a) Upon Acceptance for each Segment of the Works, (1) legal title to and ownership of the upgraded Infrastructure, Smart City Instruments and Artistic Lighting therein shall transfer to CLIENT free and clear of any and all liens, claims, security interests or other encumbrances except Permitted Security Interest in the upgraded Infrastructure, installed Smart City Instruments and Artistic Lighting granted by CLIENT to CONTRACTOR pursuant to Section 6.3 of the Main Body of the Agreement, and (2) the CLIENT shall have all duties and responsibilities for the payment of post-Acceptance Works and Services Payments. Upon and after Acceptance, CLIENT shall at all times protect and defend, at its own cost and expense, its title and the Permitted Security Interest granted to CONTRACTOR in and to the Infrastructure, Smart City Instruments and Artistic Lighting from and against all claims, liens and legal processes of its creditors, and keep all the Infrastructure free and clear of all such claims, liens and processes except Permitted Security Interest.

(b) Notwithstanding Section 3.8(a) above, if any Software Products are installed or otherwise used to operate the System, Smart City Instruments or Artistic Lighting or provided to CLIENT under this Agreement, any such Software Products shall remain CONTRACTOR property, including the Intellectual Property conceived or developed by CONTRACTOR in the Software Products. All CONTRACTOR Pre-existing Intellectual Property that may be included in the Infrastructure, Smart City Instruments, Artistic Lighting, Works or the Services provided to CLIENT under this Agreement shall also remain CONTRACTOR's property. Any Software Products provided to CLIENT are for Permitted Users' use and only for the purposes disclosed to CONTRACTOR. CONTRACTOR hereby grants CLIENT a royalty-free (once payments due under this Agreement are paid to CONTRACTOR), non-transferable, nonexclusive license for the Term to use any CONTRACTOR's Intellectual Property solely as incorporated into the Infrastructure, Smart City Instruments and Artistic Lighting and CONTRACTOR's Intellectual Property as incorporated into any Software Products provided to CLIENT under this Agreement. Under such license, to the extent allowable by Applicable Law, Permitted Users shall have a right to:

(1) Use, in object code form only, the Software Products included in the Works and/or Services, if any;

(2) Make and retain archival and emergency copies of such Software Products except if the Software Product is embedded in the System, Smart City Instruments or Artistic Lighting; and,

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(3) Use all such Software Products; provided however, the Software Products shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Software Products are provided or used relative to the System, Smart City Instruments or Artistic Lighting.

All Software Products provided to CLIENT are for Permitted Users' use only for the purposes disclosed to CONTRACTOR, and CLIENT shall not transfer them to others or use them or permit them to be used for any extension of the Works or Services or any other project or purpose, without CONTRACTOR's express written consent, to the extent allowable by Applicable Law.

3.9 Workmanship Warranty

Except as otherwise expressly provided herein, CONTRACTOR warrants that all work performed during the Works Phase is in compliance with the terms of the Agreement and will be free from workmanship defects for a period of one (1) year from the Acceptance Date of the Final Segment of the Works. Should any defects develop during the warranty period, CONTRACTOR shall remedy the defects at no expense to the CLIENT, provided that CLIENT gives CONTRACTOR written notice of any such defect promptly after discovery.

3.10 Manufacturer Warranty

CONTRACTOR hereby transfers to CLIENT all transferable warranties and remedies provided to the CONTRACTOR by any manufacturer(s) or suppliers of the Infrastructure, Smart City Instruments and Artistic Lighting. CLIENT hereby grants the CONTRACTOR the authority and the right to, on behalf of the CLIENT, exercise all the CLIENT's rights and remedies under all transferable warranties during the Term.

ARTICLE 4: SERVICES PHASE

4.1 Performance of Services after Acceptance

No later than the Acceptance Date of the Final Segment of the Works, or such other date agreed to in writing between the Parties, CONTRACTOR shall commence performance of the Services Phase, consisting of those activities set forth in Schedule 3 (Scope of Services), including, but not limited to, the operation, maintenance, monitoring and management of the System and provide such Smart City Instrument and Artistic Lighting services set forth therein.

4.2 Performance Commitments of the CONTRACTOR

CONTRACTOR commits to achieving the Energy Savings and operation and maintenance Services objectives described in Schedule 3 (Scope of Services), and commits to performing the Services in accordance with the Key Performance Indicators ("KPI") outlined in Appendix 3A (Services Performance Objectives and Penalties/Incentives) to Schedule 3 (Scope of Services) (hereinafter the "Services Performance Objectives").

4.3 CONTRACTOR's Services Phase Obligations

In furtherance of Sections 4.1 and 4.2 above, CONTRACTOR undertakes and covenants to CLIENT that it shall:

(a) be responsible for performing the Services in a manner to achieve the Services Performance Objectives consistent with Schedule 3 (Scope of Services), Applicable Law, and Prudent Industry Practice.

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(b) not impede, impair or interrupt CLIENT's utilization of the System or achievement of any Energy Savings, except with the express written consent of CLIENT when necessary for additional construction or maintenance, which consent will not be unreasonably withheld.

4.4 CLIENT's Services Phase Obligations

In addition to all duties and obligations identified in Article 2, CLIENT undertakes and covenants to CONTRACTOR that during the performance of the Services it shall:

(a) be obligated to compensate CONTRACTOR for the performance of the Services pursuant to and in accordance with the terms and conditions established in Schedule 4 (Payment Mechanism) and any other amounts due hereunder by the required due date(s) established therein; provided however, the obligations of CLIENT to pay any amounts described above are payable only from the available funds in the Revenue Fund and from the other security pledged under this Agreement, as set forth in Section 6.4 of the Main Body of the Agreement.

(b) subject to the provisions of this Agreement, comply with Applicable Law;

(c) provide such reasonable assistance to and not unreasonably impede CONTRACTOR in the performance of the Services under this Agreement; and

(d) perform all CLIENT responsibilities related to the Services.

ARTICLE 5: ENERGY SAVINGS PERFORMANCE ASSURANCE

5.1 System Baseline and Performance Baseline

(a) CONTRACTOR and CLIENT agree that the System Baseline data results set forth in Appendix 3A (Services Performance Objectives and Penalties/Incentives) to Schedule 3 (Scope of Services), is a full and reasonably accurate reflection of the System's equipment, operation, business use and energy usage as of the Effective Date, and that such System Baseline data will be the basis on which all future energy use will be compared in order to determine the Annual Realized Savings.

(b) CONTRACTOR and CLIENT agree that the Performance Baseline set forth in Appendix 3A (Services Performance Objectives and Penalties/Incentives) to Schedule 3 (Scope of Services) will represent the new operating and/or equipment profile of the System resulting from the installation of the Infrastructure and implementation of the Services.

(c) Notwithstanding any provision of this Agreement, no later than thirty (30) days prior to the Acceptance Date of the Final Segment of the Works, CONTRACTOR shall conduct an audit and inventory of the operational performance of the System. If additional Energy Savings are recognized after the audit and inventory, CONTRACTOR shall integrate and use all resulting data to calculate and revise the Performance Baseline accordingly.

5.2 Performance Guarantee and Measurement

(a) Commencing on the Acceptance Date of the Final Segment of the Works, the Annual Realized Savings calculated at the end of each Annual Period will be no less than the Guaranteed Annual Savings for the corresponding Annual Period (hereinafter the "Performance Guarantee"). The measurement and verification

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calculation methodology for determining the Energy Savings shall be established in the M&V Plan, in accordance with Section 2.9 of Schedule 2 (Scope of Works).

(b) Except as otherwise provided, Guaranteed Annual Savings will be calculated as the System Baseline for each Annual Period as units of energy (kWh) minus the Performance Baseline for each month of each annual phase, assuming that the Performance Baseline has been maintained, as set forth in Appendix 3A (Services Performance Objectives and Penalties/Incentives) to Schedule 3 (Scope of Services).

(c) A Performance Guarantee Period savings reconciliation as identified in Section 1.2 of Appendix 3A of Schedule 3 will be performed by CONTRACTOR at the end of each Annual Period.

(d) Prior to the beginning of the Performance Guarantee Period, CONTRACTOR will have inspected all portions of the System and reported any deficiencies to CLIENT which are outside of the scope of the Works and which will impact Energy Savings of the System. To the extent that the deficiencies are not remedied by CLIENT prior to the Acceptance Date of the Final Segment of the Works, the adverse effect(s) on the ability of the System to attain the necessary Guaranteed Annual Savings shall be factored into the Annual Performance Report and, if necessary, the Performance Guarantee shall be adjusted accordingly.

5.3 Material Change

(a) As part of CONTRACTOR's performance of the Services, CLIENT and CONTRACTOR shall review the Performance Baseline and the Energy Savings data derived from the inventory and monitor the System in order to determine if a Material Change has occurred. If a Material Change has occurred, the Parties will determine what, if any, adjustments to the Performance Baseline and Services Performance Objectives are required by such Material Change. Any disputes between CLIENT and CONTRACTOR concerning any such adjustment shall be resolved in accordance with the applicable dispute resolution procedure as set forth herein.

(b) If any portion of the System or Infrastructure, or related facilities or substructure that supports or may affect the System or Infrastructure, is materially altered or moved by any person (including the CLIENT) other than CONTRACTOR or a person authorized by CONTRACTOR, CONTRACTOR reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of the System or Infrastructure in order to determine if a Material Change has occurred. If the Parties agree that a Material Change has occurred after the reacceptance testing or re-commissioning, CLIENT agrees to pay reasonable costs on a time and materials basis for such testing.

5.4 Additional Provisions

(a) Except as otherwise provided, CONTRACTOR payments to CLIENT for Savings Shortfalls in accordance with Sections 1.1 & 1.2 of Appendix 3A of Schedule 3, if any, are the sole remedy of CLIENT under this Performance Guarantee contemplated in this Agreement. This provision shall not in any way effect the CLIENT's warranty rights set forth herein.

(b) As a mutual goal of the Parties is to maximize Energy Savings, if CONTRACTOR determines it can correct a Savings Shortfall through an operational improvement at no expense or material inconvenience to the CLIENT and without future operational expenses and without compromising lighting performance, then the Parties shall in good faith work to effectuate the operational improvement. Any disputes between CLIENT and CONTRACTOR concerning the implementation of such operational improvements shall be resolved in accordance with the applicable dispute resolution procedure as set forth herein.

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(c) The Guaranteed Annual Savings are dependent upon and are subject to the express condition that the CLIENT does not intentionally and knowingly prevent, impede or obstruct the CONTRACTOR from operating and maintaining the System within a five percent (5%) variance from the Performance Baseline.

(d) CONTRACTOR will have no liability or obligation to continue providing the Services or to guarantee Energy Savings under the Performance Guarantee in the event that CLIENT unreasonably impairs CONTRACTOR's access to any part of the System where Services are to be performed.

ARTICLE 6: COMPENSATION; PERMITTED SECURITY INTEREST

6.1 Compensation

Subject to Section 6.4 below, CLIENT shall pay CONTRACTOR for performance of the Works and Services as provided in Schedule 4 (Payment Mechanism), as the same may be modified from time to time in accordance with this Agreement, and this Article 6.

6.2 General Obligation

Subject to Section 6.4 below, the obligation of CLIENT to pay Works Payments, any Termination Payment and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason whatsoever, including without limitation, any failure of the Infrastructure, Smart City Instruments or Artistic Lighting to perform as intended or expected, any defects, malfunctions, breakdowns or infirmities in the Infrastructure, Smart City Instruments or Artistic Lighting or any accident, condemnation or unforeseen circumstances, any nonpayment of any amounts payable by CONTRACTOR or any failure of CONTRACTOR to perform under this Agreement.

6.3 Security Interest

To secure the Works Payments and CLIENT's obligations related thereto under this Agreement, CLIENT grants to CONTRACTOR a security interest constituting a first lien on the Energy Savings Pledged Revenues, the Revenue Fund, the Infrastructure, Smart City Instruments and Artistic Lighting and any and all proceeds of any of the foregoing; provided however, no security interest is hereby granted on any Infrastructure and Smart City Instruments installed on New Mexico Department of Transportation owned street lights ("Permitted Security Interest"). CLIENT agrees to execute and authorizes CONTRACTOR to file such financing statements and other documents, in form satisfactory to CONTRACTOR, which CONTRACTOR deems necessary or appropriate to establish and maintain CONTRACTOR's security interest in the Infrastructure, Smart City Instruments and Artistic Lighting and the proceeds thereof. Upon the request of CONTRACTOR, CLIENT will, at CLIENT's expense, furnish a waiver of any interest in the Infrastructure, Smart City Instruments and Artistic Lighting from any party having an interest in any such real estate or building to which the Infrastructure, Smart City Instruments and Artistic Lighting is located.

6.4 Special Limited Obligation; Revenue Fund; Energy Savings Pledged Revenues

(a) As set forth in the Resolution and herein, the obligations of CLIENT under this Agreement, including its obligation to pay the Works Payments, Services Payments, Termination Payments and all other

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amounts hereunder (except as specifically provided for in Section 2.3(c) of Schedule 2 (Scope of Work) and Section 2.3.2 and Article 4 of Schedule 3 (Scope of Services)), shall constitute a special limited obligation of CLIENT payable only from the Energy Savings Pledged Revenues and the other security pledged therefor under this Agreement. The Energy Savings Pledged Revenues are hereby pledged to secure the payment of the Works Payments, Services Payments, Termination Payments, and all other amounts payable hereunder and the performance and observance of all of the covenants, agreements, obligations and conditions contained herein. This Agreement shall not constitute an indebtedness of CLIENT within the meaning of any constitutional, Charter or statutory prohibition or limitation, nor shall this Agreement be considered or held to be a general obligation of CLIENT. Notwithstanding the foregoing, nothing herein shall preclude CLIENT from using other funding sources to pay any amounts due herein.

(b) As set forth and established in the Resolution, the CLIENT has created on its books and records a special, segregated account designated as the "Revenue Fund" into which CLIENT shall record, as received, all Energy Savings Pledged Revenues. So long as any amounts payable under this Agreement remain outstanding, including in the event of a termination where such Termination Payment is not paid in full by the CLIENT, the Energy Savings Pledged Revenues shall be set aside and appropriated by CLIENT in the Revenue Fund in accordance with the following schedule: 1) \$1,866,672.00 shall be encumbered on the Effective Date, and for the purpose of this Agreement, shall be as though it is included in the Revenue Fund; 2) \$3,266,672.00 shall be appropriated into the Revenue Fund no later than the 1st day of July, 2018; and 3) \$3,500,000.00 shall be appropriated into the Revenue Fund no later than the 1st day of July each year thereafter. Amounts in the Revenue Fund shall be applied only to amounts payable by CLIENT under this Agreement and may not be pledged or applied for any other purpose; provided that the amount, if any, in the Revenue Fund in excess of the sum of the then-applicable Termination Payment plus the Works Payment payable on the next succeeding scheduled Works Payment date may be released from the Revenue Fund to CLIENT for any other purposes.

(c) No provision of this Agreement or the Resolution shall be construed to permit CLIENT to issue or incur obligations, other than this Agreement, payable from, or secured by, a pledge of, the Energy Savings Pledged Revenues.

(d) If State law or the Charter or any ordinance or part thereof, which affects the Energy Savings Pledged Revenues, shall ever be held to be invalid or unenforceable, CLIENT shall immediately take any action which is legally available to CLIENT necessary to produce sufficient Energy Savings Pledged Revenues to comply with the obligations of CLIENT hereunder.

(e) No law, ordinance or resolution of CLIENT which affects the Energy Savings Pledged Revenues shall be repealed or otherwise directly or indirectly modified in such a manner as to impair obligations of CLIENT hereunder or under the Resolution, unless the CLIENT's obligations hereunder have been discharged in full or provision has been fully made therefor.

6.5 Optional Prepayment

On either the five (5) year or ten (10) year anniversary of the Commencement Date, the CLIENT may prepay, in whole but not in part, its obligations to pay Works Payments and Services Payments upon written notice delivered to the CONTRACTOR at least 120 days in advance of such prepayment date, at a prepayment price equal to the Scheduled Termination Value for the prepayment date. Upon receipt of the full prepayment this Agreement shall terminate and the Parties shall have no further obligation or liability to the other under this Agreement.

ARTICLE 7: INSURANCE; LIMITATION OF LIABILITY; BONDING

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7.1 CONTRACTOR Insurance

CONTRACTOR shall maintain at a minimum the insurance types and coverage amounts detailed in Section 1.23 of the Request for Proposal.

7.2 CLIENT Insurance

After Acceptance for each Segment, the CLIENT will maintain at its own expense, or self-insure for the equivalent risks (i) property insurance on an "all-risk" risk replacement basis in an amount not less than the full replacement cost of the accepted Infrastructure, Smart City Instruments and Artistic Lighting without optional deductibles, and cover all risk casualty risks including, without limitation, the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, testing and start-up, rebuilding and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and compensation for CONTRACTOR's services and expenses required as a result of such insured loss and (ii) liability insurance that protects the CONTRACTOR and Lender from liability in all events in form and amount satisfactory to the CONTRACTOR. If the insurance requires deductibles or retentions, CLIENT shall pay costs not covered because of such deductibles or retentions. Such insurance shall cover portions of the Works located off the facility, and also portions of the Works in transit. The insurance required by this section shall include the interests of CLIENT, CONTRACTOR, and Lender in the Works. Except where the CLIENT is self-insured, each of CONTRACTOR and Lender shall be named as an additional insured on each such insurance coverage and as loss payee in the case of property insurance. CLIENT shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of CONTRACTOR or Lender without first giving written notice thereof to CONTRACTOR at least thirty (30) days in advance of such cancellation or modification. CLIENT shall furnish to CONTRACTOR insurance certificates and other evidence of the insurance required to be maintained by the CLIENT. Insurance provided by CLIENT under any self-insurance plan or program shall be satisfactory to CONTRACTOR and Lender in all respects.

7.3 Casualty; Condemnation

If, prior to the termination of this Agreement, (a) the Infrastructure, Smart City Instruments and Artistic Lighting 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 Infrastructure, Smart City Instruments and Artistic Lighting or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any Governmental Authority, CLIENT and CONTRACTOR will cause the net proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Infrastructure, Smart City Instruments and Artistic Lighting. Any balance of the net proceeds remaining after such work has been completed shall be paid to CLIENT. If any Infrastructure, Smart City Instruments and Artistic Lighting is replaced pursuant to this Section, the replacement Infrastructure, Smart City Instruments and Artistic Lighting shall be of similar type, utility and condition to the replaced Infrastructure, Smart City Instruments and Artistic Lighting and shall be of equal or greater value than, and shall provide at least the same level of energy and/or operational savings expected as, the replaced Infrastructure, Smart City Instruments and Artistic Lighting. CLIENT shall provide to CONTRACTOR any and all documents as CONTRACTOR may reasonably request in connection with such replacement, including, but not limited to, documentation in form and substance satisfactory to CONTRACTOR evidencing CONTRACTOR'S security interest in such replacement Infrastructure, Smart City Instruments and Artistic Lighting and CLIENT HEREBY GRANTS TO CONTRACTOR a first priority security interest in any such replacement Infrastructure, Smart City Instruments and Artistic Lighting. If the net proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in this Section, CLIENT shall 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) pay or cause to be paid to the CONTRACTOR the amount of the then applicable Termination Payment, and, upon such payment, this Agreement shall terminate. If CLIENT shall make any payments

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pursuant to this Section, CLIENT shall not be entitled to any reimbursement therefor from CONTRACTOR or be entitled to any diminution of the amounts payable hereunder.

7.4 Limitation of Liability

Each Party assumes full responsibility and liability of its own actions, including all claims, demands, liabilities, suits, damages, costs and expenses arising out of or caused by its own acts or the acts of its respective directors, officers, members, shareholders, agents and employees to the extent such claims, demands, liability, suits, damages, costs and expenses arise out of this Agreement and are (a) attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, (b) the result of a Party's gross negligence or willful misconduct, or (c) the result of a Party's violation of Applicable Law. Nothing herein is intended to serve as a waiver of sovereign immunity, nor shall anything herein be construed as consent by either Party to be sued by any third party for any cause or matter related to this Agreement. The Parties assume no liability for the actions or omission of the other's agents, representatives, employees, contractors or subcontractors.

