



City of Santa Fe, New Mexico

Memorandum



DATE: January 24, 2021

TO: Governing Body

FROM: Regina Wheeler, Public Works Department Director *RW*

ITEM

Global Management Performance Contract with Dalkia Energy Solutions, LLC to convert City owned street lights to LEDs for \$2,757,777 plus NMGR and maintain City owned street lights for \$179,074/year plus NMGR. Regina Wheeler, rawheeler@santafenm.gov, 955-6622.

SUMMARY

Street lights play an important role in making roadways safe for pedestrians, bicyclists and drivers. The City's street lights have a short lifespan and a high failure rate. They are an old technology, high pressure sodium (HPS), that uses a lot of electricity. By converting street lights to LEDs, the reliability will be improved and the electricity use reduced by approximately 60%. The on-bill electric savings will pay for the conversion.

There are approximately 5550 street lights in the City of Santa Fe. The City owns approximately 3499 of these street lights including the lights on Cerrillos and St Michael's Drive that just transferred to the City from NMDOT. PNM owns approximately 2057 of the street lights in the City. NMDOT owns the lights at on and off ramps of 599 and other highways. The City is responsible for the cost of operations and maintenance for all of these lights at a cost of approximately \$1,000,000 per year.

The City pays PNM according to Rate 20, approximately \$620,000 per year for electricity and maintenance on all of the approximately 5550 street lights. The estimated on-bill electric savings of converting all of the City's lights to LED is projected to be \$550,000 per year. The City also pays PNM for non-routine maintenance associated with aging infrastructure and accidents costing an additional approximately \$300,000 per year. After the conversion, PNM will no longer maintain the City's street lights. The GMPC with Dalkia includes provisions for routine and non-routine maintenance of City street lights. The fee for regular maintenance will be \$179,074 plus NMGR and non-routine maintenance will be performed at unit rates included in the GMPC. The Dalkia team that will convert and maintain the City of Santa Fe street lights just completed the City of Albuquerque's street light conversion project and performing ongoing maintenance from their office in Albuquerque.

The new street lights are smart ready, facilitating remote monitoring. Dalkia will manage the City's street light maintenance using a software for monitoring operations and reporting key performance indicators including energy savings as required by the contract. The City will have licenses to access the software as well. Constituents reporting street light issues will be able to call Dalkia's dedicated service phone number or send an email to the dedicated email address, call City of Santa Fe constituent services or log a work order into the City's online work order system. All items will be routed to Dalkia for resolution. Dalkia will meet monthly with City Public Works to review outstanding items.

The City is entering a separate contract with PNM for the conversion of street lights owned by PNM that will come to the Governing Body in a separate item. PNM, Dalkia and the City are working together with the goal of converting all of the lights in one 6 month project. From the notice to proceed, there is 6-8 weeks for materials delivery and then 4 months for installation. The map in the Implementation Plan shows the planned sequencing of the conversion, starting on the south side of town in approximately June, then moving to downtown in case large gatherings begin again and then crossing the rest of the City by September 2021.

The lamps being removed will be recycled and hazardous waste managed properly by the contractors.

The new LED lamp heads focus light down onto the street and generate less stray light than the current street lights. This improves safety while protecting dark skies. The smart ready street lights can also support a dimming strategy. When converting to LEDs there is also the specification of color. Rate 20 specifies the light conversion for PNM lights as 3,000 kelvin for residential and 4,000 kelvin for main streets and collectors. Dalkia will follow the same conversion strategy. It has been reported that 3,000 kelvin lights minimize interference with circadian rhythms and that 4,000 kelvin lights make main roads safer. Specifications of the luminaires to be used in the conversion of City owned street lights are included in the attached Implementation Plan.

PROCUREMENT METHOD:

The procurement method is use of existing contract. See attached City of Albuquerque GMPC with Dalkia (previously Citelum).

BUDGET:

Conversion

\$2,880,464.42 (\$2,757,777 plus \$232,687.43 @ 8.4375% NMGR)

Project string FA183200I

Fund 600 Org Object: 1000471.520200a budget to be loaded after financing closes

Maintenance

\$194,183.37 (\$179,074/year plus \$15,109.37 @ 8.4375% NMGR) for annual maintenanc.

Org/object 1000416.520150 (Traffic Engineering – Repair & Maintenance System Equipment)

MUNIS CONTRACT NUMBER:

3202498 Dalkia

SCHEDULE:

Public Works Committee: 02/08/2021

Finance Committee: 02/15/2021

City Council: 02/24/2021

The project is scheduled for completion within six months after the Notice To Proceed (NTP) is received by the contractor, currently scheduled for September 30, 2021.

ATTACHMENTS:

Exhibit A - GMPC agreement with Dalkia

Exhibit B – Dalkia Implementation Plan

Exhibit C – City of Albuquerque GMPC

Exhibit D – Letter extending terms and conditions to City of Santa Fe

Exhibit E – City of Santa Fe Business License(s)



City of Santa Fe

Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☒ or CONTRACT AMENDMENT ☐

2 Name of Contractor Dalkia Energy Solutions, LLC

3 Complete information requested ☐ Plus GRT
☒ Inclusive of GRT

Original Contract Amount: \$3,074,647.79

Termination Date: 15 years from acceptance LED's

☒ Approved by Council Date: February 24, 2021

☐ or by City Manager Date: _____

Contract is for: LED Conversion of City Owned Streetlights

Amendment # _____ to the Original Contract# Munis 3202498

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

☐ Approved by Council _____

☐ or by City Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☐ Plus GRT

☐ Inclusive of GRT

Amount \$ 3,074,647.79 of original Contract# 3202498 Termination Date: 15 years from accep

Reason: LED Conversion of City Owned Streetlights

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ \$3,074,647.79

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# _____ Date: _____

RFQ ☐ _____ Date: _____



City of Santa Fe
Summary of Contracts, Agreements, & Amendments

Sole Source ☐ _____ Date: _____

Other _____

6 **Procurement History:** First year of 15 year contract
example: (First year of 4 year contract)

Fran Dunaway

Fran Dunaway (Mar 22, 2021 13:33 MDT)

Purchasing Officer Review

Use of the City of ABQ current Contract - ABQ & Contractor mutual agreement. City issued contract -same terms & conditions-as well as cost.

Comments or Exceptions: _____

7 **Funding Source:** TBD **BU/Line Item:** TBD

Alexis Lotero

Alexis Lotero (Mar 22, 2021 13:19 MDT)

Budget Officer Approval

Comments or Exceptions: Funding verified with Brad Fluetsch

8 **Any out-of-the ordinary or unusual issues or concerns:**

(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Curt Temple

Phone # 505-795-2439

10 **Certificate of Insurance attached.** (if original Contract) ☐

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Dalkia Energy Solutions, LLC

Procurement Title: City of Santa Fe Owned LED Streetlight Conversion Project

Procurement Method: State Price Agreement ☐ Cooperative ☐ Sole Source ☒ Other ☐ _____

Exempt ☐ Request For Proposal (RFP) ☐ Invitation To Bid (ITB) ☐ Contract under 60K ☐ Contract over 60K ☒

Department Requesting Public Works Staff Name Curt Temple

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees. .

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bib Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sole Source Request and Determination Form
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contractors Exempt Letter
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Purchasing Officers approval for exempt procurement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Contract, Agreement or Amendment
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Current Business Registration and CRS numbers on contract or agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contracts and Agreements form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	All documentation presented to Committees
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other: _____

<u>Curt Temple</u>	Project Administrator	2/04/2021
Department Rep Printed Name (attesting that all information included)	Title	Date


 Fran Dunaway (Mar 22, 2021 13:33 MDT)

Purchasing Officer (attesting that all information is reviewed)	Title	Date
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Include all other substantive documents and records of communication that pertain to the procurement and any resulting contract.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

Between

CITY OF SANTA FE

and

DALKIA ENERGY SOLUTIONS, LLC

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

THIS GLOBAL MANAGEMENT PERFORMANCE CONTRACT (together with the schedules and appendices attached hereto, this "Agreement") is made this _____ day of _____, 2021, ("Effective Date") by and between Dalkia Energy Solutions US, Inc. and its successors and permitted assigns ("CONTRACTOR") and the City of Santa Fe, 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, CONTRACTOR is party to a Global Management Performance Contract with the City of Albuquerque, dated October 9, 2015 (the "Albuquerque GMPC");

WHEREAS, pursuant to a letter, dated January 22, 2021, CONTRACTOR confirmed its willingness to extend the pricing, terms and conditions of the Albuquerque GMPC to the City of Santa Fe;

WHEREAS, the City of Santa Fe is using the "Procurement under Existing Contracts" methodology under Section XIV(B) of the City of Santa Fe Procurement Manual 2020 for purposes of entering into this Agreement;

WHEREAS, CLIENT desires to engage CONTRACTOR to among other things: 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 long-term operating cost reductions and other budget savings for the System (as defined herein); all of which shall be subject to the terms and conditions of this Agreement;

WHEREAS, CLIENT has an ordinance to regulate outdoor lighting in order to reduce light pollution, reduce or prevent glare, reduce or prevent light trespass, conserve energy, promote a sense of safety and security and ensure aesthetically appropriate outdoor lighting in keeping with the character of Santa Fe;

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 and CONTRACTOR seek to enter into this Agreement and set out the terms and conditions by which CONTRACTOR 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

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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GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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GLOBAL MANAGEMENT PERFORMANCE CONTRACT

ARTICLE 1: DEFINITIONS; COMMENCEMENT AND TERM

1.1 Definitions

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

1.2 Commencement and Duration

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL EXECUTED BY BOTH PARTIES. This Agreement shall terminate fifteen (15) years after acceptance of the completed LED conversion unless terminated pursuant to Article 9 (Termination), or Article 6.2 (Appropriations), or as otherwise agreed to by the Parties.

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 one five (5) year period.
- b. 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.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax.

2.3 Conditions Precedent. This Agreement and all obligations of the CONTRACTOR hereunder or in respect hereof are subject to and conditioned upon 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.

2.4 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, 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;

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

- 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;
- g. 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;
- h. Coordinate with the local utility all needed servicing for utility owned facilities needed for System operation. Any costs therein shall be borne by CLIENT.

2.5 Confidential and Proprietary Information. Subject to Applicable Law, CLIENT acknowledges that the technical and pricing information contained in Schedule 2 and 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.

2.6 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.

2.7 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).
- 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.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

3.2 CONTRACTOR's Works Phase Obligations

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), the Implementation Plan, 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.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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 the Implementation Plan, 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.
- 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 6 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.