CLIENT acknowledges and agrees that Lender is financing the acquisition of the Infrastructure, Smart City Instruments and Artistic Lighting. Lender has not been in the chain of title of the Infrastructure, Smart City Instruments and Artistic Lighting, does not operate, control or have possession of the Infrastructure, Smart City Instruments and Artistic Lighting and has no control over the Works performed by CONTRACTOR or CLIENT's or CONTRACTOR's installation, operation, use, storage or maintenance of the Infrastructure, Smart City Instruments and Artistic Lighting. Lender has no obligation with respect to the installation, operation, use, storage and maintenance of the Infrastructure, Smart City Instruments and Artistic Lighting or any other obligations of the Parties under this Agreement.

7.5 Bonding

Prior to the Commencement Date and through the Acceptance Date of the Final Segment of the Works, CONTRACTOR shall secure a surety bond(s) in the amount of \$17,669,341 each as a security for the faithful performance of the Works Phase of the Project and for the payment of all labor and materials therein. These bonds must be furnished to CLIENT within thirty (30) days of the Commencement Date. The aforementioned surety bonds for the Works shall expire and automatically be released, without request from CONTRACTOR, one (1) year from the date of CLIENT's execution of a Certificate of Acceptance of the Final Segment of the Works. *See Exhibit I for the applicable bond forms for the Works Phase surety bonds.*

On the Acceptance Date of the Final Segment of the Works, CONTRACTOR shall secure separate surety bonds in the amount of \$1,537,170 as security for the faithful performance of the Services Phase for such year and for the payment of all labor and materials therein. These bonds must be furnished to CLIENT within thirty (30) days after Acceptance Date of the Final Segment of the Works of this Agreement and thirty (30) days before each new Annual Period thereafter. The liability of CONTRACTOR under this bond is limited to the performance of the Agreement for the respective Annual Period. The liability of CONTRACTOR shall not be cumulative from Annual Period to Annual Period. *See Exhibit I for the applicable bond forms for the Services Phase annual surety bonds.*

Notwithstanding anything to the contrary herein, the surety bonds described in this Section 7.5 shall have no obligations therein and the surety of those surety bonds shall have no obligations hereunder with regard to CONTRACTOR's obligations under Article 5 above.

ARTICLE 8: HAZARDOUS MATERIALS PROVISIONS

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8.1 The Works and Services may require installation or removal of System assets, Infrastructure, Smart City Instruments and Artistic Lighting that may contain de minimus amounts of hazardous materials and the identification, handling, storage, removal, and transportation of hazardous materials expressly identified in Exhibit F ("Hazardous Materials Within Scope"). CONTRACTOR shall properly install, handle, remove and transport such Hazardous Materials Within Scope. Where pursuant to the Works or Services, CONTRACTOR is to remove Hazardous Materials Within Scope, CONTRACTOR shall properly handle, remove and transport such Hazardous Materials Within Scope to a collection point located at an authorized disposal facility.

8.2 Except for Hazardous Materials Within Scope, the Works or Services does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any part of the System, Smart City Instruments or Artistic Lighting project site at which Works or Services is performed and any part of the System, Smart City Instruments or Artistic Lighting project site where soil or groundwater is contaminated by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances, including any substances regulated under Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or any other Applicable Law (collectively called "Hazardous Materials"), including without limitation: ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. CONTRACTOR will notify CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Oil or Hazardous Material. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at any part of the System, Smart City Instruments or Artistic Lighting project site where CONTRACTOR is to perform Works or Services, or of contamination of any part of the System, Smart City Instruments or Artistic Lighting project site by Oil or Hazardous Materials not previously identified shall entitle CONTRACTOR to suspend the Works or Services in the contaminated area immediately, subject to mutual agreement of terms and conditions applicable to any further Works or Services, or to terminate the Works or Services in the contaminated area and to be paid for Works or Services previously performed.

ARTICLE 9: TERMINATION

9.1 *Termination Events*

(a) NON DEFAULT TERMINATION

(1) Voluntary. CLIENT may terminate this Agreement without cause by serving one hundred eighty (180) days prior written notice on CONTRACTOR. If CLIENT terminates the Agreement pursuant to this Section 9.1(a)(1), CLIENT shall pay to CONTRACTOR the Termination Payment in accordance with Section 9.3 below. CLIENT shall be obligated to make all Works Payments and Service Payments up to the termination date.

(2) Supervening Event. Either Party may terminate this Agreement at its sole discretion if a Supervening Event has occurred and is continuing for a period of ninety (90) consecutive days or one hundred eighty (180) days in aggregate in any Annual Period by serving the non-terminating Party one hundred eighty (180) days prior written notice. If CONTRACTOR or CLIENT terminates the Agreement pursuant to this Section 9.1(a)(2), CLIENT shall pay to CONTRACTOR the Termination Payment in accordance with Section 9.3 below. CLIENT shall be obligated to make all Works Payments and Service Payments up to the termination date.

(3) Change in Law. In the event that that CONTRACTOR is prevented from performing its obligations under the Agreement due to a Change in Law that cannot be remedied, CONTRACTOR may terminate this Agreement by serving one hundred eighty (180) days prior written notice to the CLIENT. If CONTRACTOR terminates the Agreement pursuant to this Section 9.1(a)(3), CLIENT shall pay to CONTRACTOR the Termination Payment in accordance with Section 9.3 below. CLIENT shall be obligated to make all Works Payments and Service Payments up to the termination date.

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(b) TERMINATION BY THE CLIENT FOR CONTRACTOR'S DEFAULT

CLIENT may terminate this Agreement by thirty (30) days written notice to CONTRACTOR upon the occurrence of an Event of Default by CONTRACTOR. An Event of Default occurs with respect to CONTRACTOR when:

(1) Failure to Perform

Beyond any grace or notice period CONTRACTOR fails to provide all or a substantial part of the Works or Services in accordance with this Agreement, other than:

(i) a failure to meet the Performance Guarantee or other Services Performance Objectives or Works Performance Objectives, the sole remedies for which are set forth in Schedule 4 (Payment Mechanism), in Schedule 2 (Scope of Works) and Schedule 3 (Scope of Services); or

(ii) where such failure is a consequence of a breach by CLIENT of its obligations under this Agreement; or

(iii) where such failure is a consequence of CLIENT's failure to comply with any of the provisions of the Schedules except in the event of an emergency (where CLIENT's notice is not required), in which case CONTRACTOR shall immediately and with due diligence proceed to completion any cure or remedy of a breach.

In respect of all other failures which are capable of remedy, and subject to Lender's right to cure under Article 11 of the Main Body of this Agreement, CLIENT shall provide written notice to the CONTRACTOR giving reasonable particulars of the failure, whereby CONTRACTOR shall upon receipt of notice have thirty (30) days to undertake and diligently proceed to remedy such failure. For the purpose of this Section 9.1(b) failure shall be considered capable of remedy if CONTRACTOR can comply with the provision in question in all respects other than as to the time of performance; or

(2) Insolvency

Without prejudice to any other right or remedy it may have, CLIENT may terminate this Agreement immediately by notice given in writing to CONTRACTOR if upon the dissolution or liquidation of CONTRACTOR or the filing by CONTRACTOR of a voluntary petition in bankruptcy, or failure by CONTRACTOR promptly to cause to be lifted any execution, garnishment or attachment of such consequence as will impair CLIENT's ability to carry on its obligations hereunder, or the entry of any order or decree granting relief in any involuntary case commenced against CONTRACTOR under any present or future federal bankruptcy act or any similar federal or state law, or a petition for such an order or decree shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof, or if CONTRACTOR shall admit in writing its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of CONTRACTOR shall be appointed in any proceeding brought against CONTRACTOR and shall not be discharged within ninety (90) days after such appointment or if CONTRACTOR shall consent to or acquiesce in such appointment, or assignment by CONTRACTOR for the benefit of its creditors, or the entry by CONTRACTOR into an agreement of composition with its creditors, or a bankruptcy, insolvency or similar proceeding shall be otherwise initiated by or against CONTRACTOR under any applicable bankruptcy, reorganization or analogous law as now or hereafter in effect and if initiated against CONTRACTOR shall remain undismissed (subject to no further appeal) for a period of ninety (90) days.

(c) TERMINATION BY CONTRACTOR FOR CLIENT'S DEFAULT

CONTRACTOR may terminate this Agreement by written notice to CLIENT upon the occurrence of an Event of Default by CLIENT. An Event of Default with respect to CLIENT shall occur upon any one of the following:

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- (1) CLIENT fails to pay any Works Payment when due; or
- (2) CLIENT fails to pay any Services Payment when due; provided however, CLIENT shall not be in default hereunder if it fails to pay any Services Payment amount as result of Service Payment setoff pursuant to Section 4.1.1(e) of Appendix 3A of Schedule 3; or
- (3) Failure of CLIENT to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Agreement (other than as provided in clause (a) or (b) above), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to CLIENT by CONTRACTOR, unless CONTRACTOR shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, CONTRACTOR will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by CLIENT within the applicable period and diligently pursued until the default is corrected; or
- (4) CLIENT consistently and purposefully fails to allow reasonable access to the System, Smart City Instruments or Artistic Lighting; or
- (5) Any representation or warranty made by CLIENT in connection with this Agreement shall prove to be untrue in any material respect on the date as of which it was made; or
- (6) The dissolution or liquidation of the CLIENT or the filing by CLIENT of a voluntary petition in bankruptcy, or failure by CLIENT promptly to cause to be lifted any execution, garnishment or attachment of such consequence as will impair CLIENT's ability to carry on its obligations hereunder, or the entry of any order or decree granting relief in any involuntary case commenced against CLIENT under any present or future federal bankruptcy act or any similar federal or state law, or a petition for such an order or decree shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof, or if CLIENT shall admit in writing its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of CLIENT shall be appointed in any proceeding brought against CLIENT and shall not be discharged within ninety (90) days after such appointment or if CLIENT shall consent to or acquiesce in such appointment, or assignment by CLIENT for the benefit of its creditors, or the entry by CLIENT into an agreement of composition with its creditors, or a bankruptcy, insolvency or similar proceeding shall be otherwise initiated by or against CLIENT under any applicable bankruptcy, reorganization or analogous law as now or hereafter in effect and if initiated against CLIENT shall remain undismissed (subject to no further appeal) for a period of ninety (90) days.

9.2 Provisions Governing Any Termination

(a) Limitations

Notwithstanding any other provision of this Agreement, CLIENT's right to terminate this Agreement shall be subject to Lender's rights under Article 11 of the Main Body of this Agreement.

(b) Continued Effect – No Waiver

Any waiver by either Party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provisions. Any waiver by either of Party of a breach of any provisions shall in no way relieve either Party of any of its responsibilities, duties or obligations under this Agreement, nor shall it constitute a waiver or relinquishment either Party's rights.

9.3 Compensation on Termination

In the event of termination of this Agreement for any reason, and, without prejudice to the other rights and remedies available to CONTRACTOR, CLIENT shall pay CONTRACTOR the applicable Termination Payment as set forth below and in Schedule 4 (Payment Mechanism). In the event CLIENT does not pay the full Termination Payment amount upon termination of this Agreement, CLIENT will pay the CONTRACTOR

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interest on the outstanding portion of the Termination Payment until such amount is paid, at a rate per annum equal to seven percent (7.00%) from the date of such termination.

(a) if CLIENT or CONTRACTOR terminates this Agreement in accordance with Section 9.1(a) above, or if CONTRACTOR terminates this Agreement pursuant to Section 9.1(c) above, then the Termination Payment shall be:

- (1) Scheduled Termination Value indicated in Schedule 4 (Payment Mechanism); plus
- (2) any redundancy payments; plus
- (3) any outstanding Works Payments or Service Payments; plus
- (4) other amounts owed to CONTRACTOR under this Agreement, including payment for Works performed prior to the Acceptance, taking due account of any payments already made; plus
- (5) Demobilization Costs, if Agreement is terminated pursuant Section 9.1(a)(1) or Section 9.1(c) above;

(b) if CLIENT terminates this Agreement in accordance with Section 9.1(b) above then the Termination Payment shall be:

- (1) Scheduled Termination Value indicated in Schedule 4 (Payment Mechanism)); plus
- (2) any outstanding Works Payments or Service Payments, as applicable, plus other amounts owed to CONTRACTOR under this Agreement, including Works performed prior to Acceptance, taking due account of any payments already made; plus
- (3) payments in respect, if any, by CONTRACTOR and all other accrued costs and expenses, including amounts spent on spare equipment.

The obligations of CLIENT to pay any amounts described above are payable only from the available funds in the Revenue Fund and from the other security pledged under this Agreement, as set forth in Section 6.4 of the Main Body of the Agreement.

9.4 Additional Termination Remedy Provisions

(a) CONTRACTOR may take whatever action Applicable Law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of CLIENT under this Agreement;

(b) Upon an Event of Default by CLIENT, with or without terminating this Agreement, CONTRACTOR may by written notice require CLIENT, at CLIENT's expense, to promptly return any or all of such Infrastructure, Smart City Instruments and Artistic Lighting to the possession of CONTRACTOR at such place within the United States as CONTRACTOR shall specify, or sell or lease such Infrastructure, Smart City Instruments and Artistic Lighting or, for the account of CLIENT, sublease such Infrastructure, Smart City Instruments and Artistic Lighting, continuing to hold CLIENT liable for the difference between (i) the amounts payable by CLIENT hereunder, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of CONTRACTOR in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Infrastructure, Smart City Instruments and Artistic Lighting and all brokerage, auctioneer's and attorney's fees). CLIENT's obligation to remove and return any Infrastructure, Smart City Instruments and/or Artistic Lighting to CONTRACTOR is subject to (i) Applicable Law and (ii) CLIENT's option, at CLIENT's expense, to resolve within 180 days of notice of such termination any public safety requirements related to the return of such assets.

(c) No remedy herein conferred upon or reserved to a Party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing under Applicable Law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default hereunder shall

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impair any such right or power or shall 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.

(d) In the event any agreement or covenant contained in this Agreement should be breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(e) The Parties agree that the formulations of damages described in this Article 9, including the formulation of the Termination Payment, are fair and reasonable approximations of the damages each Party would incur upon a termination based on an Event of Default and are not intended to be, nor should they be interpreted to result in, a penalty.

(f) The defaulting Party shall reimburse the other Party for all reasonable costs (including all applicable taxes and all legal or professional services) properly incurred by the other Party in exercising its rights and remedies hereunder, including any relevant increased administrative expenses.

ARTICLE 10: ASSIGNMENT

CONTRACTOR may, upon prior written consent by CLIENT (not to be unreasonably withheld), transfer, assign, mortgage, charge or dispose of any rights under this Agreement or otherwise delegate any of its rights and/or obligations hereunder; provided that if CONTRACTOR makes such transfer, assignment or takes such other action pursuant to this Article 10, CONTRACTOR acknowledges and agrees that it shall remain liable to CLIENT in relation to all of its obligations under this Agreement unless CLIENT approves the assignee's assumption of all of CONTRACTOR's rights, obligations and liabilities under this Agreement in writing. CLIENT agrees to execute all notices, consents or other documents as may be reasonably required to facilitate such action. CLIENT may not, without the prior written consent of CONTRACTOR and Lender, transfer, assign, mortgage, charge or dispose of any of its rights under this Agreement or otherwise delegate any of its obligations under it. Notwithstanding the foregoing, CONTRACTOR may assign to Lender all or part of its right, title, and interest in this Agreement (but not its obligations hereunder), including all amounts payable by CLIENT under this Agreement, all rights and remedies related thereto, and all proceeds of the foregoing, without the prior consent of CLIENT.

ARTICLE 11: FINANCING

CLIENT acknowledges that CONTRACTOR will finance the development and installation of the Infrastructure, Smart City Instruments and Artistic Lighting with financing accommodations Lenders, pursuant to loan agreements, sale agreement, notes, indentures, security arrangements, leases and other documents, ("Financing Documents") and that CONTRACTOR's obligations to such Lender(s) may be secured by, among other collateral, a pledge or collateral assignment of CONTRACTORS right, title and interest in, to and under this Agreement and the Infrastructure, Smart City Instruments and Artistic Lighting . In order to facilitate such financing or other accommodations CLIENT hereby consents and agrees to the following:

(a) CLIENT consents to sale and assignment and grant of interest by CONTRACTOR to any Lender of CONTRACTOR's right, title and interest in and to any Works Payments, Infrastructure, Smart City Instruments and Artistic Lighting installed pursuant to Schedule 2 (Scope of Works) under this Agreement, including the Permitted Security Interest.

(b) CLIENT consents to the collateral assignment of and grant of a security interest in, by CONTRACTOR to any Lender of CONTRACTOR's right, title and interest in and to this Agreement subject to the limitations contained in this Article 11.

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(c) CLIENT consents to complete and execute in a form and within the time period specified by CONTRACTOR, all notices, consents or other documents as may be reasonably required to facilitate such transfer or assignment or other action.

(d) CLIENT consents to make available to Lender a certificate(s) of insurance from its insurers which details all relevant policies, and upon Lender's reasonable request shall provide Lender with proof that such insurance remains in full force and effect or other supporting information as reasonably requested by Lender.

(e) CLIENT agrees to deliver to Lender promptly (but in no event more than five (5) Business Days) after its receipt thereof, a copy of any written notice furnished by CLIENT to CONTRACTOR relating to any default under Section 9.1 above, or opportunity to cure or intent to terminate (in whole or in part) this Agreement.

(f) CLIENT agrees to not, without the prior written consent of the Lender, agree to modify, amend or waive any Material Obligation of the CLIENT under this Agreement.

(g) CLIENT agrees to within ten (10) Business Days of receipt of Lender's request, execute and deliver such documents, evidence, and/or take such other reasonable actions necessary to recognize the rights of Lender hereunder upon foreclosure under any applicable financing documents and/or any Event of Default by CONTRACTOR hereunder and shall not take any action which would materially prejudice the interests of Lender thereunder or Lender's right to cure any Event of Default by CONTRACTOR hereunder.

(h) Notwithstanding any other provision of this Agreement:

(1) upon prior written notice to the CLIENT, the Lender, as collateral assignee and at its sole discretion, shall be entitled to exercise, in the place and instead of CONTRACTOR, any and all rights and remedies of CONTRACTOR upon the CONTRACTOR's default under this Agreement and undertake all obligations of CONTRACTOR in accordance with the terms of this Agreement.

(2) upon prior written notice to CLIENT, Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of CONTRACTOR thereunder or cause to be cured any default of CONTRACTOR thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires Lender to cure any default of CONTRACTOR under this Agreement or (unless Lender has succeeded to CONTRACTOR's interests under this Agreement) to perform any act, duty or obligation of CONTRACTOR under this Agreement, but CLIENT hereby gives it the option to do so; provided that if Lender directly or indirectly, takes possession of, or title to the Infrastructure, Smart City Instruments and Artistic Lighting prior to Acceptance, then Lender will (a) cure any CONTRACTOR defaults hereunder to the extent that such defaults are capable of being cured by Lender (but not to include payment of any monetary damages or offsets for failure to perform Services during the default period or any consequential damages claimed as a result of the failure to perform Services during such default period), as a condition to such taking of possession or title and (b) assume all of CONTRACTOR's obligations under this Agreement arising after the date of such taking of possession or title prior to Acceptance.

(3) CLIENT will not exercise its right to terminate or suspend this Agreement unless it shall have given Lender ninety (90) days' prior written notice of its intent to terminate or suspend this Agreement due to an Event of Default by CONTRACTOR, pursuant to Section 9.1(b) above, specifying the condition giving rise to such right, and Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Event of Default reasonably cannot be cured by Lender within such period and Lender commences and continuously and diligently pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances. The Parties' respective obligations will otherwise remain in effect during any cure period.

(4) If Lender, pursuant to an exercise of remedies by Lender, shall acquire title to or control of CONTRACTOR's assets prior to Acceptance and shall, within the time periods described in Section

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9.1 above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(i) CLIENT acknowledges and agrees that CONTRACTOR may change Lender at any time, in CONTRACTOR's sole discretion, and upon written notice to CLIENT, CLIENT shall abide by such new contact information and payment directions as instructed by CONTRACTOR and Lender.

ARTICLE 12: REPRESENTATIONS AND WARRANTIES

12.1 CONTRACTOR represents, warrants and covenants to the CLIENT that:

(a) It has all requisite corporate power to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of CONTRACTOR's organizational documents, any Applicable Law, or any agreements with third parties;

(b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;

(c) This Agreement is the legal, valid and binding obligation of CONTRACTOR, in accordance with its terms, and all requirements have been met and procedures have been followed by CONTRACTOR to ensure the enforceability of the Agreement;

(d) To CONTRACTOR's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting CONTRACTOR that affects the validity or enforceability of this Agreement; and,

(e) It is duly authorized to do business in all locations where the Works and Services are to be performed.

(f) CONTRACTOR has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on CLIENT in this regard.

(g) Neither of the execution or delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the organizational documents of CONTRACTOR, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which CONTRACTOR is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

(h) The information provided by CONTRACTOR to CLIENT relating to this Agreement and the Project is true, correct and complete, to the best of the CONTRACTOR's knowledge, in every material respect and contains no untrue statement of material fact or omits no material fact necessary to make the statements contained therein not misleading.

12.2 CLIENT represents, warrants and covenants to CONTRACTOR that:

(a) It is a political subdivision of the State of New Mexico and has all requisite corporate power and/or statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any Applicable Law, or any agreements with third parties;

(b) Acknowledging CLIENT's rights herein to terminate this Agreement for convenience, the CLIENT has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;

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(c) This Agreement is the legal, valid and binding obligation of CLIENT, in accordance with its terms, and all requirements have been met and procedures have been followed by CLIENT to ensure the enforceability of the Agreement;

(d) To CLIENT's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting CLIENT that affects the validity or enforceability of this Agreement; and,

(e) CLIENT has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on CONTRACTOR in this regard.

(f) CLIENT is not in violation of any Applicable Law promulgated or judgment entered by any federal, State, local or governmental authority that individually or in the aggregate, would affect its performance of any obligations under this Agreement.

(g) CLIENT is the holder of all federal, State, local or other governmental consents, licenses, permits, or other authorizations required to permit it to operate or conduct its business now and as contemplated by this Agreement.

(h) Neither of the execution or delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the organizational documents of CLIENT, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which CLIENT is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

(i) CLIENT has not entered into any leases, contracts, or agreements with any other persons regarding the lease or purchase (or equivalent transaction) of energy efficiency equipment or the provision of energy management services for or in respect to the System or, except as disclosed in writing, with regard to servicing any of the energy-related equipment located on or within the System.

(j) CLIENT is the owner of or has the requisite rights to the System (excepting those parts of the System owned by New Mexico Department of Transportation), Smart City Instruments project site and Artistic Lighting project site and has not mortgaged, pledged, lien, charged, leased, granted a security interest, encumbrance or claim on or with respect to the System (excepting those parts of the System owned by New Mexico Department of Transportation), Smart City Instruments project site and Artistic Lighting project site or any interest therein that would encumber performance under this Agreement.

(k) CLIENT intends to continue to use the System in a manner similar to its present use of such System.

(l) The System will be used by CLIENT only for the purpose of performing essential governmental or proprietary functions of CLIENT consistent with the permissible scope of CLIENT's authority.

(m) The information provided by CLIENT to CONTRACTOR relating to this Agreement and the Project is true, correct and complete, to the best of the CLIENT's knowledge, in every material respect and contains no untrue statement of material fact or omits no material fact necessary to make the statements contained therein not misleading.

ARTICLE 13: DISPUTE RESOLUTION

13.1 In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the aggrieved Party shall promptly provide written notification of the dispute, claim, question or disagreement to the other Party within thirty (30) days of the dispute, claim, question or disagreement. The Parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement, including seeking the intervention and opinion of an expert. To this effect, the Parties shall consult and negotiate with each other in good faith and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such solution within a period of thirty (30) days of the notice,

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then, upon notice by either Party to the other, all disputes, claims, questions or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provision of its Commercial Arbitration Rules, and the judgement on the award rendered by the arbitrator(s) may be entered in New Mexico court having jurisdiction thereof. No delay or omission to exercise any right or power accruing under this subsection to initiate arbitration administered by the American Arbitration Association for a dispute, claim, question or difference shall impair any such right or power or shall be construed to be a waiver thereof. Except to the extent otherwise provided herein (see Article 9 above), each Party hereto shall be responsible for their own fees, expenses and disbursements (including, without limitation, legal fees, attorney's fees and court costs) under this Article 13.

13.2 With the exception of disputes arising under Article 9 or Article 11 above, all disputes not resolved by negotiation between the Parties shall be first submitted to non-binding mediation administered by the American Arbitration Association under its Commercial Mediation Procedures, or as otherwise agreed to by the Parties or required by Applicable Law, before resorting to arbitration under this Article 13.

13.3 Notwithstanding any dispute that CONTRACTOR may have undertaken or be involved with, whether pursuant to this Article 13 or otherwise, and regardless of the basis thereof or grounds therefor, CONTRACTOR agrees that it will, for so long as this Agreement has not been terminated, diligently perform the Works and Services in accordance with the terms of this Agreement, provided that CLIENT pays all undisputed amounts invoiced and at the times required as set forth herein pursuant to the terms and provisions of the Agreement and otherwise performs its obligations in accordance with the terms of this Agreement.

13.4 Notwithstanding any dispute that CLIENT may have undertaken or be involved with, whether pursuant to this Article 13 or otherwise, and regardless of the basis thereof or grounds therefor, CLIENT agrees that it will, for so long as this Agreement has not been terminated, pay all undisputed amounts invoiced and at the times required pursuant to the terms and provisions of the Agreement and otherwise perform its obligations in accordance with the terms of this Agreement.

13.5 If a Party fails to pay any such amounts as described in Sections 13.3 and 13.4 above, the dispute resolution procedure under this Article 13 shall not apply and the Parties may proceed to enforce any rights and remedies under Article 9 above.

ARTICLE 14: AUDIT AND INSPECTIONS

At any time during normal business hours and as often as the CLIENT may deem necessary, there shall be made available to the CLIENT for examination all of the CONTRACTOR's records with respect to all matters covered by this Agreement. The CONTRACTOR shall permit the CLIENT to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The CONTRACTOR understands and will comply with the CLIENT's Accountability in Government Ordinance, §2-10-1 et seq. R.O.A. 1994 and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the CLIENT's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Charter.

ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 Subcontractors. CONTRACTOR may use subcontractors in the performance of the Works or Services, provided however that none of the Works or Services covered under this Agreement shall be subcontracted without prior written approval from CLIENT. CONTRACTOR shall be responsible for any portion of the Works and Services performed by any subcontractor of CONTRACTOR.

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15.2 Construction and Venue. This Agreement and the construction and enforceability thereof shall be interpreted under and governed by the laws of the State of New Mexico, irrespective of its choice of law provisions, and venue shall only be in Bernalillo County, New Mexico.

15.3 Change in Law. If CONTRACTOR suffers (or will suffer) delay and/ or incurs additional costs as a result of a Change of Law, then The CONTRACTOR must deliver a notice to CLIENT identifying the Change of Law and the impact of that Change of Law. Upon receiving notice, CLIENT and CONTRACTOR will proceed in good faith to negotiate an adjustment to the contract price and/or extension of time. If mutual consent is not reached, either Party may seek relief under Article 13 above. If CONTRACTOR is prevented from performing its obligations under the Agreement, but would be able to proceed if an amendment or Change Order were made to the Agreement, then the CONTRACTOR should submit a notice to CLIENT stating such. However, in the event that that CONTRACTOR is prevented from performing its obligations under the Agreement and this cannot be remedied by an amendment or Change Order, then CONTRACTOR may give notice of termination pursuant to Section 9.1(a)(3) above. If a Change of Law occurs, CONTRACTOR is obliged to take all reasonable steps to mitigate the adverse impact of such Change of Law upon the Agreement. Notwithstanding the foregoing, any amendment, supplement, modification or Change Order to this Agreement pursuant to this Section that could reasonably be expected to affect the Infrastructure, Smart City Instruments and/or Artistic Lighting or the amounts or timing of the Works Payments shall be subject to Lender's prior written consent.

15.4 Gross Inequity. Any gross proven inequity that may result in severe economic conditions not contemplated by the Parties at the time of the execution of this Agreement may be corrected by mutual consent; provided however that any gross proven inequity shall not in any way apply to, alter or affect the CLIENT's obligation to make Works Payments hereunder when due. Each Party shall in the case of a claim of gross inequity furnish the other with whatever documentary evidence may be necessary to assist in affecting a settlement. Notwithstanding the foregoing, any amendment, supplement, modification or Change Order to this Agreement pursuant to this Section that could reasonably be expected to affect the Infrastructure, Smart City Instruments and/or Artistic Lighting or the amounts or timing of the Works Payments shall be subject to Lender's prior written consent.

15.5 Prevailing Wage. As applicable, CONTRACTOR shall insure compliance with the New Mexico Public Works Minimum Works Act and any other binding prevailing wage determinations. During the Service Phase, the Service Payment amounts, Unit Prices, and/or fixed hourly labor rates will be adjusted to reflect increases or decreases by the CONTRACTOR in wages and fringe benefits to the extent that these increases or decreases are made to comply with an increased or decreased wage determination applied to this Agreement by operation of law. The CONTRACTOR shall notify the CLIENT of any increase claimed under this clause within thirty (30) days after the effective date of the wage change. The notice shall contain a statement of the amount claimed and any relevant supporting data that the CLIENT may reasonably require. Upon agreement of the Parties, the Service Payment amounts, Unit Prices, and/or fixed hourly rates shall be modified in writing. The CONTRACTOR shall continue performance pending agreement on or determination of any such adjustment and its effective date. Notwithstanding the foregoing, any amendment, supplement, modification or Change Order to this Agreement pursuant to this Section that could reasonably be expected to affect the Infrastructure, Smart City Instruments and/or Artistic Lighting or the amounts or timing of the Works Payments shall be subject to Lender's prior written consent.

15.6 Nonsubstitution. In the event of termination of this due to the non-appropriations of funds, CLIENT agrees, to the extent permitted by Applicable Law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by CONTRACTOR under the terms of this Agreement for a period of three-hundred sixty five (365) days following such termination of this Agreement due to non-appropriations.

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15.7 Representatives. CLIENT Representative and CONTRACTOR Representative (collectively "Authorized Representatives") are the following designees:

CLIENT Representative

Name: Robert J. Perry
Title: CAO
Address: PO Box 1293
Albuquerque, NM 87103
Phone: 505-768-3000

CONTRACTOR Representative

Name: Pierre Devilliers
Title: Country Manager
Phone: (202) 320-8328
Fax: (202) 488-0500
Email: pdevilliers@citelum.com

CLIENT and CONTRACTOR may change its Authorized Representative by giving written notice to the other. CLIENT Representative and CONTRACTOR Representative is the person authorized to make decisions on behalf of the CLIENT and CONTRACTOR, respectively, under the terms of this Agreement.

15.8 Notice. Without prejudice to any other method of giving notice, all communications provided for or permitted hereunder shall be in writing and delivered to the addressee by prepaid private courier or sent by telecopy or other direct written electronic means (provided that a written record is kept in respect of any such electronic communication), to the applicable address and to the attention of the officer of the addressee as follows:

To CLIENT:
City of Albuquerque
Attention: Robert J. Perry, CAO
PO Box 1293
Albuquerque, NM 87103
Phone: 505-768-3000

To CONTRACTOR:
Citelum US, Inc.
5404 Wisconsin Ave, Suite 400
Chevy Chase, MD 20815
Attention: Legal Department
Phone: (202) 558-4020
Fax: (202) 488-0500
Email: usadmin@citelum.com

Any notice or other communication made by personal delivery, telecopy or other direct written electronic means on a Business Day shall be deemed to have been given, received and made on such Business Day so long as it is actually received prior to 5:00 p.m. (Mountain Standard time) on such Business Day, and otherwise shall be deemed to have been made on the next following Business Day (any such notice given, received or made on a day which is not a Business Day shall be deemed to have been made on the next following Business Day).

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15.9 Accounting and Tax Representations. CONTRACTOR makes no representation or warranty with respect to CLIENT's treatment of any federal or state tax laws, any applicable accounting treatment or conventions or the assessment of any rating agency in connection with this Agreement, the project documents or any Infrastructure, Smart City Instruments and Artistic Lighting.

15.10 Provision of Information and Action. Parties agree to provide such information, execute and deliver any instruments and documents, and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

15.11 Expenses. Except to the extent otherwise provided herein, each Party hereto shall be responsible for their own fees, expenses and disbursements (including, without limitation, legal fees and disbursements) in connection with the preparation, execution, delivery and/or performance under this Agreement and all other documents and instruments associated with any of the same.

15.12 Assent. CONTRACTOR's performance of the Works and Services is expressly conditioned on the Parties assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted by a Party to the other Party relating to the Works or Services, even if signed by the Parties, unless the written statement expressly indicates that such terms supersede the terms of this Agreement.

15.13 Waiver. The failure of CONTRACTOR or CLIENT to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of CONTRACTOR or CLIENT.

15.14 Severability. It is agreed that the illegality or invalidity of any term or clause of this Agreement, shall not affect the validity of the remainder of this Agreement and this Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein.

15.15 Entire Agreement. This Agreement, when executed, together with all Schedules, Exhibits and other project documents in this Agreement, shall constitute the entire agreement between the Parties with respect to the subject matter hereof and this Agreement may not be amended or modified except by a written agreement signed by the Parties hereto. This Agreement supersedes all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same.

15.16 Arm's Length Negotiation. The Parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and among the Parties equally sophisticated and knowledgeable as to the subject matter of this Agreement. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.


15.17 Counterparts. This Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts taken together shall constitute one and the same Agreement. This Agreement may be executed by facsimile or electronic mail in portable document format ("pdf") and any signature contained hereon by facsimile or electronic mail in pdf shall be deemed to be equivalent to an original signature for all purposes.

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IN WITNESS WHEREOF, the Parties have executed this Agreement by their authorized signatures as of the date first written above.

CITY OF ALBUQUERQUE

Approved By:

 9/17/17

Date

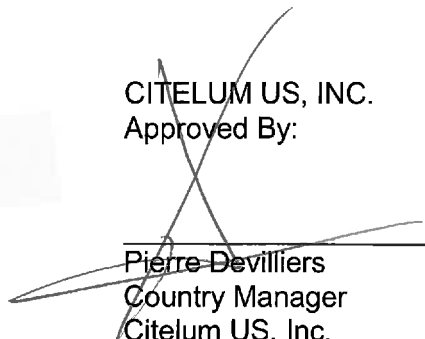
Robert J. Perry
Chief Administrative Officer
City of Albuquerque

JMA

GRS

CITELUM US, INC.

Approved By:

 09/21/2017

Date

Pierre Devilliers
Country Manager
Citelum US, Inc.

Recommended By:

 9/25/17

Date

Melissa R. Lozoya, P.E.
Acting Director Department of Municipal Development
City of Albuquerque

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

SCHEDULE 1: DEFINITIONS

The following terms shall for all purposes have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Agreement:

“Acceptance” means the conditions contained in Section 3.7 have been completed and CLIENT has signed, or is deemed to have signed and delivered, a Certificate of Acceptance.

“Acceptance Date” means the date on which Acceptance has occurred or been completed for each Segment of the Works.

“Annual Performance Report” means the document prepared by CONTRACTOR and submitted to the CLIENT, which identifies the results achieved (KPIs) for the applicable Annual Period.

“Annual Period” means an annual period beginning on the Commencement Date or on any anniversary date thereafter.

“Annual Realized Savings” means the actual Energy Savings achieved by the System during an Annual Period derived from the sum of the measured & verified savings plus any Stipulated Savings.

“Applicable Law” means any Laws in force in the State of New Mexico where the System is located, or that is otherwise binding on a Party or those for whom, at law, they are responsible.

“Artistic Lighting” means the artistic lighting projects and equipment and infrastructure required to be provided by the CONTRACTOR as described in accordance with Schedule 2 (Scope of Works).

“Authorized Representative” means collectively CLIENT Representative and CONTRACTOR Representative.

“Business Day” means any calendar day other than a Saturday, Sunday or federal holiday in the United States, except that in the event that an obligation to be performed under this Agreement falls due on a day other than a Business Day, the obligation shall be deemed due on the next Business Day thereafter.

“Calendar of Execution” refers to the calendar detailed in Exhibit C.

“Certificate of Acceptance” means a written non-recourse certificate of acceptance in the form substantially similar to the certificate of acceptance attached hereto in Schedule 5.

“Change in Law” means the coming into effect or repeal (without re-enactment or consolidation) in the state or commonwealth or the United States of any Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in the state or commonwealth, in each case after the date of this Agreement which has a material adverse effect on a Party’s ability to perform under this Agreement, provided that a Change in Law shall not apply to any Party’s obligation to pay hereunder when due.

“Change Order” means modification of the Works pursuant to Schedule 2 (Scope of Works).

“Charter” means the Charter of the City of Albuquerque adopted pursuant to the laws of the State at a special election on June 29, 1971 as amended thereafter from time to time.

“CLIENT” means City of Albuquerque, a political subdivision of the State of New Mexico.

“CLIENT Representative” means the person identified to CONTRACTOR by CLIENT as the person authorized to make decisions on behalf of CLIENT, as further set forth in Section 15.7 of the Main Body of the Agreement.

“Commencement Date” shall mean thirty (30) days after the date the CONTRACTOR achieves Financial Closing; provided, however, the Commencement Date shall be no earlier than two (2) months after the Effective Date.

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"Commissioning and Quality Assurance Plan" means the plan for commissioning the Infrastructure during the Works Phase.

"CONTRACTOR" means Citelum US, Inc. and its successor and assigns.

"CONTRACTOR Pre-existing Intellectual Property" means any Intellectual Property: (i) that has been conceived or developed by an employee or subcontractor of CONTRACTOR before CONTRACTOR performs any Works or Services under this Agreement; (ii) that is conceived or developed by such employee or subcontractor at any time wholly independently of CONTRACTOR performing the Works under this Agreement; or, (iii) if developed while performing the Works under this Agreement, where the development of Intellectual Property for the benefit of the CLIENT is not expressly identified as part of the Works. CONTRACTOR Pre-existing Property is included in all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for CONTRACTOR.

"CONTRACTOR Representative" means the person identified to CLIENT by CONTRACTOR as the person authorized to make decisions on behalf of CONTRACTOR, as further set forth in Section 15.7 in the Main Body of the Agreement.

"Constant Energy Rate" means an energy rate of \$0.0561839 per kWh, as the customer owned metered lighting rate as described in Section B of Public Service Company of New Mexico Electric Service, 15th Revised Rate No. 20, Canceling 14th Revised Rate No. 20, incorporated herein as Exhibit J. The Constant Energy Rate shall be reviewed and revised every five years in accordance with any changes in the Public Service Company of New Mexico Electric Service rate.

"Contingency Deadline" shall be thirty (30) days after the Effective Date of this Agreement.

"Damage Amount" refers to the annual damage amount covered under the Service Payments for Repairs as identified in Section 2.3.2 of Schedule 3.

"day(s)" shall mean calendar day.

"Demobilization Costs" shall mean all activities and costs for transportation of personnel, equipment and supplies from the site; disassembly, removal, and site cleanup of offices, buildings, and other facilities; all reasonable costs associated early termination incurred by CONTRACTOR with its subcontractors, vendors, providers; reasonable ongoing lease costs or lease termination costs for vehicles, warehouse space, office space and other leased items for this Agreement; accrued costs and expenses, including amounts spent on equipment and inventory. CONTRACTOR shall take all reasonable steps to mitigate demobilization costs and expenses upon termination of the agreement.

"Energy Savings" means all reductions in energy or utility consumption, a changed utility rate classification, a combination thereof, or other savings contemplated herein derived from installation of the Infrastructure and performance of the Services, in accordance with Schedule 3 (Scope of Services). Energy Savings are measured and expressed in kilowatt hours (Kwh).