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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) and (d) above, then Contractor and Client shall discuss how to mitigate the actual losses and expenses and shall work in good faith to share the responsibility for costs associated with unanticipated extensions of time. CONTRACTOR's actual loss or expenses may include overhead, additional System operation and maintenance costs or expenses and other losses or costs incurred, which such agreed to 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) and (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.

3.7 Acceptance

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

- 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, 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 and 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, or other encumbrances and (2) the CLIENT shall have all duties and responsibilities for the payment of Services Payments.
- b. All materials developed or acquired by the Contractor for the City under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

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c. 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,
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.

d. In the event Contractor (a) ceases to do business or ceases to support the Project, or (b) fails to make adequate provision for continued support of the Software that Contractor develops or provides to CLIENT, or (c) if Contractor Defaults hereunder, or (d) if this Agreement is terminated, Contractor will, within a one hundred and eighty (180) day period, make all of the following items available to CLIENT: (i) the latest available Source Code and documentation related to the Software that Contractor develops or provides according to the SOW; (ii) the Source Code and compiler/utilities necessary to maintain CLIENT'S system; and, (iii) Contractor's related documentation for Software developed by third parties to the extent Contractor is authorized to disclose such Software to CLIENT. In any of the above circumstances (a), (b), (c) or (d), Contractor will, by virtue of this Section, grant CLIENT an automatic, uncontested and unlimited right to use, modify and copy the Software, the Source Code and all of their related documentation.

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.

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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, and management of the System and provide such Smart City Instrument and Artistic Lighting services set forth therein.

4.2 Performance of 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) 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.
- 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;
- b. to the provisions of this Agreement, comply with Applicable Law;

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- 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) to Schedule 3 (Scope of Services), is a 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. The System Baseline data will be confirmed upon completion of the inventory at the conclusion of the conversion.
- b. CONTRACTOR and CLIENT agree that the Performance Baseline set forth in Appendix 3A (Services Performance Objectives and Penalties) 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 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) 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.

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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

Except as otherwise provided, CONTRACTOR payments to CLIENT for Savings Shortfalls in accordance with Sections 1.1 and 1.2 of Appendix 3A of Schedule 3, if any, are the sole remedy of CLIENT under this Performance Guarantee contemplated in this Agreement. The Contractor will provide a bond, letter of credit or other financial guarantee acceptable to the Client as a security for performance of this Guarantee.

- a. 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.
- 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; GENERAL OBLIGATION

6.1 Compensation

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.

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6.2 Appropriations

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6.3 General Obligation

Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the goods or services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action.

Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. Payment shall be made by ACH. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

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

ARTICLE 7: INSURANCE; LIMITATION OF LIABILITY; BONDING

7.1 CONTRACTOR Insurance

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall, at its sole cost and expense, maintain in force during the entire term of this Agreement or for such additional time as set forth herein, the following insurance coverage(s), naming the City as additional insured.

- a. Workers' Compensation Insurance with statutory limits, and Employer's Liability insurance with limits of not less than \$1,000,000 per accident or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City, its directors, officials, officers, employees, agents, and volunteers.
- b. Commercial General Liability Insurance which shall be written on an occurrence basis and be at least as broad as the latest version of ISO form CG 00 01 with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage, including a \$2,000,000 aggregate for products-completed operations. Such policy shall include Broad Form Contractual Liability coverage and shall be endorsed to include the City, its, directors, officials, officers, employees, agents, and volunteers as additional insureds on all primary and excess policies for ongoing and completed operations performed by, or behalf of Contractor. Such additional insured coverage shall be as broad as that provided by ISO form CG 20 10 (ongoing operations) and CG 20 37 (completed operations).

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- c. Business Automobile Liability insurance which shall be as broad as ISO form CA 00 01 covering bodily injury and property damage with a combined single limit of not less than \$1,000,000 per accident for all owned, non-owned, and hired automobiles used in connection with the services or operations to be performed under this Agreement. The policy shall be endorsed to include the City, its, directors, officials, officers, employees, agents, and volunteers as additional insureds.
- d. Professional Liability insurance (Errors & Omissions) with limits of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate.
- e. Subcontractors/Subconsultants. Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by the City from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by City representative(s) at any reasonable time.
- f. Additional Insurance Requirements.
 - 1. Acceptability of Insurers. Unless otherwise reviewed and accepted by the City, all required insurance must be placed with insurers with a current A.M. Best rating of not less than A- VII and be admitted to do business in California, or approved by the Surplus Lines Association.
 - 2. Verification of Coverage. Contractor shall furnish the City with Certificates of Insurance and applicable endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates of insurance shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received by the City before work commences. Acceptance of Contractor's Certificates of Insurance does not relieve Contractor of the insurance requirements, nor decrease the liability of Contractor under this Agreement. It is Contractor's responsibility to ensure its compliance with these insurance requirements. Any actual or alleged failure on the part of the City to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the City, in this or any regard.
 - 3. Primary and Noncontributory. The insurance required to be maintained by Contractor shall primary and any insurance or self-insurance maintained by the City shall be excess only, and not be required to contribute with it.
 - 4. Umbrella or Excess Insurance. Any Umbrella or Excess insurance shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a Named Insured.
 - 5. Waiver of Subrogation. Contractor shall obtain waiver of subrogation endorsements stating that Contractor and its insurers waive any and all rights of recovery against the City, its directors, officials, officers, employees, agents, and volunteers. Contractor shall pay all damages and costs arising out of Contractor's failure to provide a waiver of subrogation from its insurers.

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6. Broader Coverage and Limits. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.
7. Severability of Interest (Cross Liability). A severability of interest provision must apply for the additional insureds, ensuring that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policy's(ies') limits.
8. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any policy required to be maintained under this Agreement, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is canceled or materially reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Agreement. No policy required to be maintained by Contractor shall be canceled and not replaced with equivalent coverage without thirty (30) days prior written notice to the City, unless cancellation is due to the non-payment of premium, in which case, ten (10) days prior written notice shall be provided.

7.2 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, (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.

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7.3 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 compensation defined in the Payment Terms 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.

Bonds to be provided:

1. A performance bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and
2. A payment bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more.

Notwithstanding anything to the contrary herein, the surety bonds described in this Section 7.3 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 AND PROVISIONS

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 the Implementation Plan ("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.

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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. Either Party may terminate this Agreement without cause by serving one hundred eighty (180) days prior written notice on the other Party.
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. 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. CLIENT shall be obligated to make all Works Payments and Service Payments up to the termination date.

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:

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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, 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; or

3. Indictment

If, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations article herein.

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Except as otherwise allowed or provided under this Agreement, the sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement or as otherwise agreed by the Parties. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CLIENT'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

TERMINATION MANAGEMENT

Except as otherwise agreed by the parties, immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

c. TERMINATION BY CONTRACTOR FOR CLIENT'S DEFAULT

CONTRACTOR may terminate this Agreement by written notice to CLIENT in accordance with sections above and due to 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:

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

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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. 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 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

- 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. any outstanding Works Payments or Service Payments; plus
 2. 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
- b. if CLIENT terminates this Agreement in accordance with Section 9.1 (b) above then the Termination Payment shall be:
 1. 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
 2. payments in respect, if any, by CONTRACTOR and all other accrued costs and expenses, including amounts spent on spare equipment.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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 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, 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.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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, transfer, assign, mortgage, charge or dispose of any of its rights under this Agreement or otherwise delegate any of its obligations under it.

ARTICLE 11: FINANCING - deleted

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.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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;
- 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 intends to continue to use the System in a manner similar to its present use of such System.
- j. 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,
- k. 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.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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, then, upon notice by either Party to the other, all disputes, claims, questions or differences shall be submitted to mediation pursuant to the Public Works Mediation Act, NMSA 1978, secs. 13-4C-1 through 13-4C-11.

13.2 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.

13.3 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.

13.4 If a Party fails to pay any such amounts as described in Sections 13.2 and 13.3 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: AUDITS 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 shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of five (5) years from the date of payment for the work under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 Subcontractors. CONTRACTOR may use subcontractors in the performance of the Works or Services, provided however that no such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

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 Santa Fe County, New Mexico.

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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.

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.

15.5 Prevailing Wage. As applicable, CONTRACTOR shall insure compliance with the New Mexico Public Works Minimum Wage Act and any other binding prevailing wage determinations

15.6 Non-substitution. 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.

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

CLIENT Representative

Name: Ms. Regina Wheeler
Title: Public Works Director
Address: 500 Market Station
Santa Fe, NM 87501

Phone: 505-690-4197

CONTRACTOR Representative

Name: Kevin Kaye
Title: Director of Operations
Address: 4000 Vassar Drive NE, Albuquerque, NM 87107

Phone: 860-384-3024

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.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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 Santa Fe

Attention: Regina Wheeler, Public Works Director
500 Market Station
Santa Fe, NM 87507

Phone: 505-690-4197

To CONTRACTOR:

Dalkia Energy Solutions, LLC

Attention: Kevin Kaye, Director of Operations
4000 Vassar Drive NE
Albuquerque, NM 87107

Phone: 860-384-3024

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).

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.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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. If any provision of the Agreement becomes or is found to be illegal or unenforceable for any reason, such provision may be modified to the extent necessary to make this Agreement legal and enforceable. If such provision cannot be so modified, it shall be severed from this Agreement and the remainder of this Agreement shall remain in full force and effect.

15.15 Entire Agreement. This Agreement, when executed, together with all Schedules, Implementation Plan 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.

15.18 Conflict of Interest; Governmental Conduct Act.

- a. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- b. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

- c. Contractor's representations and warranties in Paragraphs A and B of this Article 13 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.
- d. All terms defined in the Governmental Conduct Act have the same meaning in this section.

15.19 Amendment.

- a. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- b. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth herein, or to agree to the reduced funding.

15.20 Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15.21 Penalties for violation of law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

15.22 Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

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15.23. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be in accordance with article 15.2 of this agreement. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

15.24. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

15.25. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15.26. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

15.27 Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

15.28 Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:



ALAN WEBBER, MAYOR

DATE: Mar 22, 2021

CONTRACTOR: DALKIA ENERGY SOLUTIONS, LLC



LEE VARDAKAS, CEO

DATE: 3/18/2021

CRS # 03-526533-00-7
Registration # 6168566

ATTEST:



Kristine Mihelcic (Mar 22, 2021 18:06 MDT)

KRISTINE BUSTOS MIHELICIC, CITY CLERK ~~GC~~

GB MTG 02/24/2021

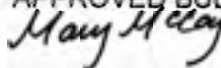
CITY ATTORNEY'S OFFICE:



Marcos Martinez (Mar 22, 2021 18:06 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED BUDGET:



MARY MCCOY, FINANCE DIRECTOR

Funding Sources: TBD AL

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 and 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 the Implementation Plan.

"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 Santa Fe adopted by the voters of the City of Santa Fe, New Mexico, at a Special Municipal Election held on December 9, 1997; amended by the voters of the City of Santa Fe at a Regular Municipal Election held on March 4, 2008; amended by the voters of the City of Santa Fe at a Regular Municipal Election held on March 4, 2014; amended by the voters of the City of Santa Fe at a General Election held on November 6, 2018; and amended by the Governing Body on March 11, 2020.

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"CLIENT" means City of Santa Fe, 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.

"CMMS" refers to a 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.

"Commencement Date" shall mean the date that the Client issues a Purchase Order.

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

"CONTRACTOR" means Dalkia Energy Solutions 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 in the Implementation Plan. 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.

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"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).

"Equipment" means installed physical street light equipment, which includes luminaires and smart controls, 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) and (c) in the Main Body of the Agreement.

"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.

"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) to Schedule 3 (Scope of Services).

"Hazardous Materials Within Scope" refers to those materials listed in the Implementation Plan.

"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.

"Implementation Plan" refers to the documented steps that will be taken by the Contractor and the Client to successfully achieve implementation pursuits, including but not limited to works phase sequence and timeline, products specifications, measurement and verification process.

"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.

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"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.

"kW" and "kWh" means kilowatt and kilowatt hour, respectively.

"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.

"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.

"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.

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"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) 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) 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) 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.

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

"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.

"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 the Implementation Plan.

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

"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).

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"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, management, repair and replacement of the System, Smart City Instruments and Artistic Lighting services during the Services Phase.

"Services Performance Objectives" shall mean the Service Phase KPIs or performance objectives, descriptions and metrics that are subject to penalties 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.

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"System" means the street light system owned, maintained or controlled by CLIENT which is located within the limits of the city of Santa Fe, 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 by the CLIENT to the Contractor. 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) 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 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 the Implementation Plan.

"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 project 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 Implementation Plan as the information received by CONTRACTOR from CLIENT about the current streetlight system. CONTRACTOR shall upgrade the Infrastructure of the System during the Works as set forth in the Implementation Plan. 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 the Implementation Plan. 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 may be requested by CLIENT at any time during the project. Technical specifications and drawing will be incorporated into the Implementation Plan 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, Wi-Fi hotspots, and additional smart city instruments. Technical specifications and drawing will be incorporated into the Implementation Plan accordingly.

Smart City Credit

In addition to other obligations of the Contractor, Contractor will provide an annual "credit" of Twenty Thousand dollars (\$20,000.00) worth of materials and installation of Smart City infrastructure, or other infrastructure as agreed by the Parties. Installation costs will be determined in accordance with the Implementation Plan. Material costs will be determined in accordance with the Implementation Plan. This Smart City infrastructure "credit" will be available annually on the anniversary of the implementation of the Services phase. This "credit" may only be used for infrastructure and may not be used as an offset to any payment due to Contractor.

e. Deferred Maintenance

During the Works phase, Contractor will implement Deferred Maintenance Work up to the amount of Eighty-Five Thousand Four Hundred and Seventeen Dollars and no Cents (\$85,417.00) plus applicable Gross Receipts Tax in the amount of \$7,209.19. This Work will be prioritized by Client in consultation with Contractor. Costs of Work will be determined in accordance with the Implementation Plan. Work will be accepted by Client as set forth in Article 3 Section 3.7.

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ARTICLE 2: GENERAL SCOPE OF WORKS

2.1 General Principles

The Works, as described herein and in the Implementation Plan, 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. 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:

- a. Movement to, placement and set-up on project site of personnel, equipment, supplies and accessory items;
- b. Establishment of offices, buildings and other needed facilities as well as utility work and connections needed for these facilities;
- c. Scheduling details, coordination and any other work and expense appropriate prior to the start of Works under Agreement.

The Client shall not be responsible for costs incurred until a Purchase Order has been issued.

2.3 Operation and Maintenance System

- a. Commencing after 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.

2.4 Works: Project Upgrade

CONTRACTOR shall perform the installation of the Infrastructure, Smart City Instruments and Artistic Lighting in accordance with the Implementation Plan.

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 the Implementation Plan, 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.

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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. 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 and 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 the Implementation Plan 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.

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2.5 Modification of the Works

2.5.1 Change Orders

Changes. The Contractor may only make changes or revisions within the Scope of Work as defined in the Implementation Plan after receipt of written approval by the City Manager or his/her designee. Such change may only be made to Tasks or Sub-Task as defined in the Scope of Work. Under no circumstance shall such change affect the:

- a. Deliverable requirements, as outlined in the Scope of Work;
- b. Due date of any Deliverable, as outlined in the Scope of Work;
- c. Compensation of any Deliverable, as outlined in the Scope of Work;
- d. Agreement compensation, as outlined in Article 2; or
- e. Agreement termination, as outlined in Article 4.

Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

- a. The Project Manager shall draft a written Change Request for review and approval by the City Manager to include:
 1. the name of the person requesting the change;
 2. a summary of the required change;
 3. the start date for the change;
 4. the reason and necessity for change;
 5. the elements to be altered; and
 6. the impact of the change.
- b. The City Manager shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the City Manager are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original 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.

2.6 Monitoring of the Works

2.6.1 CMMS: Real-Time Monitoring of Works

Throughout the Works Phase, CONTRACTOR will implement its Computerized Maintenance Management System ("CMMS"), to monitor the progress of the Works. The CONTRACTOR will use CMMS 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 and fixture types, drivers, LED kit, etc., will be updated in CMMS to reflect new field conditions. Built-in work order schedules will be entered into CMMS to ensure that the proper equipment and materials are on the trucks before they leave the facility.

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

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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 (CMMS reports), System alerts 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:

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

2.7 Waste Management and Recycling during the Work 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

Pursuant to Section 5.1 of the Main Body of the Agreement, 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" 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 the Implementation Plan.

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ARTICLE 4: TECHNICAL SPECIFICATIONS AND DRAWINGS

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

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)

Contract start date will commence when Dalkia receives the Notice to Proceed from the City of Santa Fe.

1.2 Commissioning (Kc)

Within nine (9) 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	15 months after Commencement of Works Phase for the Final Segment of the Works	Month	Once
	Kr – Recycling/ Disposal rate	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) = \$ 1,000.00 per Business Day, until effective starting date.

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Delay in commissioning (Kc) =

- 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 \$ 3,000.00

70 % ≤ Kr < 80 % = Penalties of \$ 5,000.00

Kr < 70 % = Penalties of \$10,000.00

The penalties for a recycling (Kr) are not cumulative. For example, the total penalty assessed for a recycling rate of 75% would be \$5,000.00.

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 and 1.2 of Appendix 3A "Services Performance Objectives and Penalties" of this Schedule. An Annual Performance Report will be issued upon completion of reconciliation detailing any Savings Shortfall or Saving Excess. The Contractor will provide a bond, letter of credit or other financial guarantee acceptable to the Client as a security for performance of this guarantee.

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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 CMMS used to measure, verify and reconcile Annual Realized 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: CMMS, 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 (Kip).

2.2 Inventory of the assets

Throughout the Services Phase, CONTRACTOR shall maintain a continuous inventory of the System's assets in CMMS. 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" 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).

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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 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.
- Cleaning of the fixtures as needed.
- Use of the CMMS 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 the Implementation Plan. 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.

Any costs for Repairs shall be separately billed or surcharged and paid by CLIENT. 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" 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 (CMMS)

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

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CMMS shall provide the following:

- 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)
- The rate energy consumptions data (wattage, control)

The CONTRACTOR will provide Client access to the CMMS records during the contract and upon contract termination will coordinate with CLIENT to allow continued access to the system or the data in the system.

2.5.1 CMMS: Daily Work Schedules

Throughout the Services Phase, CONTRACTOR shall implement CMMS 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, etc.);
- Step 2: CONTRACTOR's management team prioritizes the reported outage and distributes it to the appropriate maintenance team using CMMS's advanced prioritization functionalities;
- Step 3: CMMS electronically sends work order to maintenance team;
- Step 4: The maintenance team completes repair / maintenance work and submits completion report to the central CMMS server;
- Step 5: The management team checks the job and automatically updates the CMMS asset database.

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

2.5.2 CMMS: Performance Monitoring

During the Services Phase, CONTRACTOR will use CMMS to measure the timeline of the maintenance and repairs as well as the performance of the System. All System changes, including poles and fixture types and/or LED kits, shall be updated in CMMS on a regular basis to reflect the new field conditions.

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:

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

2.7 Waste Management and 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.

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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. 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 PENALTIES, SITE VISITS AND STATUS MEETINGS

5.1 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 ". In the interest of both Parties, 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.

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.

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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.

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.

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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.

APPENDIX 3A TO SCHEDULE 3 - Services Performance Objectives and Penalties

The Services Performance Objectives and Penalties 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 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.

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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 (K_e) is calculated as follow:

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

Where:

$K_e = 2,234,042$ kWh per Annual Period
 $K_{sb} = 3,955,572$ kWh per Annual Period
 $K_{pb} = 1,721,530$ kWh per Annual Period

And

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

Where:

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

$K_{sb \text{ metered}}$ = 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 the Implementation Plan 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 CMMS defined inventory.

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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 be available for other work under this agreement.
 - 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 and Maintenance KPIs

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

2.1 Accuracy of CMMS Database (Km)

During Services Phase, CONTRACTOR will implement its CMMS 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 CMMS database reflects CONTRACTOR's commitment to providing accurate and timely data inputs for System monitoring. CONTRACTOR commits to a 97% accuracy rate for a given month. The following formula shall be used to calculate the Accuracy of CMMS Database (Km):

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

With:

D =	Number of major discrepancies in CMMS 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

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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:

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

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.

CONTRACTOR commits to Ka meets or exceeds 98%.

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2.4 Self-detection (K_s)

Self-detection of outages reflects CONTRACTOR's commitment to proactively monitor the System. Through its self-detection program, CONTRACTOR monitors 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 CMMS in a given month. The KPI associated for the monthly self-detection rate is calculated as follow:

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

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 (K_t)

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 three (3) hours 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 (K_t) 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, K_t penalty metric shall only apply to the first received report. CONTRACTOR shall respond to subsequent reported emergencies in order of priority and/or receipt.

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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 5 business days 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 2 business days 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:

- For KPI for Kd₃, CONTRACTOR commits to repair the outage within 6 weeks.

2.6 Monthly Reports (Kg)

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 (Kip)

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:

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

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

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

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)

Road Type	Average Illuminance Level	Eavg0/ Emin0
Urban Local	7	6
Collector	9	4
Major	13	3
Freeway B	6	3

As budget allows, Client will prioritize addition of light fixtures. If directed, Contractor will install additional fixtures pursuant to Schedule 3 Article 7.1.