"Energy Savings Pledged Revenues" means the pledged Energy Savings Revenues, the Operational Savings and the Present Expenses. The Energy Savings Pledged Revenues are \$2,800,000.00 for the first Annual Period and \$3,500,000.00 for each subsequent Annual Period, which the CLIENT hereby unconditionally pledges in all events without abatement, diminution, deduction, set-off or defense.

"Energy Savings Revenues" means Guaranteed Annual Savings for each Annual Period multiplied by the initial Constant Energy Rate plus additional rate additional rate tariff of \$.021902. The pledged Energy Savings Revenues are \$774,672.00 for the first Annual Period and \$1,130,028.00 for each subsequent Annual Period, which the CLIENT hereby unconditionally pledges in all events without abatement, diminution, deduction, set-off or defense.

"Equipment" means installed physical street light equipment, which includes luminaires and photocells, that is required to be provided by CONTRACTOR as part of Schedule 2 (Scope and Works).

"Event of Default" refers to the terms of Event of Default prescribed in Section 9.1(b) & (c) in the Main Body of the Agreement.

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“Existing System” refers to the non-upgraded portions of the System during the Works.

“Extension Estimate” refers to the definition found in Section 1.3(b)(1) in the Main Body of the Agreement.

“Final Segment of the Works” means the last Segment of the Works which upon completion and acceptance completes the CONTRACTOR’s obligations under the Works Phase of this Agreement.

“Financial Closing” the date the CONTRACTOR achieves financial closing and/or obtains all necessary approvals for financing the Project, as evidenced by written notice from CONTRACTOR to CLIENT.

“Financing Documents” refers to the definition found in Article 11 in the Main Body of the Agreement.

“Governmental Authority”: means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the Project, any aspect of the performance of this Agreement or any of the other project documents, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.

“Guaranteed Annual Savings” are the Energy Savings that CONTRACTOR guarantees will be achieved in an Annual Period of the Performance Guarantee Period, as identified in the Appendix 3A (Services Performance Objectives and Penalties/Incentives) to Schedule 3 (Scope of Services).

“Hazardous Materials Within Scope” refers to those materials listed in Exhibit F.

“IESNA Guide for Photometric Measurement of Roadway Lighting Installations” means the ANSI/IES RP-8-14, ISBN # 978-0-87995-299-0, published by the Illuminating Engineering Society of North America, 2014.

“Infrastructure” means the Equipment and other physical street light infrastructure which includes street light poles, arms, wiring, foundations and other related infrastructure and equipment that is part of the System, Client-owned, and that is required to be installed by CONTRACTOR as part of Schedule 2 (Scope of Works).

“Intellectual Property Rights” or “Intellectual Property” means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

“IPMVP” means the International Performance Measurement and Verification Protocol, Volume 1, EVO 10000-1.2007 as prepared by the Efficiency Valuation Organization.

“KPI” means Key Performance Indicator.

“Lamp” means apparatus designed as the source of light.

“Law” means any applicable constitution, charter, act, statute, law (including common law), ordinance, code, rule, regulation, judgment, decree, writ, order, permit, approval, or the like, as any of the foregoing may change from time to time, of any federal, state or local government or any agency, department, authority, court, political subdivision or other instrumentality thereof.

“Lender” means any or all of the persons acting arm’s length to CONTRACTOR or its affiliates who provide financing to CONTRACTOR or its affiliates for the purposes of funding the performance of all or any portion of the Work and/or Services, and its successors and assigns.

“Lenders’ Compensation” refers to the compensation amounts detailed in Schedule 4.

“kW” and “kWh” means kilowatt and kilowatt hour, respectively.

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“Main Body” refers to Articles 1-15 in the main body of the Agreement above.

“Material Change” means a measurable deviation in the Performance Baseline and/or lighting performance metrics that is not caused by CONTRACTOR such that there is an adverse impact on the Annual Realized Savings which results or will result in a Savings Shortfall. A Material Change includes, but is not limited to: (a) changes in the manner of use of the System, (b) changes in the hours of operation of System, (c) changes in the quantities and types of materials used in the System, (d) modification, renovation or construction at or around the System, (e) any significant damage to the System caused by Supervening Event, or (f) any substantially changed condition affecting the energy use in the System.

“Material Obligation” means an obligation under this Agreement that is significant, as opposed to trivial, the breach of which would deprive the other Party of benefits it would have received under this Agreement, and includes any obligation the breach, waiver or modification thereof could (a) have an adverse effect on any Works Payment or Termination Payment (including the amount and due date thereof), or (b) impair the originally intended value, function or use of the Infrastructure, Smart City Instruments or Artistic Lighting.

“Measurement and Verification Plan” or “M&V Plan” shall mean the measurement and verification plan described in Section 2.9 of Schedule 2.

“MUSE” refers to the Centralized Maintenance Management Software which is a data and tracking system for asset data, installation and repair data, maintenance data, energy consumption data and other System data.

“Non-Upgraded System Assets” shall mean System components that are not upgraded or replaced during the Works Phase. Any component of the Non-Upgraded System Assets that is replaced pursuant to Section 2.3.2 of Schedule 3 shall be treated as Infrastructure for the remainder Services Phase.

“Normal Wear and Tear” means damage that naturally and inevitably occurs as a result of normal wear or aging.

“Oil” means petroleum or petroleum products.

“Operating Center” shall mean the operating center as described in Section 2.6.3 of Schedule 2 and Section 2.6 of Schedule 3.

“Operational Savings” means utility maintenance savings, utility bill savings and present third-party expenses for street light maintenance savings derived from what the CLIENT paid annually prior to the Commencement Date. The pledged Operational Savings are \$790,384.00 for each Annual Period, which the CLIENT hereby unconditionally pledges in all events without abatement, diminution, deduction, set-off or defense.

“Operations and Maintenance” or “O&M” shall mean the operation, maintenance, monitoring, management, repair and replacement of the System during the Services Phase.

“Parties” means the CLIENT and CONTRACTOR.

“Performance Assurance Reconciliation” is the process of ascertaining whether the System is performing at the level necessary to achieve the Guaranteed Annual Savings for an Annual Period.

“Penalties Cap” means the maximum cumulative amount of all Savings Shortfall payments and O&M penalty amounts the CONTRACTOR is obligated to make to the CLIENT, as more particularly described in Appendix 3A (Services Performance Objectives and Penalties/Incentives) to Schedule 3 (Scope of Services).

“Performance Baseline” means the operating profile of the System after all Works have been completed and Infrastructure installed, based on parameters described in the Appendix 3A (Services Performance Objectives and Penalties/Incentives) to Schedule 3 (Scope of Services), which is relied upon by CONTRACTOR for the calculation of Guaranteed Annual Savings as provided in the Appendix 3A (Services Performance Objectives and Penalties/Incentives) to Schedule 3 (Scope of Services).

“Performance Guarantee” means CONTRACTOR’s guarantee that the Annual Realized Savings calculated at the end of each Annual Period will be no less than the Guaranteed Annual Savings for the corresponding Annual Period.

“Performance Guarantee Period” means the timeframe from the Acceptance Date of the Final Segment of the Works until the termination of this Agreement.

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“Permitted Security Interest” means the security interest in the upgraded Infrastructure, Smart City Instruments and Artistic Lighting granted by the CLIENT to the CONTRACTOR pursuant to Section 6.3 of the Main Body of Agreement.

“Permitted Users” means the CLIENT, its employees and authorized agents.

“Phase I Deliverable” refers to Phase I deliverable provided by CONTRACTOR in accordance with the RFP.

“Phase II Deliverable” refers to Phase II deliverable provided by CONTRACTOR in accordance with the RFP.

“Phase III, Lighting Conversion Implementation Plan” refers to the plan detailed in Exhibit A.

“Present Expenses” means expenses the CLIENT annually paid for the operation and maintenance of the Existing System and the associated energy payment which are not otherwise included in the Energy Savings Revenues and Operational Savings. The pledged Present Expenses are \$1,234,944.00 for the first Annual Period and \$1,579,588.00 for each subsequent Annual Period, which the CLIENT hereby unconditionally pledges in all events without abatement, diminution, deduction, set-off or defense.

“Project” means Works and Services provided in the Agreement.

“Prudent Industry Practice” means those practices, methods, equipment, specifications and standards of safety and performance, as the same may be changed from time to time, as are generally used in the installation and operation and maintenance of street light systems, which in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are considered good, safe and prudent.

“Repair(s)” means repairs of outages, malfunctions, damages or deteriorations to the Non-Upgraded System Assets or repairs made to the System caused by accidents, acts of vandalism or acts of god.

“Request for Proposal” or “RFP” shall mean the Evaluation and Implementation of Energy Efficiency and Reduced Maintenance on City Owned and Maintained Street Lighting, Request for Proposals: P201600023.

“Resolution” means City Resolution No. 17-237, adopted by CLIENT on September 18, 2017, which is adopted herein.

“Revenue Fund” means the City of Albuquerque Energy Savings Revenue Fund established by Resolution and herein and held by CLIENT for the purposes of collecting the Energy Savings Pledged Revenues paying the amounts due and payable hereunder.

“Savings Excess” means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount greater than zero.

“Savings Shortfall” means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount less than zero.

“Schedule(s)” refers to the Schedules 1 through 6 herein.

“Schedule and Breakdown of the Works” refers to the schedule detailed in Exhibit D.

“Scheduled Maintenance” refers to proactive maintenance provisions identified in Section 2.3.1 of Schedule 3.

“Scheduled Termination Value” refers to the amounts identified in Schedule 4 to be paid by the CLIENT as part of any Termination Payment.

“Segment(s)” means collective labor, Infrastructure, Smart City Instruments, Artistic Lighting and related services to be performed by or on behalf of CONTRACTOR for each segment of the Works, as further identified and described in Schedule 2 (Scope of Works).

“Services” means those services to be provided by CONTRACTOR as described in Article 4 and Schedule 3 (Scope of Services).

“Service(s) Payment” means payments for the operation and maintenance of System during the Works Phase pursuant to Section 2.3 of Schedule 2 and the operation, maintenance, monitoring, management, repair and replacement of the System, Smart City Instruments and Artistic Lighting services during the Services Phase.

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“Services Performance Objectives” shall mean the Service Phase KPIs or performance objectives, descriptions and metrics that are subject to penalties and incentives as described in Schedule 3.

“Service(s) Phase” refers to the phase in the Agreement in which Services are performed after Acceptance Date of the Final Segment of Works.

“Smart City Instruments” refers to the physical nodes, instruments and equipment used in smart city and safety applications as required to be provided by the CONTRACTOR as described in accordance with Schedule 2 (Scope of Works)

“Software Product” means any software that is owned or licensed by CONTRACTOR or its affiliates and that is either separately deliverable for use in the Infrastructure, Smart City Instruments or Artistic Lighting or for use in a computer system owned by the CLIENT or delivered as firmware embedded in the Infrastructure, Smart City Instruments or Artistic Lighting.

“State” means the State of New Mexico.

“Stipulated Savings” are a sub-category of Guaranteed Annual Savings that do not require post-FIM implementation measurement and verification because they are agreed upon by the Parties based upon representations made to CONTRACTOR by the CLIENT and through the application of generally accepted analytical formulae. As such, Stipulated Savings are agreed upon in advance by the Parties and cannot be changed. When used as a methodology for representing a FIM’s energy savings, such methodology is not recognized as a measurement and verification methodology under IPMVP. Therefore, where the IPMVP measurement methodologies are required, a methodology other than Stipulated Savings must be used to calculate energy savings.

“Supervening Event”: means any of the following to the extent, in each case, it has a material adverse effect on CONTRACTOR’s ability to perform its obligations under this Agreement: (a) any civil disobedience or dissent, including measures taken or threatened to be taken after the date hereof by one or more persons protesting or demonstrating against the realization of all or part of the Project, including the execution of the Works and the performance of the services hereunder; (b) fire, explosion, lightning, storm, tempest (including, but not limited to, an ice storm), hurricane, tornado, flood or any other natural disaster, ionizing radiation, earthquake, riot, theft, vandalism or civil commotion or any declared State of Emergency at the Federal, State or local level; (c) failure by any utility supplier, any Governmental Authority or other similar entity to provide the requisite approvals, permits, and consents or requisite access or make the requisite repairs required for the performance of the Works and Services; (d) instability and/or unavailability of the power grid; (e) irreparable disruption of the economy or solvency of the Agreement that is no fault of CONTRACTOR; (f) blockade or embargo; (g) strikes, lockouts, or other labor-related disputes affecting the System, the construction sector or maintenance of infrastructure sector or a significant part thereof; (h) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities; (i) third party bid protest, or (j) nuclear, radioactive, chemical or biological contamination of the System, Smart City Instruments and Artistic Lighting or any real or personal property adjacent thereto that prevents the CONTRACTOR from performing a material part of its obligations under this Agreement.

“System” means the street light system owned, maintained or controlled by CLIENT which is located within the limits of the city of Albuquerque, New Mexico and where the Works and Services will be performed, and which is used primarily to illuminate a road, street, highway or interstate freeway and includes the street light system’s physical infrastructure and equipment: luminaires, photocells, street light poles, arms, wiring, pole foundations; more specifically, the System refers to the street lights owned or controlled by CLIENT as identified in the inventory provided in Phase II Deliverable of the RFP and Exhibit A. The System specifically excludes Smart City Instruments and Artistic Lighting and any utility owned street lights.

“System Baseline” means the measurements of System taken as part of the Inventory, and the System operating practices in effect on the Agreement Effective Date, as set forth in Appendix 3A (Services Performance Objectives and Penalties/Incentives) in Schedule 3 (Scope of Services).

“Technical Watch Committee” means a committee created at CLIENT’s request to ensure ongoing technical monitoring and advancements in streetlighting and to remain informed about changes in standards and

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regulations. The Technical Watch Committee will consist of an equal number of representatives from CLIENT and from CONTRACTOR and shall meet at the end of each year at the request of CLIENT.

“Technological Advancements” shall mean advances in lighting technology that occur subsequent to the execution of this Agreement that will improve the performance of the System.

“Term” means the fixed duration of this Agreement as identified in Section 1.2 of the Main Body of the Agreement.

“Termination Payment” means the sum paid in consequence of the termination of this Agreement in accordance with Article 9 in the Main Body of the Agreement.

“Unit Prices” means the lists provided in Exhibit B.

“Unscheduled Maintenance” means the repair of outages or malfunctions that are caused by Normal Wear and Tear of the Infrastructure or outages that are a result of defective Infrastructure.

“Work(s)” means collective labor, Infrastructure, Smart City Instruments, Artistic Lighting and related services for all Segments to be performed by or on behalf of CONTRACTOR in the Works Phase, as further identified and described in Schedule 2 (Scope of Works).

“Work(s) Amount” means principal amount of the financing obtained by CONTRACTOR for this Agreement. Works Amount does not include interests on the principal or any Service Payment amounts.

“Work(s) Payment” means payments for Works performed during the Works Phase, specifically excluding the operation and maintenance of the System during the Works Phase.

“Work(s) Performance Objectives” shall mean the KPIs or performance objectives, descriptions and metrics that are subject to penalties as described in Schedule 2.

“Work(s) Phase” shall mean the phase of the Agreement in which the Works are performed.

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SCHEDULE 2: SCOPE OF WORKS

ARTICLE 1: Description of the System, Artistic Lighting and Smart City Instruments

a. System Layout

The layout of CLIENT's System is described in the RFP, Phase II Deliverable and Exhibit A and is within the city limits of Albuquerque, New Mexico. CONTRACTOR shall upgrade the Infrastructure of the System during the Works as set forth in Exhibit A. The scope of the System may be amended for the installation of additional street lights in the System.

b. System Data Inventory

CLIENT's street light assets that make up the System are set forth in Phase II Deliverable and Exhibit A. Assets vary in size (wattage), type (HPS, MV, etc.), and style (Cobra, post top, wall pack, etc.). The System assets are property of the CLIENT and/or CLIENT has the requisite rights to upgrade, operate and maintain the assets. CLIENT's street light assets subject to this Agreement do not include any utility-owned street lights.

c. Artistic Lighting

Artistic Lighting shall be installed on CLIENT's city hall, located at 1 Civic Plaza NW, Albuquerque, NM. A conceptual design and scope for each Artistic Lighting installation is set forth in Exhibit A. Technical specifications and drawing will be incorporated into Exhibit E accordingly.

d. Smart City Instruments

Smart City Instruments shall be installed on CLIENT's System. The Smart City Instrument installation may include street light control nodes, network access points, dome security cameras, Wifi hotspots, and a digital platform. A conceptual design and scope of the Smart City Instruments installation is set forth in Exhibit A. Technical specifications and drawing will be incorporated into Exhibit E accordingly.

ARTICLE 2: General Scope of Works

2.1 General principles

The Works, as described herein and in Exhibits A, C and D, shall be performed by CONTRACTOR in conformity with current standards, Applicable Laws and regulations, and in accordance with the prescriptions of this Schedule and associated appendices and exhibits. Except as otherwise expressly provided herein, CONTRACTOR shall provide all items necessary for the performance of the Works.

2.2 Interim Period

The Interim Period shall be the period between the Agreement's Effective Date and the Commencement Date. During the Interim Period, CONTRACTOR may perform any preparatory work and operations needed to mobilize for the Works, which may include, but is not limited to, the following:

1. Movement to, placement and set-up on project site of personnel, equipment, supplies and accessory items;

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2. Establishment of offices, buildings and other needed facilities as well as utility work and connections needed for these facilities;
3. Scheduling details, coordination and any other work and expense appropriate prior to the start of Works under Agreement.

2.3 Operation and Maintenance of System

(a) Commencing no later than the Commencement Date and until the Acceptance Date of the Final Segment of the Works, CONTRACTOR will operate and maintain the Existing System that has not been upgraded and that is part of the scope of Works. CONTRACTOR shall maintain Existing System at an overall lighting efficiency of approximately seventy percent (70%).

(b) Upon Acceptance of each Segment, CONTRACTOR shall operate and maintain the accepted Segment at a level consistent with its conditions upon its Acceptance Date. This level shall be maintained through the Acceptance Date of the Final Segment of the Works.

(c) Prior to the Acceptance Date of the Final Segment, any materials and equipment installed or used in order to repair or replace the Existing System or any Segments or portions of Segments that have been accepted will be provided for under the Services Payments up to an amount of \$100,000.00. Any costs for materials or equipment that exceed this amount during said operation and maintenance period shall be separately billed or surcharged on a time and materials basis and paid by CLIENT from sources other than the Revenue Fund, unless otherwise agreed to in writing. If the CLIENT lacks other available funds to pay for repair costs above the \$100,000.00 cap, CONTRACTOR shall not be obligated to make any such repairs until such other funds are made available. Upon approval by CLIENT, CONTRACTOR shall have the right to use CLIENT's fixtures and materials for maintenance of the Existing System.

(d) CONTRACTOR'S operation and maintenance of Existing System and any Segments of the System that have received a Certificate of Acceptance will be compensated under the Services Payments in accordance with Article 6 of the Agreement and Schedule 4 (Payment Schedule) below during the Works Phase. The terms and conditions of Schedule 3 (Scope of Services) and Appendix 3A, "Services Performance Objectives and Penalties/Incentives" to Schedule 3 are not applicable to and not enforceable under the operation and maintenance of the Existing System or accepted Segments of the System prior to Acceptance Date of the Final Segment of the Works.

2.4 Works: Project Upgrade

CONTRACTOR shall perform the installation of the Infrastructure, Smart City Instruments and Artistic Lighting in accordance with Exhibit A ("Phase III, Lighting Conversion Implementation Plan"), Exhibit C ("Calendar of Execution") and Exhibit D ("Schedule and Breakdown of the Works").

2.4.1 Modifications to Calendar of Execution and Schedule of Works

CLIENT may request adaptations and modifications to the work schedule set forth in Exhibit C and D, provided that the request is made in writing and made no later than thirty (30) days before the submission of the required authorizations and applicable approvals. Notwithstanding the foregoing, for any adaptation and modifications to the work schedules for urban redevelopment or city-owned projects, CLIENT shall request any modifications at least sixty (60) days prior to the submission of the required authorizations.