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 96 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.

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

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

With:

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

3. KPI Table

Category	Sub-Category	Designation	Commitment	Unit	Periodicity
Energy	Consumptions	Ke - Guaranteed Annual Savings	2,234,042	kWh	Each Annual Period
Operations & Maintenance	Operations & Maintenance	Km - Accuracy of CMMS database	97%	% 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	3 hours	Hour	Per Occurrence
	Operations	Kd ₁ - Delay of Unscheduled Maintenance or Repairs- single SL*	5 business days	Business Day	Per Occurrence
	Operations	Kd ₂ - Delay of Unscheduled Maintenance or Repairs - more than 3 SL* in a row	2 business days	Business Day	Per Occurrence
	Operations	Kd ₃ - Delay of Unscheduled Maintenance or Repairs - Poles, Arms and Foundation	6 Weeks	Business Week	Per Occurrence
	Operations	Kq - Monthly Report	one report	Report	Monthly
	Operations	Kip - Lighting Performance	100 %	% of IES standard values	Each Annual Period
	Operations	Kw - Average Installed Wattage	99 W	W	Each Annual Period

*SL = Street Light

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

4. Performance Penalties

4.1 Penalties

4.1.1 General Conditions

- a. CMMS. CMMS 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 and 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 CMMS 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 \$100,000.00 ("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.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

- 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.

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)	$K_{eY} \geq K_e$	-1.0 x AES

With:

$K_e =$	Contractual reference (see Section 3 above, KPI) (Guaranteed Annual Savings)
$K_{eY} =$	Real value of the considered Annual Period (Annual Realized Savings)
AES =	Difference between the expected and real kWh ($K_{eY} - K_e$) consumed multiplied by the Constant Energy Rate.

4.1.3 Operations and 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 (P_m)
Accuracy of CMMS 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 (P_o)
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 (P_a)
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 (P_s)
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

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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 (Kd1): If CONTRACTOR fails to meet the designated Unscheduled Maintenance or Repairs times under Kd1, 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 (Kd2): If CONTRACTOR fails to meet the designated Unscheduled Maintenance or Repairs times under Kd2 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 (Kd3): If CONTRACTOR fails to meet the designated Unscheduled Maintenance or Repairs times under Kd3 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 KP/s

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

KPI	KPI's Value	Penalties Coefficient (Pip)
Lighting Performance (Kip)	$90\% \leq Kip_y < 100\%$	0.99**
	$80\% \leq Kip_y < 90\%$	0.95**
	$70\% \leq Kip_y < 80\%$	0.85**
	$60\% \leq Kip_y < 70\%$	0.75**
	$Kip_y < 60\%$	0.60**

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

With:

Kip _y =	Value of the considered Annual Period
Pip =	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, 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's Value	Penalties 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
	$1.03 \times Kw < KwY \leq 1.05 \times K$	0.90
	$1.05 \times Kw < KwY \leq 1.10 \times K$	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 - deleted

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

SCHEDULE 4: PAYMENT MECHANISM

1. Compensation

- a. The City shall pay to the Contractor in full payment for services satisfactorily performed as described below:

1. LED Street Light Conversion:

The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work for the LED Street Light Conversion at the rate established by the Implementation Plan") in an amount not to exceed Two Million Five Hundred Forty-Three Thousand One Hundred and Ninety-Five Dollars (\$2,543,195.00), excluding gross receipt tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (\$214,582.10) shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this paragraph of this Agreement, including gross receipts tax and expenses, shall not exceed (\$2,757,777.10).** This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

2. Routine Street Light Maintenance:

The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work for Routine Street Light Maintenance (As Detailed in the Implementation Plan "A-3") the amount of One Hundred Seventy-Nine Thousand Seventy-Four Dollars and Sixty Cents (\$179,074) per fiscal year excluding gross receipt tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement per fiscal year (\$15,109.42) shall be paid by the City to the Contractor. The amount due shall be paid monthly in twelve equal payments. **The total amount payable to the Contractor under this paragraph of this Agreement, including gross receipts tax and expenses, shall not exceed (\$194,184.02) per fiscal year.** This amount is based upon 3,499 street lights in the Santa Fe system. These amounts may be adjusted to account for current inflation rates based on the Consumer Price Index (CPI) as established by the Bureau of Economic Analysis (BEA) of the United States Department of Commerce or increase or decrease in street light numbers. Any adjustments can be performed administratively at the time a Purchase Order is opened and/or amended and does not necessitate amendment to this agreement.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

3. Payment is subject to availability of funds pursuant to the Appropriations Paragraph in this agreement and to any negotiations between the parties from year to year pursuant to Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. Payment shall be made by ACH. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

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 Santa Fe 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.

1.2 Adjustment to Services Payments for Additional Street Lights

A fixed price of \$5.00 per additional street light (with smart control) 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.

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, 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.

3. Adjustments for Performance.

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.

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

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.

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.

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.

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.

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 CLIENT shall notify CONTRACTOR within five (5) Business Days of any discrepancies;

GLOBAL MANAGEMENT PERFORMANCE CONTRACT

- 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.

Certificate of Acceptance

The Final Segment of the Works has been measured against its acceptance criteria and deemed substantially complete, and is therefore formally accepted by the City of Santa Fe.

CITY OF SANTA FE

NAME AND TITLE

DATE: _____



Santa Fe Implementation Plan

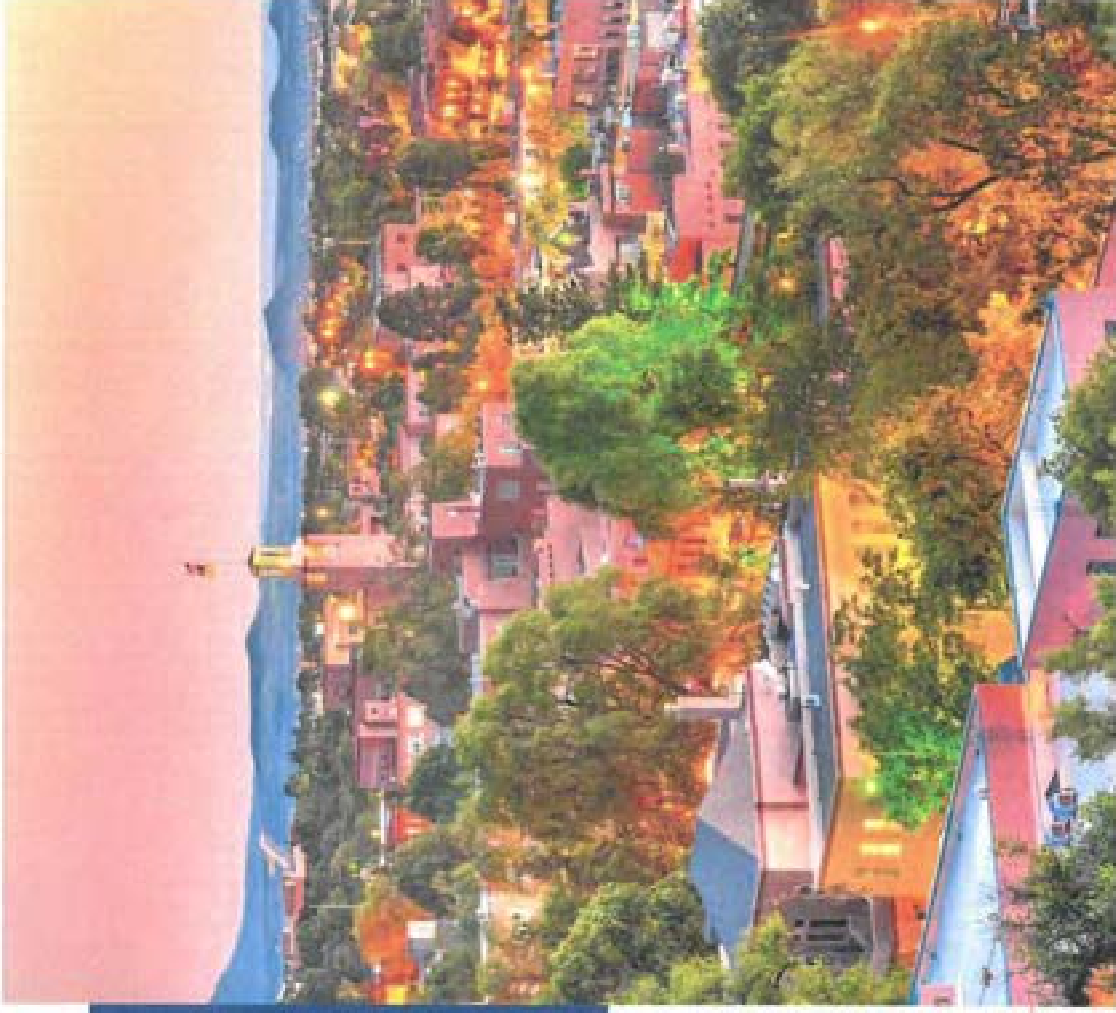


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Logistics/Planning Phase

Design Finalization

- The system upgrade to LED will be viewed holistically considering goals and concerns of stakeholders, existing conditions, neighborhood and road characteristics, regulatory requirements, energy conservation and product specifications. The lighting design process will be the opportunity to engage with the community, organize demonstration and/or mock-ups and analyze scenarios in order to finalize the lighting design. The lighting design will be submitted to the governing body for its approval before the work phase begins.

Dalkia has developed an upgrade plan and phasing schedule to complete the conversion of all 3,499 City-owned luminaires to LED technology within 9 months from project commencement. The upgrade plan was developed with consideration for the following factors:

- Improvement of the lighting performance and look and feel of the City
- Reduction of traffic and lane closure requirements by scheduling a majority of disruptive work overnight or during low volume periods

Equipment and Workforce

In order to complete the project within a six-month period from the project commencement, Dalkia anticipates the need for four-six field crews. Each crew will be composed of two workers: a Journeyman Electrician (EL-01J or EE-98J) and a ground man.

- Depending on the nature of work and location of poles, crews will be equipped with either forty-foot or sixty-five-foot bucket trucks for luminaire replacement, and derrick trucks will be available when pole replacement is necessary. Dalkia will run all operations out of a centrally located warehouse, where we will store equipment, vehicles, and the inventory upgrade materials.

The proposed six-month timeline is based on the following variables:

- 3,499 City-owned light points
- 4-6 teams, 12 light points upgraded per day per team, 6-8 weeks of material lead time
- 4 months field work, 20 working days per month

These numbers are estimates based on Dalkia's performance commitment to conduct all upgrade tasks within six months, including for mobilization and material supply availability

Santa Fe Contract Unit Prices

as of January 27, 2021

Unit prices will be updated annually to reflect cost increases or decreases, technological advancements and the addition or deletion of items based on the work performed.

Line	Item	Description	Unit	Road Type	Total	Road Type	Total
1	Fixture Installation: Cobra head	Installation of (1) LED cobra head. Price includes luminaire, photocell, rewiring, and labor.	EA	Residential	\$342.26	Local	\$462.89
2	Fixture Installation: Cobra head	Installation of (1) LED cobra head. Price includes luminaire, photocell, rewiring, and labor.	EA	Major/Highway			\$607.65
3	Arm Installation: 5 ft or less	Installation of (1) arm made of aluminum, steel or comparable material. Price includes labor and wiring.	EA	Pipe	\$610.77	Davit	\$1,016.00
4	Arm Installation: Greater than 5 ft	Installation of (1) arm made of aluminum, steel or comparable material. Price includes labor and wiring.	EA	Davit	\$1,100.97	Twin Davit	\$2,177.60
5	Pole Installation: Less than 25 ft	Installation of pole made of aluminum, steel, or comparable material. Price includes labor and wiring.	EA	Local			\$2,484.36
6	Pole Installation: 25 to 35 ft	Installation of pole made of aluminum, steel, or comparable material. Price includes labor and wiring.	EA	Local			\$3,101.85
7	Pole Installation: Greater than 35 ft	Installation of pole made of aluminum, steel, or comparable material. Price includes labor and wiring.	EA	Up to 45 ft	\$3,911.12	Greater than 45 ft	\$5,957.64
8	Pole Base: 18"	Installation of an 18" pole base. Price includes base and labor	EA	All			\$778.91
9	Pole Base: 24"	Installation of a 24" pole base. Price includes base and labor	EA	All			\$942.31
10	Wiring Material: Copper Wire	Underground Copper 10/2 UF Wire. Price per foot, material only.	FT	All			\$1.12
11	Wiring Material: Aluminum Wire	Underground Aluminum Triplex Wire. Price per foot, material only.	FT	All			\$1.48
12	Overhead Wiring Material: Copper Wire	Overhead #8 Copper THHN Wire. Overhead requires 2 wires per pole. Price per foot, material only.	FT	All			\$0.45
13	Overhead Wiring Material: Aluminum Wire	Overhead #4 ACSR Wire. Overhead requires 2 wires per pole. Price per foot, material only.	FT	All			\$0.77
14	Pole Installation: Reusable	Installation of a reusable pole. Price includes labor and wiring.	EA	All			\$1,188.45
15	Arm Installation: Reusable	Installation of a reusable arm. Price includes labor and wiring.	EA	All			\$564.64
16	Fixture Installation: Reusable	Installation of a reusable fixture. Price includes labor and wiring.	EA	All			\$191.49
18	Materials for Repair	Extra materials needed to complete works will be itemized and priced on an individual basis.	EA	All			TBD
17	General Labor	Hourly rate for an electrician team composed of 1 Journeyman, 1 Groundman, 1 bucket truck plus equipment. MoT not included.	HR	All			\$174.48
19	Excavation	Hourly rate for an electrician team composed of 1 Journeyman, 1 Groundman, 1 bucket truck plus mini excavator	HR	All			220.96
20	Locating	Hourly rate for 1 technician, 1 vehicle, plus line locating machine	HR	All			204.48
21	Boring	Boring w/2-2" dia conduit & 2-#2 triplex, does not include set up fee	FT	All			\$27.69
22	Troubleshooting	Hourly rate for a troubleshooting team composed of 1 Journeyman, 1 Groundman, 1 bucket truck. MoT not included.	HR	All			165.85
23	Maintenance of Traffic	Traffic control comprised of 1 Groundman, 1 truck, 1 arrow board, and additional equipment for 1 hour.	HR	City	\$89.17	DOT	\$178.33
24	Labor for Smart Ready Controls	Hourly rate for a Smart Ready Control team composed of 1 Journeyman, 1 Groundman, 1 bucket truck plus	HR	All			\$230.80
25	IT Support	Hourly rate for technical support of Smart Ready Controls	HR	Basic	\$126.00	Expert	\$205.00

Deferred Maintenance

Budget

- \$89k budgeted for deferred maintenance during Works Phase
- Priorities
 - Priority 1: Brittle/Damaged Wiring in Pole Infrastructure
 - Priority 2: Pole Components: Hand-hole covers, vandal deterrent banding

Action Plan (Planned Maintenance)

- Throughout the Works Phase, Dalkia will record detailed notes around future planned maintenance that falls outside of the plan for deferred maintenance
- Priorities
 - Log vandalism, damage to build plan for proposed maintenance
 - Allow city to properly budget for upcoming maintenance in the Service Phase

City of Santa Fe NM – LED Implementation Plan
Dalkia Schedule of Works Phase

2021

January						
Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

March						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

April						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

May						
Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

June						
Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

July						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

August						
Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

September						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

October						
Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

November						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

December						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Date	Event
Months 1-2 (March-April 2021)	<ul style="list-style-type: none"> • Community Engagement Phase • Design Finalization
Month 3 (May 2021)	<ul style="list-style-type: none"> • Council Approval for Finalized Design • Product Ordering
Month 4 (June 2021)	<ul style="list-style-type: none"> • Delivery of Product • Begin Installation of Phase 1 • Weekly Construction Meetings
Month 5 (July 2021)	<ul style="list-style-type: none"> • Closeout of Phase 1 • Weekly Construction Meetings
Month 6 (August 2021)	<ul style="list-style-type: none"> • Closeout of Phase 2 • Weekly Construction Meetings
Month 7 (September 2021)	<ul style="list-style-type: none"> • Closeout of Phase 3 • Weekly Construction Meetings
Month 8 (October 2021)	<ul style="list-style-type: none"> • Closeout of Phase 4 • Weekly Construction Meetings
Month 9 (November 2021)	<ul style="list-style-type: none"> • Closeout of Phase 5 • Weekly Construction Meetings • Project Completion/Commencement of Services Phase

Lighting Plan/Energy Savings

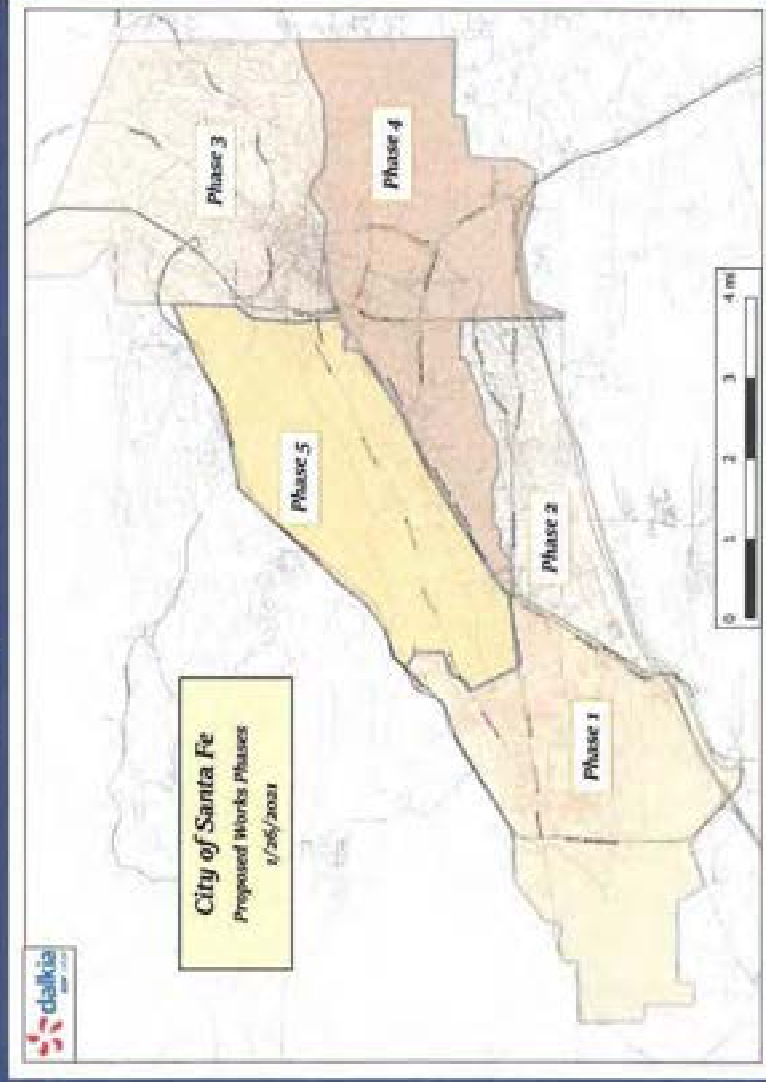
Energy Savings

Streetlight Type	Units	kWh/Month	Current kWh/Year	Non-Fuel Rate/Month	Current Non-Fuel Charge/Year	LED Equivalent Wattage	LED Equivalent kWh/Month	LED kWh/Year	Non-Fuel Rate/Month	LED Non- Fuel Charge/Year	LED kWh/Year Savings	LED Non-Fuel Savings/Year
100W HPS	1,316	45.0	710,640	\$3.42	\$54,008.64	28	14.2	224,246	\$0.60	\$9,475.20	486,394	\$ 44,533.44
250W HPS	1,404	107.0	1,802,736	\$8.12	\$136,805.76	118	42.7	719,410	\$2.40	\$40,435.20	1,083,326	\$ 96,370.56
400W HPS	635	165.0	1,257,300	\$12.53	\$95,478.60	190	92.4	704,068	\$3.79	\$28,879.80	553,212	\$ 66,598.80
175W MV	0	73.0	0	\$5.54	\$0.00	40	14.2	0	\$0.80	\$0.00	0	\$ -
400W MV	0	162.0	0	\$12.30	\$0.00	120	42.7	0	\$2.40	\$0.00	0	\$ -
Decorative 250W	144	107.0	184,896	\$8.12	\$14,031.36	118	42.7	73,786	\$0.60	\$1,036.80	111,110	\$ 12,994.56
Subtotal	3,499	94.2	3,955,572		\$286,293.00		41.0	1,721,530		79,817	2,234,042	\$ 220,497.36

LED Models

Streetlight Type	Model #	LED Wattage	LED Qty
100W HPS	ATBX P40 MVOL TR2 3K MP P7	28.0	1316
250W HPS	ATBM P30 MVOL T R2 3K/4K MP P7	118.0	1404
400W HPS	ATBM P70 MVOL T R2 3K/4K MP P7	190.0	635
Decorative 250W	MSPL2 P50 30K AS SN6SS P7 PCS	120.0	144