Upon CLIENT's request, CONTRACTOR shall study and define the technical, economic and financial impacts of the scheduling adaptations and modifications and provide the CLIENT with a proposal for CLIENT's requests. Any scheduling adaptations or modifications must be agreed to in writing by both Parties and any financial or other consequences related to any requested scheduling adaptations or modifications that are subsequently implemented will be borne by CLIENT.

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If a change of the schedule requested by CLIENT directly causes a delay in the acceptance of any Segment, the direct or indirect consequences, including costs, will be borne by CLIENT.

2.4.2 Conditions of Execution of the Works & Safety Program

Conditions of Execution of the Works. Prior to starting the Works, CONTRACTOR will obtain all requisite information and authorizations and fulfill all administrative requirements necessary for the performance of the Works. CONTRACTOR shall provide CLIENT an organizational plan of the Works to be performed, indicating the access requirements and installation requirements for the worksites and any plans to limit the impacts on the surrounding areas.

Safety Program. CONTRACTOR will make a commercially reasonable effort to ensure safety at the worksites and their surroundings areas for the entire duration of the Works in accordance with all Applicable Law. In carrying out its responsibilities herein, CONTRACTOR shall (a) protect the lives and health of persons performing the Work and other persons who may be affected by the Work and shall erect and maintain all necessary safeguards for such safety and protection; (b) prevent damage and theft to materials, supplies, and equipment whether on worksites or stored off worksites; and (c) prevent damage to other property at worksites or adjacent thereto. CONTRACTOR shall provide CLIENT with a safety plan within thirty (30) days from Commencement Date.

2.4.3 Progress Reports; Status Meetings

Progress Reports. CONTRACTOR shall periodically, but at least monthly, provide CLIENT progress reports pertaining to the Works detailing all ongoing tasks and the progress made with respect to the Calendar of Execution and the Schedule and Breakdown of the Works.

Status Meetings. Status meetings during the Works Phase will be held on a bi-weekly basis, and may be attended by Authorized Representatives and all persons designated by CLIENT and CONTRACTOR. Meeting times and frequency will be modified upon CONTRACTOR or CLIENT mutual agreement. Meeting minutes shall be recorded by CONTRACTOR for each meeting.

2.4.4 Project Commissioning and Acceptance

Project Commissioning. The Commissioning and Quality Assurance Plan in Exhibit G establishes procedures for commissioning each Segment of the Works. Upon completion of a Segment of the Works, CONTRACTOR, in concert with CLIENT, shall conduct a thorough and systematic performance test of each element of the completed Segment of the Works per the terms of the plan. CONTRACTOR shall correct or adjust any deficiencies in accordance with Schedule 5 and the Commissioning and Quality Assurance Plan.

Acceptance. Acceptance of Work or Segment of Work shall be in accordance with the procedures established in Section 3.7 of the Main Body of the Agreement and Schedule 5.

2.5 Modification of the Works

Based on specific needs of CLIENT, CLIENT and CONTRACTOR may modify the scope of the Works by executing a Change Order upon mutual written agreement that is executed by both Parties. The Change Order shall specify the agreed upon terms and conditions of any modification of the scope of the Works. Except as provided for in Section 1.3 of the Main Body of the Agreement, the Change Order shall constitute full and final settlement of all claims arising from or related to any Work either covered or affected by the Change Order or related to the events. All Change Orders must be approved and signed by CLIENT Representative and CONTRACTOR Representative or their authorized designees.

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2.6 Monitoring of the Works

2.6.1 MUSE: Real-Time Monitoring of Works

Throughout the Works Phase, CONTRACTOR will implement its Computerized Maintenance Management System ("MUSE"), to monitor the progress of the Works. The CONTRACTOR will use MUSE to measure the timeline of the upgrades and monitor its crews on a real-time basis. All Infrastructure and Artistic Lighting installations and repairs made to the System, including poles & fixture types, drivers, LED kit, etc., will be updated in MUSE to reflect new field conditions. Built-in work order schedules will be entered into MUSE to ensure that the proper equipment and materials are on the trucks before they leaves the facility.

CLIENT shall have a real-time access to MUSE to monitor the status of the streetlight asset upgrade.

2.6.2 Construction Monitoring

CONTRACTOR shall perform checks at the end of each workday to ensure that all work performed is functioning as intended.

2.6.3 Operating Center

Within ten (10) days of the Commencement Date, an Operating Center will be established which shall have the requisite personnel, technology and equipment to monitor the indicators (MUSE reports), System alerts and the real-time location of site technicians for a holistic status of the System, Smart City Instruments and Artistic Lighting installations.

The Operating Center shall be equipped to analyze problems, communicate with site technicians and supervisors, track issues through resolutions, and escalate problems when appropriate. For emergencies or disasters, the Operating Center shall have established procedures in place to immediately contact the correct team and respond appropriately.

Responsibilities of Operating Center personnel will include:

- Phone hotline management
- Streetlight monitoring
- Emergency response
- Repairs and upgrade monitoring
- Communication and reporting between the field teams, headquarters, and the CLIENT
- MUSE administration (database updates and treatment of the work orders)

2.7 Waste Management & Recycling during the Works Phase.

During the Works Phase, recycling management processes will be integrated throughout CONTRACTOR's day- to-day operation (ISO 9001-14001). CONTRACTOR shall procure and/or maintain the appropriate recycling and disposal facilities.

2.8 Project and Performance Baseline Inventory

CONTRACTOR has conducted a baseline audit of the operational performance of the System and has provided CLIENT with the full inventory of the assets, which has been incorporated into MUSE, and relied on

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as the System Baseline under Section 1.1 of Appendix 3A “Services Performance Objectives and Penalties/Incentives” of Schedule 3.

Pursuant to Section 5.1 of the Main Body of the Agreement, no later than thirty (30) days prior to the Acceptance Date of the Final Segment of the Works, CONTRACTOR shall conduct an audit and inventory of the operational performance of the System after all the Infrastructure is installed. If additional Energy Savings are recognized after the audit and inventory, CONTRACTOR shall integrate and use all resulting data to calculate and revise the Performance Baseline and adjust Section 1.1 of Appendix 3A “Services Performance Objectives and Penalties/Incentives” of Schedule 3, accordingly.

2.9 Measurement and Verification Plan: Energy Savings

Within sixty (60) days of the Commencement Date, CONTRACTOR shall provide CLIENT with a written Measurement and Verification Plan (M&V Plan), which shall be based on the International Performance Measurement and Verification Protocol (IPMVP). The M&V Plan shall provide the CLIENT with an accurate assessment of Energy Savings for an Annual Period and identify any Savings Excess or Savings Shortfall for the corresponding Annual Period in accordance Performance Assurance Reconciliation of Appendix 3A of Schedule 3 below.

ARTICLE 3: Technical Scope of Works:

The technical Scope of Works is detailed in Exhibit A (Phase III: Lighting Conversion Implementation Plan).

ARTICLE 4: Technical Specifications and Drawings:

The Works shall be performed in accordance with the technical specifications and drawing set forth in Exhibit E.

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APPENDIX 2A TO SCHEDULE 2– Works Performance Objectives and Penalties

The Works Performance Objectives and Penalties are set forth below. Section 1 details the Key Performance Indicators (KPIs) that will be measured and evaluated during the Works Phase and serve as CONTRACTOR's performance metrics for the Works Phase. Section 1 details each KPI that will be measured and provides the respective formula used during the Agreement to measure the Works KPIs. Section 2, below, provides a quick reference table that details the Works KPIs and commitments. Section 3, below, depicts the penalties calculations applied for each KPI should CONTRACTOR not satisfy its respective commitments.

1. Works Phase Commitments

1.1 Starting Date of Works (Ksd)

CONTRACTOR commits to commencing the Operation and Maintenance of the System pursuant to Section 2.3 of Schedule 2 on or before the Commencement Date.

1.2 Commissioning (Kc)

Within twelve (12) months of the Commencement Date, CONTRACTOR commits to submitting the certificate of substantial completion for the Final Segment of the Works, pursuant to the Commissioning and Quality Assurance Plan.

1.3 Recycling/Disposal (Kr)

CONTRACTOR shall recycle or properly dispose of the Lamps, housing and miscellaneous electronics of the existing fixtures. CONTRACTOR commits to achieving a 90% recycling rate, which shall be measured in accordance with the below KPI formula (Kr). Per the below formula, one (1) Lamp and associated housing and one (1) miscellaneous electronics per street light shall equal one (1) set of materials for the terms of this KPI. This commitment will be measured at the completion of the Works Phase and be based on CONTRACTOR's disposal records.

$$Kr = \frac{R}{S}$$

With S= Number of upgraded street lights
 R= Number of sets of materials recycled/properly disposed

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2. KPI Table

Category	Sub-category	Designation	Commitment	Unit	Periodicity
Construction	Operation and Maintenance	Ksd - Starting date	Commence Operation and Maintenance of System on or before Commencement Date	Business Day	Once
	Construction	Kc - Commissioning	12 months after Commencement of Works Phase for the Final Segment of the Works	Month	Once
	Construction	Kr - Recycling/Disposal rate	90%	% of recycled/disposed sources	Once

3. Performance Penalties for Works Phase

3.1 General

Works Phase penalties shall be identified, documented and agreed to by CLIENT and CONTRACTOR at the respective status meetings. Upon receipt of CLIENT's penalty notification, CONTRACTOR shall have ten (10) days to notify CLIENT in writing whether the CONTRACTOR disputes any penalty. If CONTRACTOR disputes a penalty notification, then CONTRACTOR and CLIENT shall set a meeting within twenty (20) days to review the penalty claim. Notwithstanding the foregoing, the CONTRACTOR shall timely notify the CLIENT of any KPI penalties CONTRACTOR identifies.

Non-compliance with the Works Performance Objectives will result in the application of below penalties, except where the non-compliance was caused by, wholly or partially, a Supervening Event, or delays in the start of the Works or delays in installation or commissioning of Infrastructure, Smart City Instruments or Artistic Lighting that were caused by actions not attributable to CONTRACTOR.

The payments for penalties, if any, are the sole remedy of CLIENT under the Works Performance Objectives of this Schedule. Any penalties under the Works Performance Objectives shall be deducted from the Service Payments until satisfied.

3.2 Works Phase Penalties

If CONTRACTOR does not comply with its commitments set forth above for the respective KPIs, the following penalties shall apply:

Delay in starting the Works (Ksd) = \$ 1000.00 per Business Day, until effective starting date.

Delay in commissioning (Kc) =

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- From 1 to 30 calendar days = 0.5 % of the non-commissioned Works Amount
- From 31 to 60 calendar days = 1 % of the non-commissioned Works Amount
- More than 61 calendar days = 2% of the non-commissioned Works Amount

The penalties for a delay in commissioning (Kc) are not cumulative. For example, the total penalty assessed for a delay in commissioning of 45 days would be 1% of the Works Amount.

Recycling (Kr)

Penalties for noncompliance of the recycling rate (Kr) for the total amount of Lamps and miscellaneous electronics =

80 % ≤ Kr < 90 % = Penalties of \$ 3,000

70 % ≤ Kr < 80 % = Penalties of \$ 5,000

Kr < 70 % = Penalties of \$ 10,000

The penalties for a recycling (Kr) are not cumulative. For example, the total penalty assessed for a recycling rate of 75% would be \$5000.00.

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SCHEDULE 3: SCOPE OF SERVICES

Performance of Services after Acceptance (“Services Phase”)

No later than the Acceptance Date of the Final Segment of the Works, or such other date agreed to in writing between the Parties, CONTRACTOR shall commence performance of the Services Phase. During the Services Phase, CONTRACTOR shall be responsible for ensuring the technical operation and maintenance of the System to achieve Energy Savings and Services objectives. CONTRACTOR shall also render such Smart City Instrument and Artistic Lighting services as described herein.

Article 1: System Energy Savings

The following sections of this Article 1 identify and detail the programs that serve to measure, reconcile and optimize Energy Savings.

1.1 Performance Guarantee: Performance Assurance Reconciliation

The Energy Savings commitments, specifically the Performance Guarantee as described in Article 5 in the Main Body of the Agreement (Performance Guarantee), shall be measured and reconciled annually pursuant Performance Assurance reconciliation process set forth in Section 1.1 & 1.2 of Appendix 3A “Services Performance Objectives and Penalties/Incentives” of this Schedule. An Annual Performance Report will be issued upon completion of reconciliation detailing any Savings Shortfall or Saving Excess.

1.2 Measurement and Verification of the Energy Savings

During the Services Phase, CONTRACTOR shall implement the M&V Plan to measure, verify and reconcile Annual Realized Savings as part of the Performance Assurance reconciliation. Annual Period measurement and verification results shall be detailed in the Annual Performance Report.

Commencing on the Acceptance Date of Final Segment of the Works, CONTRACTOR shall provide CLIENT with read-only access to real-time System measurement and verification data in MUSE used to measure, verify and reconcile Annual Realized Savings.

1.3 Optimization of CLIENT Energy Bills

With CLIENT consent, CONTRACTOR shall review CLIENT's energy bills and provide the CLIENT with the following:

- strategies to optimize its energy supply, pricing and terms with provider, if possible;
- Follow-up, verify and validate of the invoices issued by the energy supplier(s) within the framework of the supply contracts for the consumption of electric energy;
- Assistance CLIENT with claims against the energy supplier in case of problems with the quality of the supply or noncompliance commitments made to CLIENT.

CONTRACTOR shall present the results annually with energy optimization recommendations.

1.4 Impacts on Energy Savings: CLIENT Solar Projects

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CLIENT is contemplating solar projects that may impact the energy consumption and servicing of the System. This Agreement shall be modified as described herein if any solar projects impact the System or Energy Savings.

Article 2: System Operation and Maintenance

The following sections of this Article 2 detail the scope of the System's Operations and Maintenance program that will be implemented during the Services Phase. The first two sections set forth the System's asset inventory and analysis program. The third and fourth sections set forth the maintenance and repair program for the System's assets and response measures instituted during emergencies. The fifth, sixth and seventh sections depict the monitoring program for the System: MUSE, Operating Center. The final section details the recycling program for the System that will be instituted throughout the Services Phase.

2.1 Photometric Analysis

Each Annual Period CONTRACTOR shall randomly measure 1% of the System's Infrastructure to assess the System's lighting performance compliance with the IESNA Guide for Photometric Measurement of Roadway Lighting Installations. The results of the photometric analysis will be included in the Annual Performance Report and will be the basis for the KPI commitments for lighting performance (Klp).

2.2 Inventory of the assets

Throughout the Services Phase, CONTRACTOR shall maintain a continuous inventory of the System's assets in MUSE. CONTRACTOR shall deliver to CLIENT an audit report of the inventory for the System in each Annual Performance Report. The inventory report shall include:

- (1) A summary description of the System; and
- (2) A summary of the condition of System and its conformity to the applicable standards and procedures established in the Schedule 2 (Scope of Works).

2.3 Maintenance and Repairs

CONTRACTOR shall operate and maintain the System's lighting performance and malfunctions in accordance with below provisions and the response times and monitoring commitments defined in Appendix 3A, "Services Performance Objectives and Penalties/Incentives" to this Schedule.

The Operation and Maintenance of the System is split into two categories:

- **Scheduled and Unscheduled Maintenance** pertains to CONTRACTOR's proactive maintenance and/or restoration of the Infrastructure to its proper functioning status.
- **Repair(s)** pertains to CONTRACTOR's repairs rendered necessary by the history of the System (including but not limited to repair and replacement of Non-Upgraded System Assets) and/or unforeseen events (including, but not limited to, abnormal use, vandalism and accidents).

2.3.1 Scheduled and Unscheduled Maintenance

Scheduled Maintenance. CONTRACTOR's Scheduled Maintenance program is designed to optimize the lighting performance and reduce the outage rate through proactive monitoring of the System. As part of its

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Scheduled Maintenance program, CONTRACTOR shall perform preventative maintenance on the System as set forth below.

- Complete audit of the assets at the beginning of Services Phase to identify general asset conditions for preventive maintenance planning.
- City-wide day and night patrols for outages, day burns, and related maintenance issues. The entire System will be patrolled at least once a month.
- Cleaning of the fixtures as needed.
- Use of the MUSE and other advanced tools for predicting issues, scheduling preventive maintenance, and maintaining asset inventory and stock management.

Unscheduled Maintenance. Unscheduled Maintenance refers to CONTRACTOR's obligations to maintenance and repair any Infrastructure outages and malfunctions that are caused by Normal Wear and Tear of the Infrastructure or caused by defective Infrastructure. Unscheduled Maintenance will also include outages caused by Normal Wear and Tear to System assets that have been upgraded in accordance with Section 2.3.2 below. Unscheduled Maintenance does not include repairing outages caused by deterioration (i.e. abnormal wear or aging), accidents, acts of vandalism or acts of god.

All Scheduled Maintenance and Unscheduled Maintenance activities are covered under the monthly Services Payment amounts during the Service Phase.

2.3.2 Repairs

CONTRACTOR shall make the necessary Repairs for System outages, System malfunctions and damages to the System that are caused by the Normal Wear and Tear of Non-Upgraded System Assets or caused by deterioration (i.e. abnormal wear or aging), accidents, acts of vandalism or acts of god.

The cost of the Repairs made to the System shall be based on the list of Unit Prices for the category "Current Maintenance", as set forth in Exhibit B. CONTRACTOR shall submit to CLIENT, for written approval, a work order that includes the cost provisions of each Repair within ten (10) days of the reported outage, malfunction or damage. In the absence of written approval from CLIENT to perform the Repairs within fifteen (15) Business Days following receipt of CONTRACTOR's costs provisions and work order, all related KPIs and their associated penalties shall be temporarily suspended and unenforceable and CONTRACTOR shall not be obligated to make any such Repairs until receipt of CLIENT written authorization.

During an Annual Period, the costs of any outage, malfunction or damage to the System that require Repairs, as described in this Section 2.3.2, shall be covered under the Annual Period's Services Payments, up to an amount of \$100,000.00 ("Damage Amount"). Any costs for Repairs that exceed the Damage Amount in any Annual Period shall be separately billed or surcharged and paid by CLIENT from sources other than the Revenue Fund, unless otherwise agreed to in writing. If the CLIENT lacks other available funds to pay for the Repairs above the Damage Amount, CONTRACTOR shall not be obligated to make any such Repairs and all related KPIs and their associated penalties shall be temporarily suspended and unenforceable until such other funds are made available.

CLIENT acknowledges that it shall receive and take title to any repaired or replaced parts of the System described under this Section upon completion of installation, inspection and acceptance.

2.3.3 Incident Report

In cases of System damage, outage or malfunction caused by a third party or act of god, CONTRACTOR shall administratively manage the matter as follows.

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Once the damage, outage or malfunction is observed or reported, CONTRACTOR shall:

- secure the concerned part of the System;
- make reasonable efforts to identify the third party at fault, if any;
- make reasonable efforts to collect information and document the incident (driver information, contact information, police report number, etc.);
- assist, if applicable, with assessment activities.

CONTRACTOR shall generate a report of each incident and provide it to CLIENT.

2.4 Emergency response.

As part of the Services Payment, CONTRACTOR shall maintain on-call field personnel who are operational 24 hours per day, 365 days per year. On-call technicians shall have the authority to take initiatives and make decisions in emergency situations. On-call technicians shall have all necessary tools and plans (keys, operating diagrams, city on-call numbers, etc.) at their disposal to make the conditions safe and/or re-establish the System elements within the response times defined in Appendix 3A, "Services Performance Objectives and Penalties/Incentives" to this Schedule.

Emergency response scenarios include:

- Those caused by outside influences, presenting an immediate danger to the public, such as a vehicle striking a pole or downed wires;
- Those caused by faulty System elements, such as a faulty cable or bad splice causing a mass outage; and
- Those that would not normally be deemed an emergency but for extenuating circumstances, such as a "light out" in an already under-lit area or a missing base door on a pole in close proximity to a school or day care center.

In the event of the first type of emergency, such as a pole down, CONTRACTOR shall secure the area, the extent of the damage shall be surveyed, and a report shall be generated recommending the next course of action. The appropriate action will then be placed on the schedule for Repairs.

In the event of the second type of emergency, such as faulty System equipment or infrastructure, CONTRACTOR shall visit the site immediately to do a visual inspection of the area. His/her observations shall then be relayed to the appropriate teams in order to expedite the Repair or Unscheduled Maintenance.

In the event of the third type of emergency, a CONTRACTOR shall direct a team to the site to affect immediate Repairs or Unscheduled Maintenance actions.

In each case, if the damage is due to a third party or act of god, CONTRACTOR shall take pictures and generate a report that includes all of the pertinent information (driver information, contact information, police report number, etc.) in accordance with Section 2.3.3 of this Schedule. The report shall be sent to CLIENT.

2.5 Centralized Maintenance Management Software (MUSE)

During the Services Phase, CONTRACTOR will use its Computerized Maintenance Management System ("MUSE"), to monitor the entire scope of the System and Artistic Lighting installations. CLIENT shall have access to MUSE database, which shall be updated on a real-time basis.

MUSE shall provide the following:

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- The System asset data (database, cartography, condition of the System assets, photo, description of Artistic Lighting sites)
- The current maintenance data (tickets, work orders, feedback, response time, day and night patrols)
- The preventive data (schedule, status, measurements)
- The rate energy consumptions data (wattage, control)
- The works schedule

2.5.1 MUSE: Daily Work Schedules

Throughout the Services Phase, CONTRACTOR shall implement MUSE in order to organize each team's daily work. CONTRACTOR shall implement the following process to prioritize and execute work schedules in response to outage reports:

- Step 1: An outage is reported by any source (Operating Center, CLIENT, patrols, etc.);
- Step 2: CONTRACTOR's management team prioritizes the reported outage and distributes it to the appropriate maintenance team using MUSE's advanced prioritization functionalities;
- Step 3: MUSE electronically sends work order to maintenance team;
- Step 4: The maintenance team completes repair / maintenance work and submits completion report to the central MUSE server;
- Step 5: The management team checks the job and automatically updates the MUSE asset database.

All actions shall be recorded and stored in the MUSE, establishing a record of maintenance for each asset and a detailed history of each work order.

2.5.2 MUSE: Performance Monitoring

During the Services Phase, CONTRACTOR will use MUSE to measure the timeline of the maintenance and repairs as well as the performance of the System. CONTRACTOR's crews shall be monitored on a real-time basis and each step of the process shall be logged into the system for review and verification. All System changes, including poles & fixture types and/or LED kits, shall be updated in MUSE on a regular basis to reflect the new field conditions.

2.5.3 MUSE: Analysis and Reporting Tools

During the Services Phase, the analysis and reporting tools of MUSE shall be the primary means for monitoring the status of the System and the primary database function utilized to validate and verify KPI commitments set forth in Appendix 3A below (with the exception of lighting performance (Klp)).

2.6 Operating Center.

CONTRACTOR shall continue to operate throughout the Services Phase the Operating Center established in the Works Phase.

Responsibilities of Operating Center personnel shall continue to include:

- Phone hotline management
- Streetlight monitoring
- Emergency response
- Repairs and upgrades monitoring
- Communication and reporting between the field teams, headquarters, and the CLIENT

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2.7 Waste Management & Recycling.

Recycling management processes shall be integrated throughout CONTRACTOR's day- to-day operation (ISO 9001-14001). CONTRACTOR shall procure and/or maintain the appropriate recycling and disposal facilities.

Article 3: Services Phase System Reports

3.1 Monthly Reports

CONTRACTOR shall provide a monthly report of the operations and maintenance activities for the preceding month, including the KPI values, within seven (7) Business Days after the conclusion of each calendar month.

3.2 System Annual Performance Report

CONTRACTOR shall provide an Annual Performance Report of the System's operating results for each Annual Period, which shall detail the achieved Energy Savings and the Services objectives of the System. The Annual Performance Report will be provided to CLIENT for review and acceptance within thirty (30) days after the close of each Annual Period.

Article 4: Smart City Instruments and Artistic Lighting Operation and Maintenance

CONTRACTOR shall maintain the Artistic Lighting installations and Smart City Instruments in a fully operable and functional condition throughout the Services Phase. Any repairs or replacement of Artistic Lighting installations and Smart City Instruments shall be authorized in writing by the CLIENT and separately billed or surcharged to CLIENT on a time and materials basis and paid by CLIENT from sources other than the Revenue Fund, unless otherwise agreed to in writing. If the CLIENT does not have other available funds to pay for the repair or replacement of Artistic Lighting installation and Smart City Instruments, CONTRACTOR shall not be obligated to make such repairs and all related KPIs and their associated penalties shall be temporarily suspended and unenforceable until such other funds are made available.

Any maintenance activities performed on the Artistic Lighting installations and Smart City Instruments shall be included in the monthly report described above.

Article 5: Services Phase Incentives & Penalties, Site Visits and Status Meetings

5.1 Incentives and Penalties

In fulfilling its obligations as detailed hereunder, CONTRACTOR shall be subject to the Services Performance Objectives, as defined in Appendix 3A of this Schedule, "Services Performance Objectives and Penalties/Incentives". In the interest of both Parties, incentive and penalty metrics based on performance indicators are established in Appendix 3A of this Schedule as basis to measure the Services Performance Objectives.

Non-compliance with the Services Performance Objectives shall result in the application of penalties, as defined in the Appendix 3A of this Schedule, except where the non-compliance was caused by, wholly or partially, a Supervening Event or accidents, acts of vandalism or malfunction of the System due to actions not attributable to CONTRACTOR.

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The penalties, if any, are the sole remedy of the CLIENT under the Services Performance Objectives of this Schedule, except as provided for in Section 4.1.1(e) of Appendix 3A.

5.2 Site Visits

Upon request and within a reasonable timeframe, the CLIENT Representative or his designee will be afforded the opportunity to visit and inspect the System during the Services Phase. A report summarizing the inspection will be provided to the CLIENT by the CONTRACTOR following the CLIENT'S inspection.

5.3 Status Meetings

Status meetings during the Services Phase will be held on a bi-weekly basis, and may be attended by all persons designated by the CLIENT and the CONTRACTOR. Meeting times and frequency will be modified upon CONTRACTOR or CLIENT mutual agreement. CONTRACTOR shall record and provide the CLIENT with the meeting minutes for each meeting.

Article 6: Technical Monitoring Committee; Technical Advancements

6.1 Technical Monitoring Committee

The CONTRACTOR commits to ensure ongoing technical monitoring in order to allow the CLIENT to benefit from Technological Advancements and to remain informed about changes in standards and regulations.

A Technical Watch Committee shall be created for this purpose. The Technical Watch Committee shall consist of an equal number of representatives from the CLIENT and from the CONTRACTOR and shall meet at the end of each Annual Period. The agenda of the meetings shall be established by the CONTRACTOR with the CLIENT's input. The purpose of these meetings shall be to inform the CLIENT about:

- potential Technological Advancements and their impact on the execution of the Agreement; and
- potential changes in any standards and regulations and about their impact on the performance of the Agreement.

6.2 Installation of Technological Advancements

CONTRACTOR shall develop a technical and financial analysis for any Technological Advancements the CLIENT requests implemented. The technical and financial analysis shall include a draft implementation and cost schedule for the installation of the Technological Advancements, as well as identify impacts the installation will have on the operating and maintenance costs of the System. Any installation of Technological Advancements shall be agreed to in writing by the Parties. The cost of the installation of any Technological Advancements will be entirely borne by the CLIENT.

The installation of Technological Advancements may have a positive or negative impact on Energy Savings and the costs of Services. Any adjustments whether in the form of savings or increased costs will be reflected in the Services Payments. If the installation of Technological Advancements causes a Material Change in the System, then the Performance Guarantee shall be adjusted in accordance with Article 5 of the Main Body of this Agreement.

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Article 7: Additional Street Lights, Artistic Lighting and Smart City Projects

7.1 Addition of Street Lights to System

Upon mutual written agreement executed by both the Parties, CLIENT may request and CONTRACTOR will install and/or provide Services for additional street lights that were not part of the System on the Acceptance Date. CLIENT will provide official documents detailing the number and the nature of the additional street lights, and all other related documentation and drawings. The remuneration for the construction and installation of any additional street lights shall be agreed to by the Parties and shall be separately billed or surcharged to the CLIENT. Adjustments to the Service Payments for Services rendered for any additional street lights will be made in accordance with Section 1.1.2 of Schedule 4.

Any additional street lights integrated into the System after the Acceptance Date will be considered a Material Change to the System. The Parties shall modify the Performance Baseline and Services Performance Measures Objectives to account for the Material Change without resulting in a Savings Shortfall or penalties.

7.2 Additional Artistic Lighting and Smart City Projects

Upon mutual written agreement that is executed by both Parties, CLIENT and CONTRACTOR may modify this Agreement for the provision of additional artistic lighting projects and/or smart city installations to be provided during the Services Phase. The modification shall specify the agreed upon terms and conditions for any additional artistic lighting projects and/or smart city installations.

7.3 Additional Funding Sources

By execution of this Agreement, the CLIENT, without any further approvals needed, has been duly authorized by its respective authorities to use (but is not required to use) additional savings and additional funding sources derived herein and from ancillary engagements to fund the construction and maintenance of additional street lights, artistic lighting and smart city projects.

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APPENDIX 3A TO SCHEDULE 3 – Services Performance Objectives and Penalties/Incentives

The Services Performance Objectives, Penalties and Incentives for the System are detailed below. Sections 1 and 2 describe the System's Key Performance Indicators (KPIs) that will be measured and evaluated during the Services Phase and serve as CONTRACTOR's performance metrics for the System during the Services Phase. Sections 1 and 2 below describe each KPI that will be measured and provide the respective formula used during the Agreement to calculate the KPIs. Section 3, below, details CONTRACTOR's commitments for each KPI, which will be measured in accordance with Section 1 and 2. Section 4, below, depicts the penalties and incentives calculations applied to each commitment.

The below KPIs apply only to the System. The below KPIs do not apply to the Artistic Lighting installations or Smart City Instruments.

1. Energy Savings: System Performance Guarantee KPI

1.1 System Guaranteed Annual Savings (Ke)

Guaranteed Annual Savings reflects the annual savings in kWh that CONTRACTOR commits to under the Performance Guarantee. Guaranteed Annual Savings is the difference in kWh between the System Baseline and the Performance Baseline over an Annual Period. CONTRACTOR commits to achieving the Guaranteed Annual Savings during the Performance Guarantee Period. The Guaranteed Annual Savings commitment is reconciled through the calculation of the Annual Realized Savings for an Annual Period and comparing that result to the Guaranteed Annual Savings for the corresponding Annual Period, pursuant Section 1.2 of this Appendix 3A, below.

In accordance with the M&V Plan, CONTRACTOR shall calculate Annual Realized Savings by taking the difference in kWh between the actual energy consumption of the System and the System Baseline for the respective Annual Period. The commitment in terms of Guaranteed Annual Savings is set forth below:

The KPI associated to the Guaranteed Annual Savings (Ke) is calculated as follow:

$$Ke = K_{sb} - K_{pb}$$

Where:

Ke = 14,471,605 kWh per Annual Period

K_{sb} = 23,752,007 kWh per Annual Period

K_{pb} = 9,253,402 kWh per Annual Period

AND

$$K_{sb} = K_{sb_{metered}} + K_{sb_{unmetered}}$$

Where:

K_{sb} = System Baseline: Total consumption in kWh for an Annual Period prior to Works, the sum of metered and unmetered lights

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$K_{sb \text{ metered}}$ = Total measured kWh usage of metered street lights in the System Baseline for an Annual Period, as measured and billed by Public Service Company of New Mexico

$K_{sb \text{ unmetered}}$ = Total expected kWh usage of unmetered street lights in the System Baseline for an Annual period, as defined by the corresponding "Monthly kWh Usage" (multiplied by 12) in Exhibit A for each streetlight in the inventory.

AND

$$K_{pb} = K_{pb \text{ metered}} + K_{pb \text{ unmetered}}$$

Where:

K_{pb} = Performance Baseline: Total consumption in kWh for Annual Period after completion of Works, the sum of metered and unmetered lights

$K_{pb \text{ metered}}$ = Total measured kWh usage of metered street lights in Performance Baseline for an Annual Period, as measured and billed by Public Service Company of New Mexico

$K_{pb \text{ unmetered}}$ = Total expected kWh usage of unmetered street lights in the Performance Baseline for an Annual period, as defined by the corresponding "Monthly kWh Usage" (multiplied by 12) defined in PNM Rate 20 for each streetlight in the to-date Muse defined inventory.

1.2 Performance Assurance Reconciliation

A Performance Guarantee Period savings reconciliation will be performed at the end of each Annual Period as follows unless otherwise agreed:

(a) At the conclusion of each Annual Period, CONTRACTOR will calculate the System's Annual Realized Savings and compare the result to the Guaranteed Annual Savings for the corresponding Annual Period.

(i) Should the Annual Realized Savings be greater than the Guaranteed Annual Savings for the corresponding Annual Period, a Savings Excess shall be recorded accordingly and paid in accordance with Section 4.2.2 of this Appendix 3A.

(ii) Should the Annual Realized Savings be less than the Guaranteed Annual Savings, a Savings Shortfall shall be recorded and paid in accordance with the terms below and Section 4.1.2 of this Appendix 3A.

(b) Within sixty (60) days following issuance and acceptance by CLIENT of the Annual Performance Report for the corresponding Annual Period, CONTRACTOR shall pay to CLIENT the Savings Shortfall, if any, identified in the Annual Performance Report and shall have fulfilled its obligations under the Performance Guarantee for the applicable Annual Period and the Shortfall Payment being then equal to the Guaranteed Annual Savings for the applicable Annual Period.

(c) The payments and credits based on Savings Shortfalls, if any, are the sole remedy of CLIENT under this Performance Guarantee; provided, however, if the Penalties Cap is exceeded, CLIENT shall have the right to terminate the Agreement pursuant to Section 9.1(b)(1) of the Main Body of the Agreement.

2. System Operations & Maintenance KPIs

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CONTRACTOR will operate and maintain the System throughout the Services Phase of the Agreement, subject to the penalties and incentives for the below KPIs.

2.1 Accuracy of MUSE Database (Km)

During Services Phase, CONTRACTOR will implement its MUSE software to monitor the assets. Through the software, CLIENT will be able to monitor CONTRACTOR's performance objectives (KPIs) and CONTRACTOR's contractual commitments. The KPI for the accuracy of the MUSE database reflects CONTRACTOR's commitment to providing accurate and timely data inputs for System monitoring. CONTRACTOR commits to a 99% accuracy rate for a given month. The following formula shall be used to calculate the Accuracy of MUSE Database (Km):

$$Km = 1 - \frac{D}{S}$$

with: D = number of major discrepancies in MUSE CLIENT has notified CONTRACTOR of during the respective month (except additional assets or changes CLIENT has not communicated to CONTRACTOR)
S = number of street lights existing in the inventory during the month

2.2 Outage rate (Ko)

CONTRACTOR will measure the number of street light outages that occur each month. This KPI measures the Scheduled Maintenance program's efficiency in proactively servicing the System to prevent outages. CONTRACTOR commits to a less than 2% outage rate for existing inventory for the respective month. The KPI associated with the monthly outage rate is calculated as follows:

$$Ko = \frac{P}{S}$$

with: P = number of outages during the month
S = number of street lights existing in the inventory during the month

Notwithstanding the foregoing, outages caused by CLIENT or third-party actions, whether construction or otherwise, accidents, vandalism, or CLIENT's decision to turnoff or shutdown the System or any part thereof for any reason will not be included in the outage rate measurement.

2.3 Availability of the assets (Ka)

The KPI for the availability of the assets (Ka) measures the average percentage of time that the System is operating on a monthly basis. For this KPI, CONTRACTOR reviews each street light individually to calculate the number of days that each street light is operating and functioning within the respective month. The KPI associated with the monthly availability of the assets is calculated as follow:

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$$Ka = \frac{\sum_i^N (\frac{d_i}{D_m})}{N}$$

With: N = the number of fixtures existing in the inventory for the month (i.e. the total number of street lights less accepted or scheduled outages)
D_m = Days in the given month
d_i = days that the given fixture (i) was out during the month
Ka = the average amount of time all fixtures were out each month (calculated on an individual basis)

The operational or functional status of streetlight for the terms of calculating this KPI does not include malfunctions or operational issues caused by CLIENT or third-party actions, whether construction or otherwise, accidents, vandalism, or CLIENT's decision to turnoff or shutdown the System or any part thereof for any reason.

2.4 Self-detection (Ks)

Self-detection of outages reflects CONTRACTOR's commitment to proactively monitor the System. Through its self-detection program, CONTRACTOR patrols the System in order to proactively locate and repair outages. CONTRACTOR commits that it will self-detect at least 75% of the outages inputted into MUSE in a given month. The KPI associated for the monthly self-detection rate is calculated as follow:

$$Ks = \frac{NOC}{P}$$

With: NOC = Number of outages CONTRACTOR detects in a month
P=Total number of inputted outages in a month (which includes CLIENT's and third party reported detections)

2.5 Emergency Response time / Delay of Unscheduled Maintenance or Repairs

Under the below subsections, CONTRACTOR commits to intervene in cases of outages, malfunctions or damages to the System in order to:

- Secure the installation in emergencies, if necessary
- Proceed with the repairs within the response times

Notwithstanding anything herein, if CONTRACTOR is required to obtain approval from CLIENT or permit for maintenance of traffic (MOT) or if the malfunction or outage is inaccessible due to no fault of CONTRACTOR or if materials need to be procured, CONTRACTOR shall diligently work to obtain the requisite approval, permits, access and/or materials and shall be allotted a reasonable amount additional time to meet the KPI commitments set forth below.

2.5.1 Emergency Response time (Kt)

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In cases of System outage, malfunction or damage that are a public safety concern as set forth in Section 2.4 of Schedule 3, CONTRACTOR commits to respond to the outage, malfunction or damage within one (1) hour of the detection or notice. CONTRACTOR commits to be at the location of the outage, malfunction or damage and to commence the necessary actions to secure the site within the stated timeframe. The KPI associated with the emergency response time (Kt) is calculated as follow:

- From the detection of the street light outage or damage that is a public safety concern by CONTRACTOR or receipt of an email/fax/call from authorized person(s) (CLIENT, police, firemen, or other persons designated by CLIENT and CONTRACTOR is on notice of)
- And shall continue until CONTRACTOR is onsite to secure the installation.

This KPI is calculated only for the cases where the installation must be secured in CONTRACTOR's professional judgment. If simultaneous street light outages or damages occur that are of a public safety concern, Kt penalty metric shall only apply to the first received report. CONTRACTOR shall respond to subsequent reported emergencies in order of priority and/or receipt.

2.5.2 Delay of Unscheduled Maintenance or Repairs (Kd₁, Kd₂, Kd₃)

Kd₁ and Kd₂. In cases of street light outages caused by or related to the Equipment malfunction only, CONTRACTOR commits to repair the outage within the timeframes described below for Kd₁ and Kd₂. The metrics used to determine compliance with delay of Unscheduled Maintenance or Repairs for Kd₁ and Kd₂ shall be calculated as follows:

- From the detection of the Equipment malfunction by CONTRACTOR or receipt of an email/fax/call from authorized person(s) (CLIENT or other persons designated by the CLIENT and CONTRACTOR is on notice of)
- And shall continue until CONTRACTOR repairs outage.

Commitments for the Delay of Unscheduled Maintenance or Repairs for Kd₁ and Kd₂ are as follows:

- The KPI for Kd₁ shall apply for single street light outage or malfunction. CONTRACTOR commits to repair a single outage or malfunction within 48 hours of detection or notice.
- The KPI for Kd₂ shall apply when more than three (3) street lights in a row are out or malfunctioning. CONTRACTOR commits to repair such outages within 4 hours of detection or notice.