Comprehensive Install Plan/Mapping



Phased Install Approach

Phase 1/2 - South

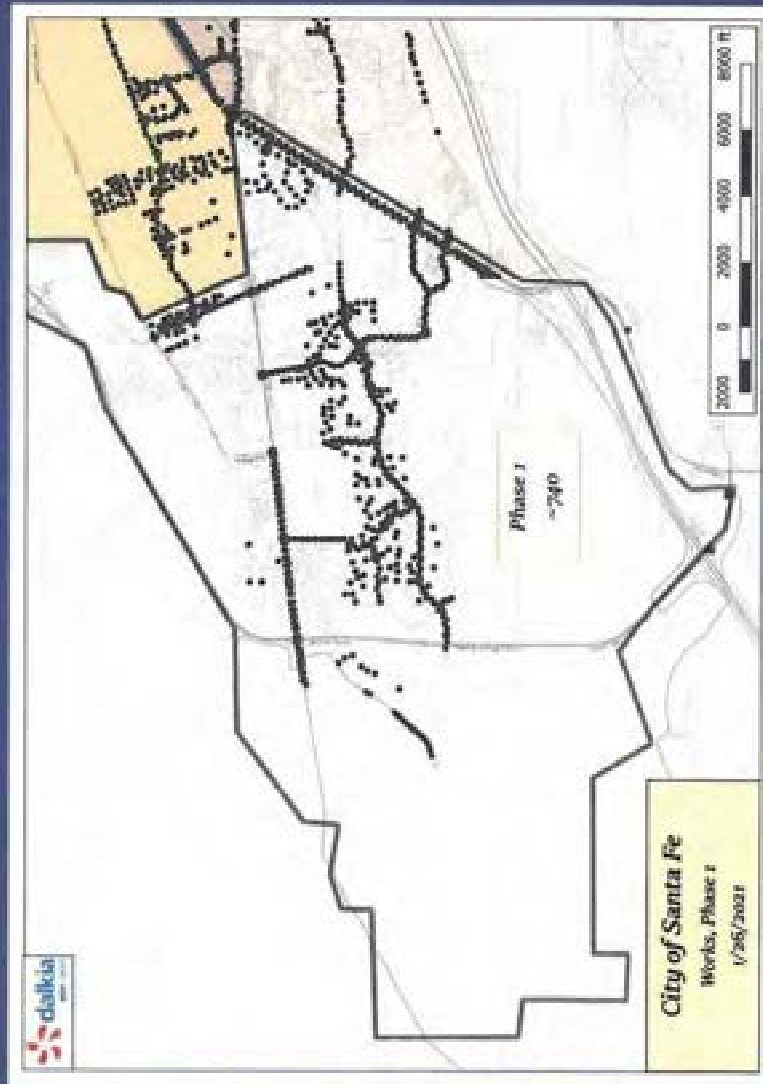
Phase 3 - Downtown

Phase 4 - East

Phase 5 - North

Based on the priorities of the City of Santa Fe, Dalkia will implement the upgrade in phases to convert existing lighting to LED

Phase 1



Details

OVERVIEW
South/Southwest

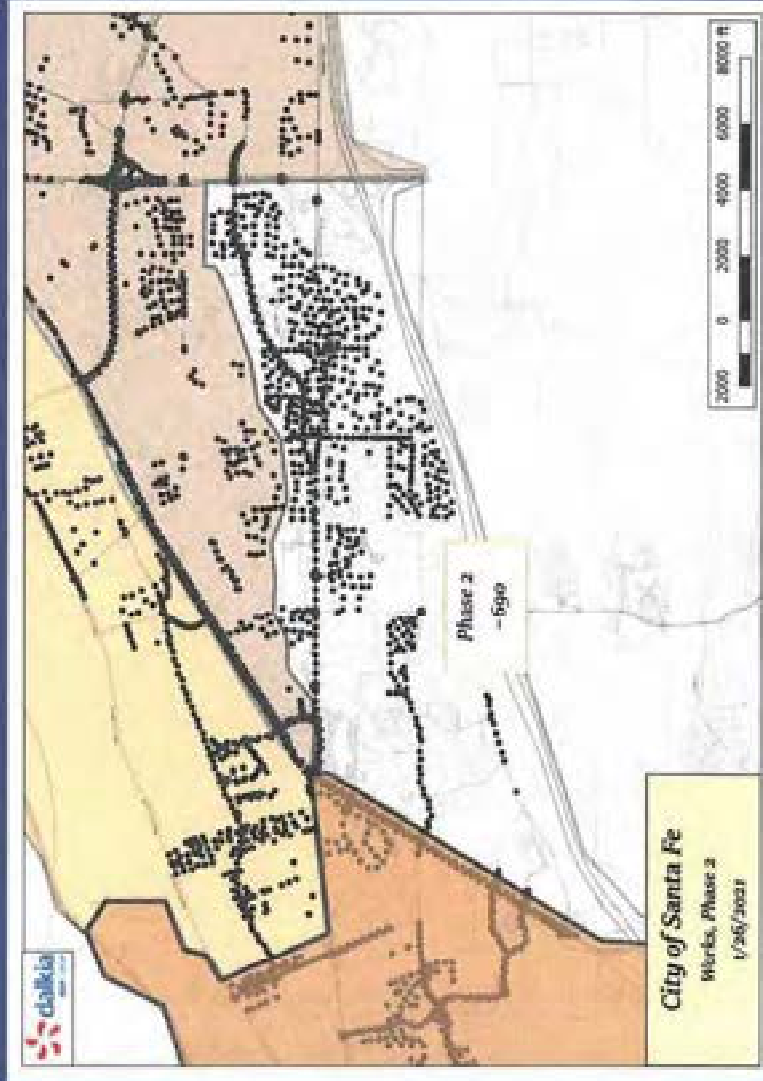
NUMBER OF TEAMS/TIME OF DAY
All teams/Day

DESCRIPTION
North of I-25, South of 264, West of 14

NUMBER OF POLES
740

DURATION
1 month

Phase 2



City of Santa Fe

Works, Phase 2

1/26/2007

Details

OVERVIEW
South

NUMBER OF TEAMS/TIME OF DAY
All teams/Day

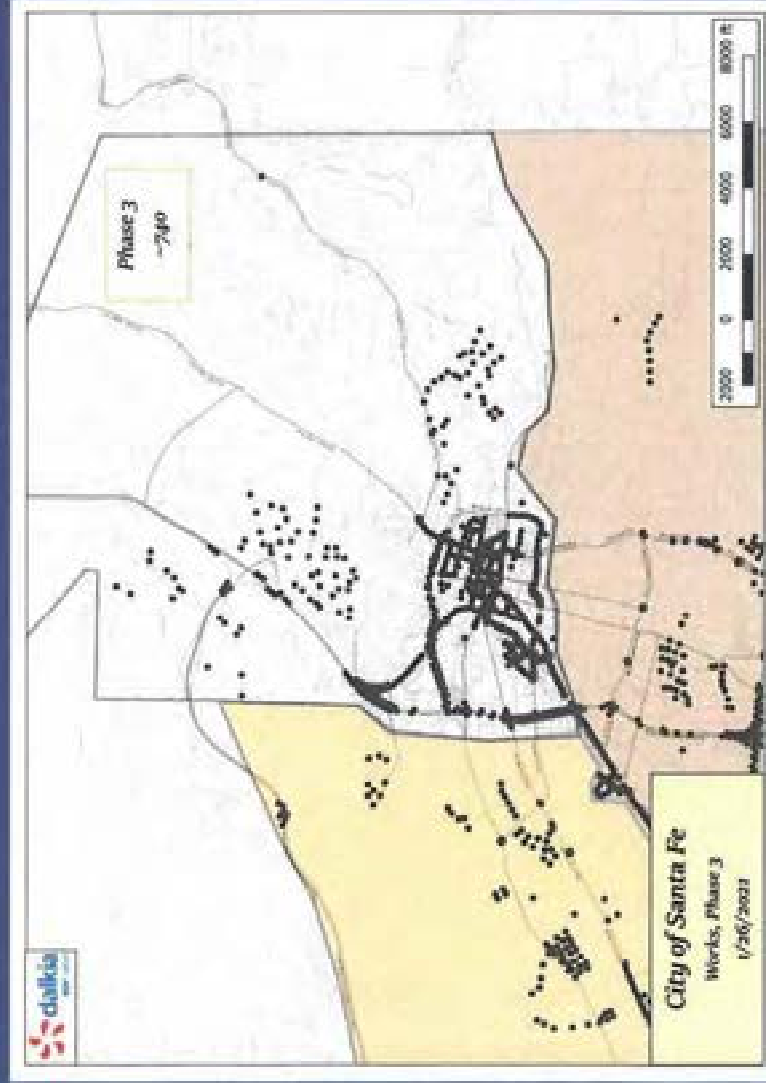
DESCRIPTION

North of I-25, South of 14 and 466, West of 285

NUMBER OF PLOTS
650

DURATION
1 month

Phase 3



Details

OVERVIEW
Downtown

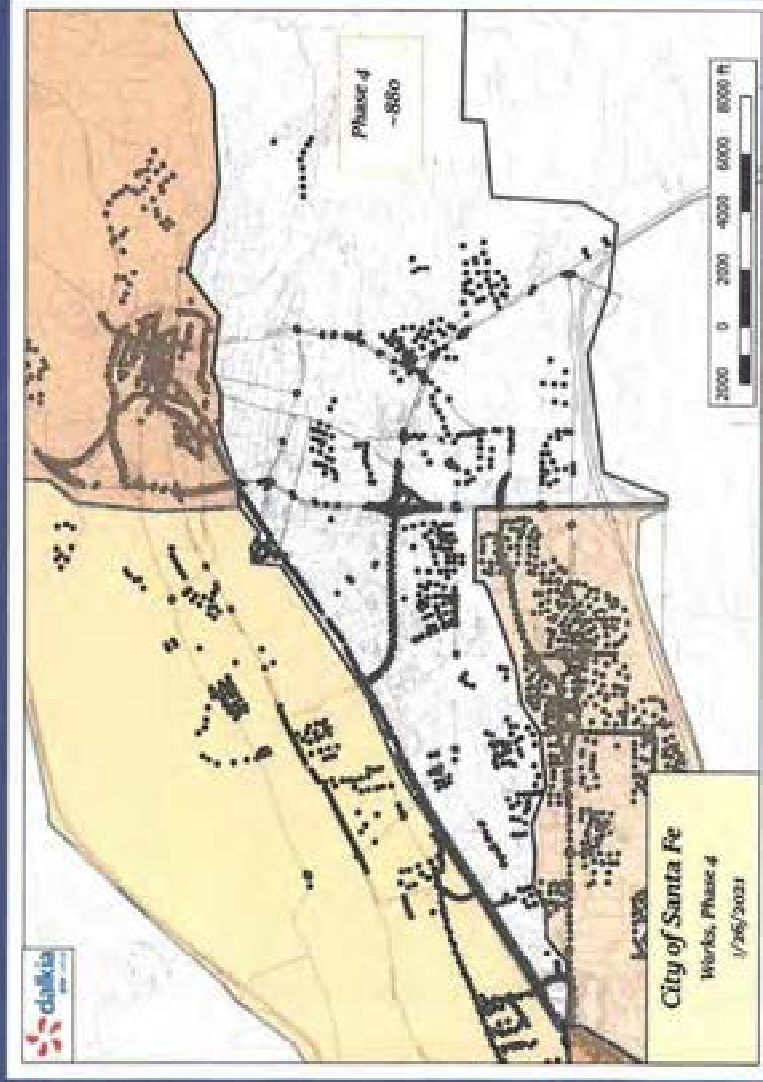
NUMBER OF TEAMS/TIME OF DAY
All teams/Day

DESCRIPTION
Downtown and North of Downtown

NUMBER OF POLES
740

DURATION
1 month

Phase 4



Details

OVERVIEW
East

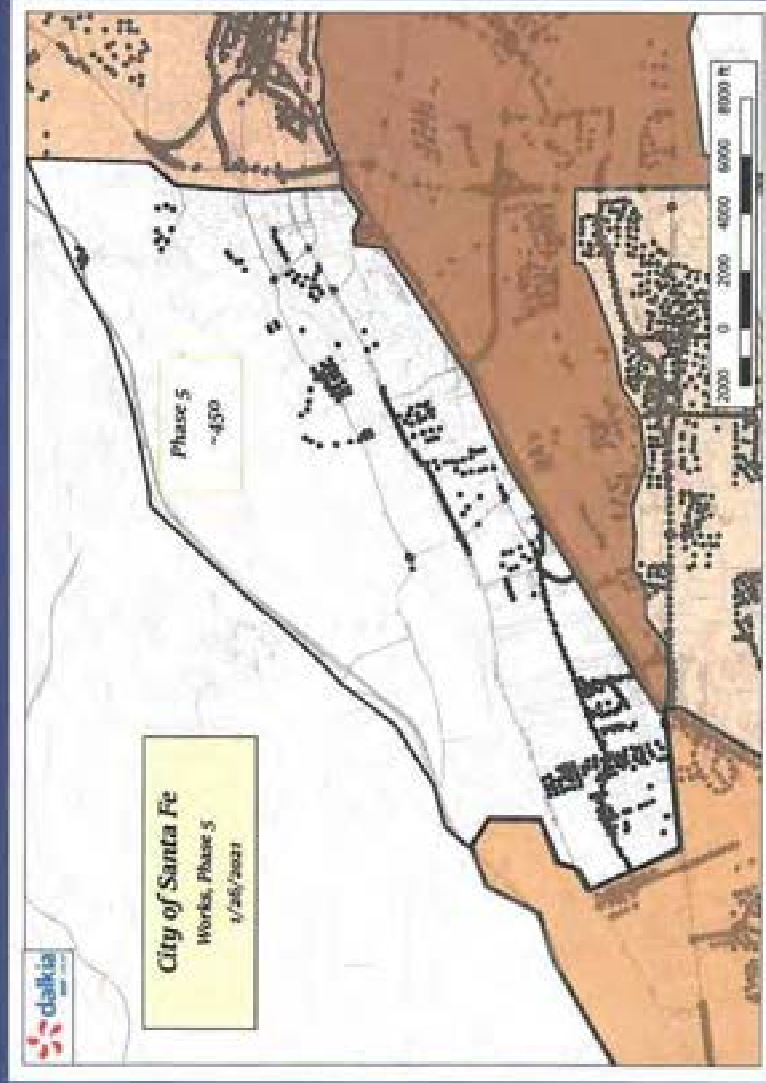
NUMBER OF TEAMS/TIME OF DAY
All teams/Day

DESCRIPTION
South of 14 and 475, North of I-25

NUMBER OF POLES
880

DURATION
1 month

Phase 5



Details

OVERVIEW
South/Southwest

NUMBER OF TEAMS/TIME OF DAY
All teams/Day

DESCRIPTION
North of 14, South of 599, West of 285

NUMBER OF POLES
450

DURATION
2 weeks

Maintenance of Traffic (MoT)

Dalkia and its subcontractors will implement Maintenance of Traffic (MoT) procedures based on roadway type according to the following tiers: (All MoT guidelines will follow OSHA standard protocols)

- Tier 1: Local/Residential; low traffic. Assumed that Curb Side Parking is allowed.
- Tier 2: Collector Roads; congested residential areas where street parking is limited and there is medium to occasionally high traffic
- Tier 3: Major/Arterial; medium to high traffic volumes and will require personnel with a Traffic Control Supervisor (TCS) Certification and a Mobile Utility Traffic Vehicle following the bucket truck.
- Tier 4: High traffic, congested areas, freeways, high traffic arterial, state highways. Will require personnel with TCS Certification and a Mobile Uniform Traffic Vehicle following the bucket truck.



ASSETS REQUIRING MOT DURING UPGRADE		
ROADWAY TYPE	MOT REQUIRED	
Local	NO	55% (Based on ABQ)
Collector	YES	
Major	YES	
Ramp	YES	45% (Based on ABQ)
Highway	YES	

LED streetlights and Dark Sky

The industry accepted method for measuring uplight and light trespass that a fixture produces is IES (Illuminating Engineering Society) Standard TM 15-11 and the BUG (Backlight, Uplight, Glare) Ratings. BUG is an acronym coined by the Illuminating Engineering Society (IES) and the International Dark Sky Association (IDA) to better explain how light trespass can be measured.

NO uplight

All Acuity American Electric Lighting (AEL) Autobahn Roadway Series Fixtures, specified for this project by the City of Santa Fe, PNM and Dalkia, have **"U-0" Listings, which means NO uplight goes above an angle of 90° degrees above nadir.** This is verified by independent testing using the LM-79 Report and the IES TM63 Photometric Files tested in the spherical photometer.

NMDOT-New Mexico Department of Transportation Special Provisions for Section 716-B: LED LUMINAIRE is the specification that American Electric Lighting LED Roadway products are required to meet in order to be approved for 5 years on the NMDOT Approved Products List (APL). To meet 716-B specifications, one of the requirements can be found on page 1: "All outdoor lighting shall be installed in accordance with the New Mexico Night Sky Protection Act (NMSA 1978, 74-12-1-et seq.).

Additionally, AEL has been the product of choice for Albuquerque (13,000 units); Phoenix, AZ (90,000 units) and Tucson, AZ (home of the Dark Sky Association (32,000 units), all with stringent uplight restrictions.

Additional options for shielding if needed

There are roadside and **house side shields available** for all Acuity AEL Roadway Series fixtures. Shields can be field installed.

Color temperature: a balance between 3000K for residential and wildlife health and comfort and 4000K for driver and pedestrian safety

CCT (Correlated Color Temperature) have to do with the way human and various animal species react to the SPD (Spectral Power Distribution) of LED sources, and the amount of shorter wavelengths of radiant energy in what is considered the "blue" range of the spectrum, from approximately 405 to 530 nanometers.

For this project, The City of Santa Fe, PNM and Dalkia follow a thoughtful approach that takes both public safety and human and environmental factors into consideration. This project follows IDA recommendations by utilizing LED fixtures with CCT of up-to **3,000K in residential neighborhoods.** It also takes into account additional studies that show that **4,000K sources are optimal for driver reaction times when use on higher speed roadways.**



Consistent with LEED® goals
& Green Glides® criteria
for light pollution reduction

Autobahn Series ATBM Roadway

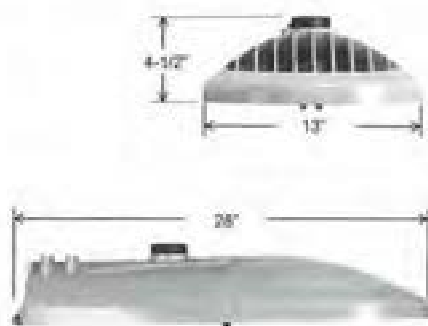
PRODUCT OVERVIEW



Applications:

Residential streets
Parking lots
High speed roadways

DIMENSIONS



Effective Projected Area (EPA)
The EPA for the ATBM is 0.3 sq. ft.,
Approx. Wt. = 21 lbs. (9.5 kg)

STANDARDS

Color temperatures of $\leq 3000\text{K}$ must be specified for International Dark-Sky Association certification.

Rated for -40°C to 40°C ambient

CSA Certified to U.S. and Canadian standards

Complies with ANSI: C136.2, C136.10, C136.14, C136.31, C136.15, C136.37

Features:

OPTICAL

Same Light: Performance is comparable to 150W – 250W HPS

White Light: Correlated color temperature - 4000K, 70 CRI minimum, 3000K, 70 CRI minimum or optional 5000K, 70 CRI minimum.

IP66 rated borosilicate glass optics ensure longevity and minimize dirt depreciation. Unique IP66 rated LED light engines provide 0% uplight and restrict backlight to within sidewalk depth, providing optimal application coverage and optimal pole spacing.

Available distributions are Type III, III, IV, & V roadway distributions.

ELECTRICAL

Expected Life: LED light engines are rated $> 100,000$ hours at 25°C , L70. Electronic driver has an expected life of 100,000 hours at a 25°C ambient.

Lower Energy: Saves an expected 40-60% over comparable HID luminaires.

Robust Surge Protection: Standard surge protection is 20kV/10kA "Extreme Level" per ANSI C136.2. An optional MOV pack provides 10kV/5kA "Enhanced Level."

MECHANICAL

Includes standard AEL lineman-friendly features such as tool-less entry, 3 station terminal block and quick disconnects. Bubble level located inside the electrical compartment for easy leveling at installation.

Rugged die-cast aluminum housing and door are polyester powder-coated for durability and corrosion resistance. Rigorous five-stage pre-treating and painting process yields a finish that achieves a scribe creepage rating of 8 (per ASTM D1654) after over 5000 hours exposure to salt fog chamber (operated per ASTM B117).

Mast arm mount is adjustable for arms from 1-1/4" to 2" (1-5/8" to 2-3/8" O.D.) diameter. The 2-bolt and optional 4 bolt clamping mechanism provide 3G vibration rating per ANSI C136.31.

The Wildlife shield is cast into the housing (not a separate piece).