Kd₃. In cases of street light outages caused by or related to damage to the poles, arms or foundations, CONTRACTOR commits to repair the outage within the timeframes described below for Kd₃. The metrics used to determine compliance with delay of Unscheduled Maintenance or Repairs commitments for Kd₃ shall be calculated as follows:

- From the detection of the outage by the CONTRACTOR or receipt of an email/fax/call from authorized person(s) (CLIENT or other persons designated by the CLIENT and CONTRACTOR is on notice of)
- And shall continue until CONTRACTOR repairs outage.

Commitments for the Delay of Unscheduled Maintenance or Repairs for Kd₃ is as follows:

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- For KPI for Kd_3 , CONTRACTOR commits to repair the outage within 6 weeks.

2.6 Monthly Reports (Kq)

CONTRACTOR shall provide a monthly report of its operations and maintenance activities for the preceding month, including the KPI values, within seven (7) Business Days after the conclusion of each calendar month.

2.7 Lighting Performance (Klp)

During the Services Phase, CONTRACTOR shall randomly measure 1% System's Infrastructure each Annual Period to assess the System's lighting performance compliance with the IESNA Guide for Photometric Measurement of Roadway Lighting Installations. CONTRACTOR will measure the lighting performance of the sampled lights to determine compliance with the illuminance standards set forth in the IESNA Guide for Photometric Measurement of Roadway Lighting Installations for the respective roadway.

CONTRACTOR commits to achieving 100% compliance for lighting performance in the sampled street lights, considering the space-to-mounting ratio is between 3 and 5. Calculations to determine compliance with lighting performance commitment shall be based on the below formula:

The KPI associated with the lighting performance is calculated as follow:

Considering: $3 \leq \frac{S}{MH} \leq 5$

$$Klp = \frac{I + \left(\frac{E_{avg}}{E_{min}} \right)}{I_0 + \left(\frac{E_{avg0}}{E_{min0}} \right)}$$

with:

S/MH	=	Spacing-to-mounting height ratio, ratio of the distance between luminaires centers, along the center line of the street, to the mounting height above the roadway
I	=	Average measured Illuminance (Lux)
I_0	=	IES reference value for the considered type of configuration (see tab below)
E_{avg}	=	minimum maintained average horizontal illuminance at pavement
E_{avg0}	=	IES reference value for the minimum maintained average horizontal illuminance at pavement (see tab below)
E_{min}	=	minimum maintained horizontal illuminance at pavement
E_{min0}	=	IES reference value for the minimum maintained horizontal illuminance at pavement (see tab below)

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Road Type		Average Illuminance Level	Eavg0/ Emin0
URBAN LOCAL	high	9	6
URBAN LOCAL	medium	7	6
URBAN LOCAL	Low	4	6
COLLECTOR	high	12	4
COLLECTOR	medium	9	4
COLLECTOR	low	6	4
MAJOR	high	17	3
MAJOR	med	13	3
MAJOR	low	9	3
FREEWAY A	high (A)	9	3
FREEWAY B	med (B)	6	3

2.8 Average Installed Wattage (Kw)

The average installed wattage (Kw) reflects the total wattage of the System upon completion of the Works. Maintenance of the averaged installed wattage at a consistent rate throughout Agreement plays an important role in maintaining Energy Savings and lighting performance. The average installed wattage metric reflects CONTRACTOR's commitment to repairing and/or replacing street lights with infrastructure that is consistent with the System's wattage output after Acceptance. CONTRACTOR's commitment for average installed wattage (Kw) is 86 Watts which shall be measured in accordance with the below KPI formula Kw. The KPI Kw shall be calculated on an annual basis and included in the Annual Performance Report.

$$Kw = \frac{W}{S}$$

with: W = Total Wattage after Acceptance of Works
 S = Number of street lights taken into account during the Annual Period

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3. KPI Table

Category	Sub-category	Designation	Commitment	Unit	Periodicity
Energy	Consumptions	Ke – Guaranteed Annual Savings	14,471,605	kWh	Each Annual Period
Operations & Maintenance	Operations & Maintenance	Km - Accuracy of MUSE database	99 %	% of assets	Monthly
	Maintenance	Ko - Outage rate	Less than 2%	% of assets	Monthly
	Maintenance	Ka - Availability of the assets	More than 98%	% of assets	Monthly
	Operations	Ks - Self-detection	More than 75%	% of tickets	Monthly
	Operations	Kt – Emergency Response time	1 hour	Hour	Per occurrence
	Operations	Kd ₁ - Delay of Unscheduled Maintenance or Repairs– single SL*	48 hours	Business Day	Per occurrence
	Operations	Kd ₂ - Delay of Unscheduled Maintenance or Repairs – more than 3 SL* in a row	4 hours	Hour	Per occurrence
	Operations	Kd ₃ - Delay of Unscheduled Maintenance or Repairs – Poles, Arms & Foundation	6 Weeks	Business Day	Per occurrence
	Operations	Kq – Monthly Report	one report	Report	Monthly
	Operations	Klp - Lighting Performance	100 %	% of IES standard values	Each Annual Period
	Operations	Kw – Average Installed Wattage	86 W	W	Each Annual Period

*SL = Street Light

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4. Performance Penalties and Incentives

4.1 Penalties

4.1.1 General Conditions

(a) MUSE. MUSE shall be platform used to verify compliance with Operation and Maintenance commitments for the penalties hereunder (except for the KPI for lighting performance which will be reconciled in a separate report).

(b) Savings Shortfalls. Any Saving Shortfalls will be reconciled on an annual basis in accordance with the terms and conditions of Section 1.1 & 1.2 of this Appendix 3A.

(c) O&M Penalties: Notice. If CLIENT observes any delay, lack of performance or other failures of CONTRACTOR to achieve its KPI commitments which are not then properly documented and reflected in MUSE or in the lighting performance report, CLIENT shall notify CONTRACTOR at the next status meeting of the observed occurrence or deficiency. Upon receipt of the notification, CONTRACTOR shall have ten (10) Business Days to notify CLIENT in writing whether CONTRACTOR disputes CLIENT's claim. If CONTRACTOR disputes the penalty notification, then CONTRACTOR and CLIENT shall set a meeting within twenty (20) days to review CLIENT's penalty claim. If CONTRACTOR does not dispute the claim, CONTRACTOR shall reduce the CLIENT's next monthly invoice by the appropriate penalty amount. Notwithstanding the foregoing, the CONTRACTOR shall timely notify the CLIENT of any KPI penalties CONTRACTOR identifies.

(d) Application of O&M Penalties. The penalties apply on the monthly Services Payments only. No penalties will apply on Works Payments.

(e) Service Payment Setoff. If CONTRACTOR incurs monthly KPI penalties that amount to more than seventy-five percent (75%) of the amount of the monthly Service Payment in three (3) consecutive months, then CLIENT, without being in default hereunder, has the right to withhold or setoff the next month's Service Payment and every months' Service Payment thereafter until CONTRACTOR's monthly penalties for a subsequent month are less than seventy-five percent (75%) of the amount for that subsequent month's Services Payment amount. CLIENT shall be obligated to pay the CONTRACTOR any setoff or withheld Service Payment amount, less any penalties, upon a subsequent month's penalty amount being less than seventy-five percent (75%) of that month's Service Payment amount.

(f) Penalties Cap. The Parties agree that cumulative amount of all Savings Shortfall and O&M penalty payments made to CLIENT or deducted from the Services Payments under the terms of this Agreement shall not exceed \$1,000,000.00 ("Penalties Cap"). CONTRACTOR shall have no obligation to pay or deduct any penalties or shortfall amounts above the Penalties Cap. Notwithstanding Section 9.1(b)(1)(i) in the Main Body of the Agreement, CLIENT shall have the right to terminate the Agreement pursuant to Section 9.1(b)(1) in the Main Body of the Agreement, subject to the applicable Termination Payment, if cumulative amount of all Savings Shortfall and O&M penalty payments equals or exceeds Penalties Cap.

(g) Supervening Event; CLIENT Breach of Obligation. All penalties stated herein under the Services Phase and the enforcement thereof shall be suspended during any Supervening Event or during any duration CLIENT is in breach of its obligations under this Agreement. The penalties will not be reinstituted until the cause of the event has been resolved and the System has been restored to its pre-event condition and/or CLIENT has cured any breach.

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4.1.2 Energy : Savings Shortfall

If CONTRACTOR doesn't reach its commitments for an Annual Period for K_e , then a Savings Shortfall occurs and CONTRACTOR will reimburse the balance to CLIENT as described below and in accordance with the "Performance Assurance Reconciliation" described in Section 1 of this Appendix 3A.

KPI	KPI value	Penalty Value (Pe)
Guaranteed Annual Savings (K_e)	$KeY \leq Ke$	- 1.0 x AES

With Savings) K_e = contractual reference (see Section 3 above, KPI) (Guaranteed Annual Savings)
 KeY = real value of the considered Annual Period (Annual Realized Savings)
AES = difference between the expected and real kWh ($KeY - K_e$) consumed multiplied by the Constant Energy Rate.

4.1.3 Operations & Maintenance

For each following KPI below, if CONTRACTOR fails to reach its commitments, the associated coefficient or amount will be applied to or deducted from the next month's Services Payment.

Monthly Measured O&M KPIs

KPI	KPI's value	Penalties Coefficient (Pm)
Accuracy of MUSE Database (K_m)	$95\% \leq K_{mM} < 99\%$	0.99
	$90\% \leq K_{mM} < 95\%$	0.95
	$80\% \leq K_{mM} < 90\%$	0.90
	$70\% \leq K_{mM} < 80\%$	0.75
	$K_{mM} < 70\%$	0.60
KPI	KPI's value	Penalties Coefficient(Po)
Outage Rate (K_o)	$4\% \geq K_{oM} > 2\%$	0.97
	$6\% \geq K_{oM} > 4\%$	0.90
	$8\% \geq K_{oM} > 6\%$	0.75
	$K_{oM} > 8\%$	0.60
KPI	KPI's value	Penalties Coefficient (Pa)
Availability of Assets (K_a)	$99\% \leq K_{aM} < 99.5\%$	0.97
	$94\% \leq K_{aM} < 99\%$	0.90
	$90\% \leq K_{aM} < 94\%$	0.75
	$K_{aM} < 90\%$	0.60
KPI	KPI's value	Penalties Coefficient(Ps)
Self-Detection (K_s)	$70\% \leq K_{sM} < 75\%$	0.99
	$60\% \leq K_{sM} < 70\%$	0.95
	$50\% \leq K_{sM} < 60\%$	0.80
	$K_{sM} < 50\%$	0.60

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With

KmM = value of the considered month

Pm = Penalties coefficient applied on the corresponding monthly Services Payment

KoM = value of the considered month

Po = Penalties coefficient applied on the corresponding monthly Services Payment

KaM = value of the considered month

Pa = Penalties coefficient applied on the corresponding monthly Services Payment

KsM = value of the considered month

Ps = Penalties coefficient applied on the corresponding monthly Services Payment

- **Emergency Response Time (Kt):** If CONTRACTOR fails to meet the designated Response times, Kt , in accordance with the terms of the Agreement, then CONTRACTOR shall be penalized \$ 100.00 per hour for every hour CONTRACTOR's response time exceeds the established metric.
- **Delay of Unscheduled Maintenance or Repairs--single street light (Kd_1):** If CONTRACTOR fails to meet the designated Unscheduled Maintenance or Repairs times under Kd_1 , then CONTRACTOR shall be penalized \$ 100.00 per Business Day, until outage, malfunction or damage has been fixed.
- **Delay of Unscheduled Maintenance or Repairs—more than 3 street lights in a row (Kd_2):** If CONTRACTOR fails to meet the designated Unscheduled Maintenance or Repairs times under Kd_2 then CONTRACTOR shall be penalized \$ 20.00 per hour, until outage, malfunction or damage has been fixed.
- **Delay of Unscheduled Maintenance or Repairs—Poles, Arms and foundations (Kd_3):** If CONTRACTOR fails to meet the designated Unscheduled Maintenance or Repairs times under Kd_3 then CONTRACTOR shall be penalized \$ 100.00 per Business Day, until outage, malfunction or damage has been fixed.
- **Monthly Report (Kq):** If there is a delay in CONTRACTOR's submission the operation and maintenance monthly report, then CONTRACTOR shall be penalized \$ 15.00 per Business Day, until the delivery of the report.

Annually Measured O&M KPIs

CONTRACTOR shall measure Klp and Kw once each Annual Period. If CONTRACTOR fails to reach its commitments for Klp in an Annual Period, then a penalty coefficient will be applied as set forth below.

KPI	KPI's value	Penalties Coefficient (Plp)
Lighting Performance (Klp)	$90\% \leq Klp_y < 100\%$	0.99**
	$80\% \leq Klp_y < 90\%$	0.95**
	$70\% \leq Klp_y < 80\%$	0.85**
	$60\% \leq Klp_y < 70\%$	0.75**
	$Klp_y < 60\%$	0.60**

Klp_y = value of the considered Annual Period

Plp = Penalties coefficient applied on each corresponding monthly Services Payment thereafter until the Lighting Performance deficiency is corrected.

**If the Lighting Performance deficiency is not related to CONTRACTOR's design or implementation of the Works (e.g. insufficient tree trimming, caused by third-party action,

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etc.), then the above penalty shall not apply. CONTRACTOR and CLIENT will jointly perform a new Lighting Performance measurement upon mitigation of deficiency.

If CONTRACTOR fails to reach its commitments for Kw in an Annual Period, then a penalty coefficient will be applied as described set forth below.

KPI	KPI values	Penalty Coefficient (Pw)
Average Installed Wattage (Kw)	$Kw < KwY < 1.01 \times Kw$	0.99
	$1.01 \times Kw < KwY \leq 1.03 \times Kw$	0.97
	$1.03 \times Kw < KwY \leq 1.05 \times Kw$	0.90
	$1.05 \times Kw < KwY \leq 1.10 \times Kw$	0.80
	$1.10 \times Kw < KwY$	0.60

With Kw = contractual reference (see Section 3 above, KPI)
 KwY = real value of the considered Annual Period
 Pw = Incentive coefficient applied on the preceding Annual Period's Services amount

4.2 Incentives

4.2.1 General Conditions

(a) MUSE. MUSE shall be platform used to verify compliance with Operation and Maintenance commitments for incentives.

(b) Savings Excess. Any Savings Excess incentives will be reconciled as described in Section 4.2.2 of this Appendix 3A. Any Savings Excess payment shall be added to the next Services Payment after the completion Performance Assurance Reconciliation in this Appendix 3A.

(c) O&M Incentives: Notice. Incentives for O&M apply only if CONTRACTOR has notified CLIENT in writing within 15 days of achieving the incentive. CONTRACTOR's notification shall detail the performance metrics that justify any incentives. Upon receipt of the notification, the CLIENT shall have ten (10) days to notify the CONTRACTOR in writing whether the CLIENT disputes the CONTRACTOR's incentive claim. If the CLIENT disputes the incentive notification, then the CONTRACTOR and CLIENT shall set a meeting within twenty (20) days to review the CONTRACTOR's incentive claim.

4.2.2 Energy : Savings Excess

The Saving Excess for Ke for an Annual Period is calculated and applied on CONTRACTOR remuneration as described below and in accordance with Sections 1.1 & 1.2 of this Appendix 3A as follows:

KPI	KPI values	Incentives Value (Ie)
Guaranteed Annual Savings (Ke)	$Ke < KeY$	$+ 0.4 \times AES$

With Savings for Ke = contractual reference (see Section 3 above, KPI) or Guaranteed Annual considered Annual Period

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KeY = real value of the considered Annual Period (Annual Realized Savings)

AES = difference between expected and real kWh consumed (KeY - Ke) multiplied by the Constant Energy Rate

4.2.3 O&M

The below incentive coefficients are calculated and applied on CONTRACTOR remuneration on a monthly basis as part of the Service Payment as follows:

Monthly Measure O&M KPIs

KPI	KPI's value	Incentive's Coefficient (Io)
Outage Rate (Ko)	$1.5\% \leq KoM < 2\%$	1
	$KoM < 1.5\%$	1.02
KPI	KPI's value	Incentive's Coefficient (Ia)
Availability of assets (Ka)	$98\% \leq KaM \leq 99\%$	1
	$99\% < KaM \leq 100\%$	1.02
KPI	KPI's value	Incentive's Coefficient (Is)
Self-Detection (Ks)	$75\% \leq KsM \leq 80\%$	1
	$80\% < KsM$	1.01
KPI	KPI's value	Incentive's Coefficient (Ilp)

With

KoM = value of the considered month

Io = Incentive coefficient applied on the corresponding monthly Services Payment

KaM = value of the considered month

Ia = Incentive coefficient applied on the corresponding monthly Services Payment

KsM = value of the considered month

Is = Incentive coefficient applied on the corresponding monthly Services Payment

Annually Measured O&M KPIs

The incentive for Kw is calculated on CONTRACTOR remuneration for the corresponding Annual Period as follows:

KPI	KPI values	Incentives Coefficient (Iw)
Average Installed Wattage (Kw)	$0.99 \times Kw < KwY \leq Kw$	1
	$0.95 * Kw < KwY < 0.99 * Kw$	1.01
	$KwY < 0.95 * Kw$	1.02

With

Kw = contractual reference (see Section 3 above, KPI)

KwY = real value of the considered Annual Period

Iw = Incentive coefficient applied on the preceding Annual Period's Services amount

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5. Remuneration Formula Including Penalties and Incentives

The below monthly remuneration formula details the cumulative application of the KPIs penalties and incentives on the monthly Services Payments (Note: Klp and Kw are annual commitments and will be applied to the first monthly service payment of the following Annual Period). The Annual Period remuneration applies only to Guaranteed Annual Savings or Ke.

Monthly Remuneration:

$$\text{Remuneration} = (\text{Monthly Service Payment} * \{P_f * I_f\}) - \text{Other}$$

Where f = all applicable contractual factors = {w, m, o, a, s, lp}

And *Other* refers to penalties related to Kt, Kd1, Kd2, Kd3, Kq, Kn

Annual Period Remuneration: Remuneration for the KPI Ke shall be in accordance with this Appendix 3A.

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SCHEDULE 4: PAYMENT MECHANISM

1.1 Contract Price.

As consideration of CONTRACTOR's performance of the Works and the Services as described in Schedule 2 and Schedule 3 CLIENT shall pay to CONTRACTOR \$45,617,188 in monthly installments in accordance with the Payment Schedule set forth Section 1.4 to this Schedule 4 (Payment Mechanism). Such payment shall include the following components as identified in this Schedule 4 (Payment Mechanism): 1) Works Payments provided in accordance with Article 3 in the Main Body of the Agreement and Schedule 2 shall commence on the Acceptance Date for the corresponding Segment of the Works; 2) Services Payments for the operation and maintenance of the Existing System and upgraded System, Smart City Instruments and Artistic Lighting services provided in accordance and Schedule 2 and 3, which shall commence on the Commencement Date.

1.1.1 Price Adjustments to Service Payments: CPI.

Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI) for the Albuquerque area. The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June 2017) and each January through June six month average thereafter. The percentage difference between those two CPI issues will be the price adjustment rate for the Services Payments, Unit Prices and other applicable pricing. The price adjustment rate shall be determined at the beginning of each Annual Period and applied thereafter.

1.1.2 Adjustment to Services Payments for Additional Street Lights.

A fixed price of \$5.00 per additional street light per month will be applied on Services Payments for each additional streetlight receiving Services pursuant to Article 7 of Schedule 3. Section 1.1.1 above shall apply to any adjustments to Services Payments for Services rendered to additional street lights. For each additional street light added to the System pursuant to this section, CLIENT shall pledge additional funding to the Revenue Fund to cover the additional costs set forth in this Section 1.1.2, including the requisite price adjustment set forth in Section 1.1.1, unless otherwise agreed to in writing.

1.2 Non-recourse Limitation; Unconditional Payment Obligation.

CLIENT'S acceptance of Works and Acceptance of any Segment of the Works is non-recourse and final. After the Acceptance of each Segment of the Works, and subject to Section 6.4 of the Main Body of the Agreement, the obligations of CLIENT to make Works Payments under this Agreement for the accepted Segments of the Works and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason whatsoever.

1.3 Adjustments for Performance.

Incentives and penalties apply on the Services Payments only, in accordance with Schedule 2 and Schedule 3. Notwithstanding the foregoing, any Savings Shortfalls or Savings Excess will be accounted for in accordance with Appendix 3A to Schedule 3.

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1.4 Services Payment and Works Payment Schedule

Price: As consideration of CONTRACTOR's performance of the Works and the Services as described in Schedule 2 (Technical Scope and Works) and Schedule 3 (Scope of Services), CLIENT shall pay to CONTRACTOR the amounts identified below which shall be invoiced on a monthly basis beginning on the Acceptance Date for the corresponding Segment of the Works for the Works Payments, and on Commencement Date for the Services Payments.

Month	Works Payment	Services Payment	Total
Month 1	\$-	\$170,691	\$170,691
Month 2	\$-	\$170,691	\$170,691
Month 3	\$-	\$170,691	\$170,691
Month 4	\$-	\$170,691	\$170,691
Month 5	\$-	\$170,691	\$170,691
Month 6	\$-	\$170,691	\$170,691
Month 7	\$62,911	\$170,691	\$233,602
Month 8	\$62,911	\$170,691	\$233,602
Month 9	\$62,911	\$170,691	\$233,602
Month 10	\$62,911	\$170,691	\$233,602
Month 11	\$62,911	\$170,691	\$233,602
Month 12	\$62,911	\$170,691	\$233,602
Month 13	\$129,577	\$127,519	\$257,096
Month 14	\$129,577	\$127,519	\$257,096
Month 15	\$129,577	\$127,519	\$257,096
Month 16	\$129,577	\$127,519	\$257,096
Month 17	\$129,577	\$127,519	\$257,096
Month 18	\$129,577	\$127,519	\$257,096
Month 19	\$129,577	\$127,519	\$257,096
Month 20	\$129,577	\$127,519	\$257,096
Month 21	\$129,577	\$127,519	\$257,096
Month 22	\$129,577	\$127,519	\$257,096
Month 23	\$129,577	\$127,519	\$257,096
Month 24	\$129,577	\$127,519	\$257,096
Month 25	\$129,577	\$127,514	\$257,091
Month 26	\$129,577	\$127,514	\$257,091
Month 27	\$129,577	\$127,514	\$257,091
Month 28	\$129,577	\$127,514	\$257,091
Month 29	\$129,577	\$127,514	\$257,091
Month 30	\$129,577	\$127,514	\$257,091
Month 31	\$129,577	\$127,514	\$257,091

Month	Works Payment	Services Payment	Total
Month 32	\$129,577	\$127,514	\$257,091
Month 33	\$129,577	\$127,514	\$257,091
Month 34	\$129,577	\$127,514	\$257,091
Month 35	\$129,577	\$127,514	\$257,091
Month 36	\$129,577	\$127,514	\$257,091
Month 37	\$129,577	\$127,514	\$257,091
Month 38	\$129,577	\$127,514	\$257,091
Month 39	\$129,577	\$127,514	\$257,091
Month 40	\$129,577	\$127,514	\$257,091
Month 41	\$129,577	\$127,514	\$257,091
Month 42	\$129,577	\$127,514	\$257,091
Month 43	\$129,577	\$127,514	\$257,091
Month 44	\$129,577	\$127,514	\$257,091
Month 45	\$129,577	\$127,514	\$257,091
Month 46	\$129,577	\$127,514	\$257,091
Month 47	\$129,577	\$127,514	\$257,091
Month 48	\$129,577	\$127,514	\$257,091
Month 49	\$129,577	\$127,514	\$257,091
Month 50	\$129,577	\$127,514	\$257,091
Month 51	\$129,577	\$127,514	\$257,091
Month 52	\$129,577	\$127,514	\$257,091
Month 53	\$129,577	\$127,514	\$257,091
Month 54	\$129,577	\$127,514	\$257,091
Month 55	\$129,577	\$127,514	\$257,091
Month 56	\$129,577	\$127,514	\$257,091
Month 57	\$129,577	\$127,514	\$257,091
Month 58	\$129,577	\$127,514	\$257,091
Month 59	\$129,577	\$127,514	\$257,091
Month 60	\$129,577	\$127,514	\$257,091
Month 61	\$129,577	\$127,514	\$257,091
Month 62	\$129,577	\$127,514	\$257,091

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Month	Works Payment	Services Payment	Total
Month 63	\$129,577	\$127,514	\$257,091
Month 64	\$129,577	\$127,514	\$257,091
Month 65	\$129,577	\$127,514	\$257,091
Month 66	\$129,577	\$127,514	\$257,091
Month 67	\$129,577	\$127,514	\$257,091
Month 68	\$129,577	\$127,514	\$257,091
Month 69	\$129,577	\$127,514	\$257,091
Month 70	\$129,577	\$127,514	\$257,091
Month 71	\$129,577	\$127,514	\$257,091
Month 72	\$129,577	\$127,514	\$257,091
Month 73	\$129,577	\$127,514	\$257,091
Month 74	\$129,577	\$127,514	\$257,091
Month 75	\$129,577	\$127,514	\$257,091
Month 76	\$129,577	\$127,514	\$257,091
Month 77	\$129,577	\$127,514	\$257,091
Month 78	\$129,577	\$127,514	\$257,091
Month 79	\$129,577	\$127,514	\$257,091
Month 80	\$129,577	\$127,514	\$257,091
Month 81	\$129,577	\$127,514	\$257,091
Month 82	\$129,577	\$127,514	\$257,091
Month 83	\$129,577	\$127,514	\$257,091
Month 84	\$129,577	\$127,514	\$257,091
Month 85	\$129,577	\$127,514	\$257,091
Month 86	\$129,577	\$127,514	\$257,091
Month 87	\$129,577	\$127,514	\$257,091
Month 88	\$129,577	\$127,514	\$257,091
Month 89	\$129,577	\$127,514	\$257,091
Month 90	\$129,577	\$127,514	\$257,091
Month 91	\$129,577	\$127,514	\$257,091
Month 92	\$129,577	\$127,514	\$257,091
Month 93	\$129,577	\$127,514	\$257,091

Month	Works Payment	Services Payment	Total
Month 94	\$129,577	\$127,514	\$257,091
Month 95	\$129,577	\$127,514	\$257,091
Month 96	\$129,577	\$127,514	\$257,091
Month 97	\$129,577	\$127,514	\$257,091
Month 98	\$129,577	\$127,514	\$257,091
Month 99	\$129,577	\$127,514	\$257,091
Month 100	\$129,577	\$127,514	\$257,091
Month 101	\$129,577	\$127,514	\$257,091
Month 102	\$129,577	\$127,514	\$257,091
Month 103	\$129,577	\$127,514	\$257,091
Month 104	\$129,577	\$127,514	\$257,091
Month 105	\$129,577	\$127,514	\$257,091
Month 106	\$129,577	\$127,514	\$257,091
Month 107	\$129,577	\$127,514	\$257,091
Month 108	\$129,577	\$127,514	\$257,091
Month 109	\$129,577	\$127,514	\$257,091
Month 110	\$129,577	\$127,514	\$257,091
Month 111	\$129,577	\$127,514	\$257,091
Month 112	\$129,577	\$127,514	\$257,091
Month 113	\$129,577	\$127,514	\$257,091
Month 114	\$129,577	\$127,514	\$257,091
Month 115	\$129,577	\$127,514	\$257,091
Month 116	\$129,577	\$127,514	\$257,091
Month 117	\$129,577	\$127,514	\$257,091
Month 118	\$129,577	\$127,514	\$257,091
Month 119	\$129,577	\$127,514	\$257,091
Month 120	\$129,577	\$127,514	\$257,091
Month 121	\$129,577	\$127,514	\$257,091
Month 122	\$129,577	\$127,514	\$257,091
Month 123	\$129,577	\$127,514	\$257,091
Month 124	\$129,577	\$127,514	\$257,091

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Month	Works Payment	Services Payment	Total
Month 125	\$129,577	\$127,514	\$257,091
Month 126	\$129,577	\$127,514	\$257,091
Month 127	\$129,577	\$127,514	\$257,091
Month 128	\$129,577	\$127,514	\$257,091
Month 129	\$129,577	\$127,514	\$257,091
Month 130	\$129,577	\$127,514	\$257,091
Month 131	\$129,577	\$127,514	\$257,091
Month 132	\$129,577	\$127,514	\$257,091
Month 133	\$129,577	\$127,514	\$257,091
Month 134	\$129,577	\$127,514	\$257,091
Month 135	\$129,577	\$127,514	\$257,091
Month 136	\$129,577	\$127,514	\$257,091
Month 137	\$129,577	\$127,514	\$257,091
Month 138	\$129,577	\$127,514	\$257,091
Month 139	\$129,577	\$127,514	\$257,091
Month 140	\$129,577	\$127,514	\$257,091
Month 141	\$129,577	\$127,514	\$257,091
Month 142	\$129,577	\$127,514	\$257,091
Month 143	\$129,577	\$127,514	\$257,091
Month 144	\$129,577	\$127,514	\$257,091
Month 145	\$129,577	\$127,514	\$257,091
Month 146	\$129,577	\$127,514	\$257,091
Month 147	\$129,577	\$127,514	\$257,091
Month 148	\$129,577	\$127,514	\$257,091
Month 149	\$129,577	\$127,514	\$257,091
Month 150	\$129,577	\$127,514	\$257,091
Month 151	\$129,577	\$127,514	\$257,091
Month 152	\$129,577	\$127,514	\$257,091
Month 153	\$129,577	\$127,514	\$257,091
Month 154	\$129,577	\$127,514	\$257,091
Month 155	\$129,577	\$127,514	\$257,091

Month	Works Payment	Services Payment	Total
Month 156	\$129,577	\$127,514	\$257,091
Month 157	\$129,577	\$127,514	\$257,091
Month 158	\$129,577	\$127,514	\$257,091
Month 159	\$129,577	\$127,514	\$257,091
Month 160	\$129,577	\$127,514	\$257,091
Month 161	\$129,577	\$127,514	\$257,091
Month 162	\$129,577	\$127,514	\$257,091
Month 163	\$129,577	\$127,514	\$257,091
Month 164	\$129,577	\$127,514	\$257,091
Month 165	\$129,577	\$127,514	\$257,091
Month 166	\$129,577	\$127,514	\$257,091
Month 167	\$129,577	\$127,514	\$257,091
Month 168	\$129,577	\$127,514	\$257,091
Month 169	\$129,577	\$127,514	\$257,091
Month 170	\$129,577	\$127,514	\$257,091
Month 171	\$129,577	\$127,514	\$257,091
Month 172	\$129,577	\$127,514	\$257,091
Month 173	\$129,577	\$127,514	\$257,091
Month 174	\$129,577	\$127,514	\$257,091
Month 175	\$129,577	\$127,514	\$257,091
Month 176	\$129,577	\$127,514	\$257,091
Month 177	\$129,577	\$127,514	\$257,091
Month 178	\$129,577	\$127,514	\$257,091
Month 179	\$129,577	\$127,514	\$257,091
Month 180	\$129,577	\$127,514	\$257,091
TOTAL	\$22,146,462	\$23,470,726	\$45,617,188

If the Acceptance of any Segment of the Works is delayed, the payment schedule for the Works Payments and Services Payments will be adjusted accordingly.

1.5 Payments.

CLIENT agrees it will make all amounts payable by CLIENT under or with respect to this Agreement within thirty (30) days of receipt of the invoice by electronic funds transfer of immediately available funds as directed in writing by CONTRACTOR.

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CLIENT shall pay CONTRACTOR a charge on any payment not paid on the date such payment is due at the rate of six percent (6.00%) per annum or the maximum amount permitted by law, whichever is less, from such date.

If CLIENT disagrees with any portion of an invoice, it shall notify CONTRACTOR in writing of the amount in dispute and the reason for its disagreement within twenty-one (21) days of receipt of the invoice, and shall pay the portion not in dispute. If CLIENT fails to pay CONTRACTOR within thirty (30) days after receipt of an invoice, the CLIENT shall pay interest to CONTRACTOR beginning on the twenty-second day after payment was due, computed at rate per annum as set forth above.

1.6 Scheduled Termination Value: Payment Tables

The Scheduled Termination Value corresponding to month of the Agreement, beginning from the Commencement Date shall be the respective value applied to the Termination Payment.

Month	Termination Fee	Month	Termination Fee	Month	Termination Fee	Month	Termination Fee
1	\$ 1,301,754	25	\$ 15,908,754	49	\$ 14,040,043	73	\$ 11,989,713
2	\$ 2,603,508	26	\$ 15,834,302	50	\$ 13,958,355	74	\$ 11,900,086
3	\$ 3,905,262	27	\$ 15,759,562	51	\$ 13,876,351	75	\$ 11,810,113
4	\$ 5,207,015	28	\$ 15,684,533	52	\$ 13,794,030	76	\$ 11,719,790
5	\$ 6,508,769	29	\$ 15,609,213	53	\$ 13,711,390	77	\$ 11,629,119
6	\$ 7,810,523	30	\$ 15,533,602	54	\$ 13,628,430	78	\$ 11,538,096
7	\$ 9,694,579	31	\$ 15,457,697	55	\$ 13,545,149	79	\$ 11,446,720
8	\$ 10,962,239	32	\$ 15,381,499	56	\$ 13,461,545	80	\$ 11,354,991
9	\$ 12,229,769	33	\$ 15,305,006	57	\$ 13,377,618	81	\$ 11,262,906
10	\$ 13,497,168	34	\$ 15,228,217	58	\$ 13,293,365	82	\$ 11,170,465
11	\$ 14,764,437	35	\$ 15,151,130	59	\$ 13,208,786	83	\$ 11,077,666
12	\$ 16,031,575	36	\$ 15,073,745	60	\$ 13,123,880	84	\$ 10,984,508
13	\$ 16,780,088	37	\$ 14,996,060	61	\$ 13,038,645	85	\$ 10,890,989
14	\$ 16,709,011	38	\$ 14,918,074	62	\$ 12,953,080	86	\$ 10,797,108
15	\$ 16,637,657	39	\$ 14,839,787	63	\$ 12,867,184	87	\$ 10,702,863
16	\$ 16,566,028	40	\$ 14,761,196	64	\$ 12,780,955	88	\$ 10,608,253
17	\$ 16,494,121	41	\$ 14,682,301	65	\$ 12,694,392	89	\$ 10,513,277
18	\$ 16,421,936	42	\$ 14,603,100	66	\$ 12,607,494	90	\$ 10,417,933
19	\$ 16,349,472	43	\$ 14,523,593	67	\$ 12,520,260	91	\$ 10,322,220
20	\$ 16,276,727	44	\$ 14,443,778	68	\$ 12,432,687	92	\$ 10,226,137
21	\$ 16,203,700	45	\$ 14,363,654	69	\$ 12,344,776	93	\$ 10,129,681
22	\$ 16,130,390	46	\$ 14,283,219	70	\$ 12,256,524	94	\$ 10,032,852
23	\$ 16,056,797	47	\$ 14,202,474	71	\$ 12,167,931	95	\$ 9,935,648
24	\$ 15,982,918	48	\$ 14,121,415	72	\$ 12,078,994	96	\$ 9,838,067

Month	Termination Fee	Month	Termination Fee	Month	Termination Fee	Month	Termination Fee
97	\$ 9,740,109	121	\$ 7,271,856	145	\$ 4,563,697	169	\$ 1,592,309
98	\$ 9,641,771	122	\$ 7,163,960	146	\$ 4,445,314	170	\$ 1,462,419
99	\$ 9,543,052	123	\$ 7,055,646	147	\$ 4,326,473	171	\$ 1,332,026

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100	\$ 9,443,951	124	\$ 6,946,913	148	\$ 4,207,171	172	\$ 1,201,128
101	\$ 9,344,467	125	\$ 6,837,759	149	\$ 4,087,408	173	\$ 1,069,724
102	\$ 9,244,597	126	\$ 6,728,183	150	\$ 3,967,180	174	\$ 937,810
103	\$ 9,144,340	127	\$ 6,618,182	151	\$ 3,846,487	175	\$ 805,386
104	\$ 9,043,696	128	\$ 6,507,755	152	\$ 3,725,327	176	\$ 672,449
105	\$ 8,942,661	129	\$ 6,396,900	153	\$ 3,603,698	177	\$ 538,996
106	\$ 8,841,235	130	\$ 6,285,616	154	\$ 3,481,597	178	\$ 405,028
107	\$ 8,739,417	131	\$ 6,173,901	155	\$ 3,359,024	179	\$ 270,540
108	\$ 8,637,204	132	\$ 6,061,754	156	\$ 3,235,975	180	\$ 135,531
109	\$ 8,534,596	133	\$ 5,949,172	157	\$ 3,112,451		
110	\$ 8,431,590	134	\$ 5,836,154	158	\$ 2,988,448		
111	\$ 8,328,185	135	\$ 5,722,699	159	\$ 2,863,965		
112	\$ 8,224,380	136	\$ 5,608,804	160	\$ 2,739,000		
113	\$ 8,120,172	137	\$ 5,494,468	161	\$ 2,613,550		
114	\$ 8,015,562	138	\$ 5,379,690	162	\$ 2,487,615		
115	\$ 7,910,546	139	\$ 5,264,467	163	\$ 2,361,193		
116	\$ 7,805,123	140	\$ 5,148,797	164	\$ 2,234,280		
117	\$ 7,699,293	141	\$ 5,032,680	165	\$ 2,106,877		
118	\$ 7,593,052	142	\$ 4,916,113	166	\$ 1,978,980		
119	\$ 7,486,400	143	\$ 4,799,095	167	\$ 1,850,587		
120	\$ 7,379,335	144	\$ 4,681,624	168	\$ 1,721,698		

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SCHEDULE 5: ACCEPTANCE PROCEDURES

Project Commissioning

CONTRACTOR shall implement the Commissioning and Quality Assurance Plan in partnership with the CLIENT during the Works Phase. CONTRACTOR shall implement a rolling Works commissioning process. As quickly as lights are being installed, CONTRACTOR shall work with the CLIENT to get them certified and approved. This will be repeatable and fair for both Parties and allows the project to proceed with the utmost quality and speed.

Acceptance Procedures

In accordance with the Commissioning and Quality Assurance Plan, when CONTRACTOR believes that all, or an independent, definable phase or portion, of a Segment of the Works is substantially complete, CONTRACTOR will submit a certificate of substantial completion to CLIENT which shall be subject to the following:

- (a) If CLIENT concurs that the described Segment of the Works as performed is substantially complete, CLIENT will accept that Segment of the Works by signing a Certificate of Acceptance and returning it to CONTRACTOR;
- (b) If CLIENT does not concur that the Segment of the Works is substantially complete, then e CLIENT shall notify CONTRACTOR within five (5) Business Days of any discrepancies;
- (c) To the extent CONTRACTOR does not dispute the discrepancies raised by CLIENT, CONTRACTOR shall correct the Works to conform to the description of the Work set forth herein, and resubmit the certificate of substantial completion to CLIENT;
- (d) If CONTRACTOR disagrees with the discrepancies raised by CLIENT, CONTRACTORS shall notify CLIENT of a dispute and such dispute shall be resolved in accordance with the dispute resolution provisions of the Agreement;
- (e) If the CLIENT Representative does not deliver written notice to CONTRACTORS within ten (10) Business Days of receiving the certificate of substantial completion, in the mutual interests of the Project proceeding in a timely manner, the Parties shall immediately refer the matter for determination in accordance with the applicable dispute resolution procedure as set forth herein.

To the extent that any Segment requires multiple certificates of substantial completion, the final non-recourse Certificate of Acceptance for each Segment shall determine the date on which the Acceptance Date of that Segment of the Works is achieved.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

SCHEDULE 6: ORDER OF PRECEDENCE

In the event of conflicts or discrepancies among the contract documents, which includes this Agreement, the attached schedules, appendices, exhibits, and such other document incorporated herein by reference, interpretations of these documents will be based on the following priorities:

1. Modifications to the Agreement
2. The Agreement and its attached schedules, appendices and exhibits
3. RFP
4. Phase I Deliverable & Phase II Deliverable