CONTROLS

NEMA 3 pin photocontrol receptacle is standard, with the Acuity designed ANSI standard 7 pin receptacle optionally available.

Premium solid state locking-style photocontrol – PCSS (10 year rated life) Extreme long life solid state locking-style photocontrol – PCL1 (20 year rated life).

Extreme long life solid state locking-style photocontrol with on demand remote on/off control - PCCC (15 year rated life).

Optional onboard Adjustable Output module allows the light output and input wattage to be modified to meet site specific requirements, and also can allow a single fixture to be flexibly applied in many different applications.

Autobahn Series ATBM

Roadway

ORDERING INFORMATION

ATBM	P30	MVOLT	R2	
Series	Performance Packages	Voltage	Optics	Mounting
ATBM Autobahn LED Roadway	P05 9,700 lumens P10 11,000 lumens P20 12,800 lumens P30 15,500 lumens P40 17,400 lumens P50 18,700 lumens P60 20,000 lumens P70 21,500 lumens	MVOLT Multi-volt, 120-277V 347 347V 480 480V	R2 Roadway Type II R3 Roadway Type III R4 Roadway Type IV R5 Roadway Type V	(Blank) 2 Bolt Mounting 4B 4 Bolt Mounting

3K, MP, P7

Options

Color Temperature (CCT)

(Blank)	4000K CCT, 70 CRI Min.
3K	3000K CCT, 70 CRI Min.
5K	5000K CCT, 70 CRI Min.

Paint

(Blank)	Gray
BK	Black
BZ	Bronze
DOB	Dark Bronze
GI	Graphite
WH	White

Surge Protection

(Blank)	Standard 20kV/10kA SPD
MP	MOV Pack

Miscellaneous Options

HSS	House Side Shield
NL	NEMA Label Indicating Wattage
XL	Not CSA Certified – No Terminal Block Cover
UMR-XX	8" Horizontal Arm for Round Pole, Painted to match Fixture
UMS-XX	8" Horizontal Arm for Square Pole, Painted to match Fixture
UMR-GALV	8" Horizontal Arm for Round Pole, Galvanized
UMS-GALV	8" Horizontal Arm for Square Pole, Galvanized

Control Options

(Blank)	3 Pin NEMA Photocontrol Receptacle
P7	7 Pin Photocontrol Receptacle (diminable driver included) ¹
NR	No Photocontrol Receptacle
A0	Field Adjustable Output ²
DM	0-10V Dimmable Driver ²
PCSS	Solid-State Lighting Photocontrol ⁴
PCLL	Solid-State Long Life Photocontrol
PCCC	Solid-State Long Life Photocontrol with remote control on/off ⁴
SH	Shorting Cap

Packages

(Blank)	Standard Pack
JP	Job Pack (36/pallet)

Accessories

ATBMHSS	House Side Shield
ATBMLTS	Light Trespass Shield
RKATBMMVOLTSPD	ATBM Acuity SPD, MVOLT
RKATBMHVSPD	ATBM Acuity SPD, 347/480V
RKATBMMVOLTMP	ATBM MOV Pack, MVOLT
RKATBMHVMP	ATBM MOV Pack, 347/480V

Notes:

- 1 Dimmable Driver included. Not available with DM or NR.
- 2 Controls by others. Not available with P7 or A0.
- 3 Not available with DM.
- 4 MVOLT only.



AEL Headquarters, 3825 Columbus Road, Granville, OH 43023
www.americanelectriclighting.com

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Warranty Five-year limited warranty. Complete warranty terms located at:

www.acuitybrands.com/support/warranty-terms-and-conditions

Actual performance may differ as a result of end-user environment and application. Specifications subject to change without notice.

Please contact your sales representative for the latest product information. **Page 18**

ATBM

Autobahn Series ATBM

Roadway

PERFORMANCE PACKAGE

Performance Package	Distribution	Input Watts	3K (3000K CCT, 70 CRI)					4K/5K (4000K/5000K CCT, 70 CRI)					LLD @ 25°C		
			Lumens	LPW	B	U	G	Lumens	LPW	B	U	G	25k Hours	75k Hours	100k Hours
P05	R2	95	9,396	138	1	0	2	9,718	143	1	0	2	0.93	0.86	0.83
	R3		9,366	138	1	0	3	9,688	142	1	0	3			
	R4		9,030	133	1	0	3	9,340	137	1	0	3			
	R5		10,334	152	3	0	2	10,689	157	3	0	2			
P10	R2	81	10,635	131	3	0	3	11,299	139	2	0	3	0.93	0.86	0.83
	R3		10,675	132	2	0	3	11,302	140	2	0	3			
	R4		10,291	128	2	0	4	10,994	136	2	0	4			
	R5		11,504	142	3	0	2	12,086	149	3	0	2			
P20	R2	34	12,073	128	2	0	3	12,874	137	2	0	3	0.93	0.86	0.83
	R3		12,065	128	2	0	3	12,818	136	2	0	3			
	R4		11,546	127	2	0	4	12,525	133	2	0	4			
	R5		13,085	139	4	0	2	13,776	147	4	0	2			
P30	R2	118	14,637	124	2	0	3	15,514	131	2	0	3	0.93	0.86	0.83
	R3		14,631	124	2	0	3	15,452	131	2	0	3			
	R4		14,317	121	2	0	4	15,151	128	2	0	5			
	R5		15,775	134	4	0	2	16,665	141	4	0	2			
P40	R2	135	16,233	120	2	0	3	17,493	130	2	0	3	0.93	0.86	0.83
	R3		16,402	121	2	0	3	17,367	129	2	0	3			
	R4		15,911	118	2	0	5	17,008	126	2	0	5			
	R5		17,507	130	4	0	2	18,595	138	4	0	2			
P50	R2	152	17,541	115	2	0	3	18,748	123	2	0	3	0.93	0.86	0.83
	R3		17,677	116	2	0	4	18,712	123	2	0	4			
	R4		17,154	113	2	0	5	18,248	120	2	0	5			
	R5		19,008	125	4	0	2	20,088	132	4	0	2			
P60	R2	168	18,770	112	2	0	3	20,065	120	3	0	3	0.93	0.86	0.83
	R3		18,830	112	2	0	4	20,094	120	3	0	4			
	R4		18,269	109	2	0	5	19,648	117	2	0	5			
	R5		20,350	121	4	0	2	21,505	128	4	0	2			
P70	R2	190	20,190	108	3	0	3	21,585	114	3	0	3	0.93	0.86	0.83
	R3		20,142	106	3	0	4	21,504	113	3	0	4			
	R4		19,660	103	2	0	5	21,024	111	3	0	5			
	R5		21,588	116	4	0	2	23,076	121	4	0	2			

Note: Individual fixture performance may vary. Specifications subject to change without notice.



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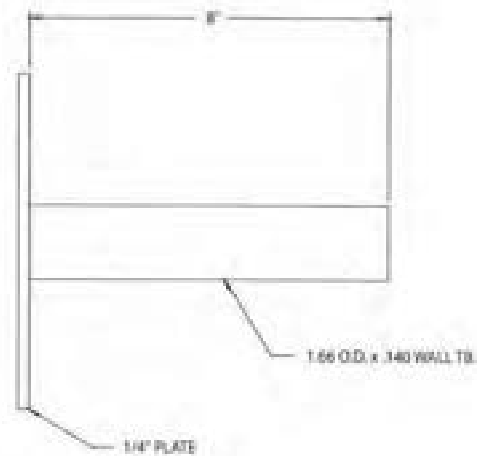
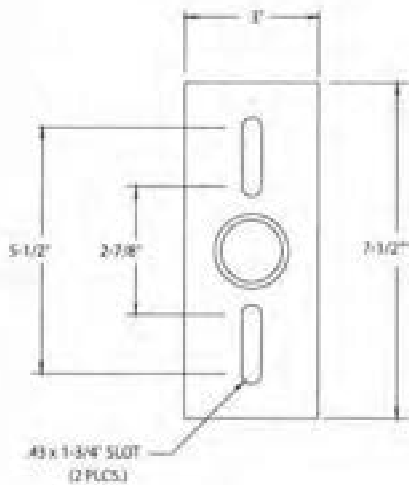
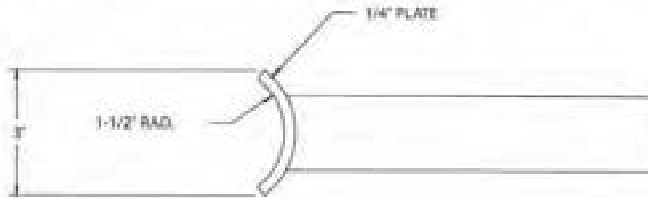
ATBM

Autobahn Series ATBM

Roadway

UMR POLE ADAPTOR

RECOMMENDED FOR USE WITH POLES OF 4" DIAMETER OR SMALLER



UMS POLE ADAPTOR



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ATBM



Consistent with LEED® goals
A Green Glazer® solution
for light pollution reduction

Autobahn Series ATBM Roadway

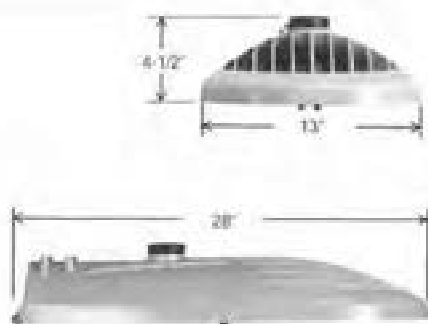
PRODUCT OVERVIEW



Applications:

Residential streets
Parking lots
High speed roadways

DIMENSIONS



Effective Projected Area (EPA)
The EPA for the ATBM is 0.3 sq. ft.
Approx. Wt. = 21 lbs. (9.5 kg)

STANDARDS

Color temperatures of $\leq 3000K$ must be specified for International Dark-Sky Association certification.

Rated for $-40^{\circ}C$ to $40^{\circ}C$ ambient

CSA Certified to U.S. and Canadian standards

Complies with ANSI: C136.2, C136.10, C136.14, C136.31, C136.15, C136.37

Features:

OPTICAL

Same Light: Performance is comparable to 150W – 250W HPS

White Light: Correlated color temperature - 4000K, 70 CRI minimum, 3000K, 70 CRI minimum or optional 5000K, 70 CRI minimum.

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ELECTRICAL

Expected Life: LED light engines are rated $>100,000$ hours at $25^{\circ}C$, L70.

Electronic driver has an expected life of 100,000 hours at a $25^{\circ}C$ ambient.

Lower Energy: Saves an expected 40-60% over comparable HID luminaires.

Robust Surge Protection: Standard surge protection is 20kV/10kA "Extreme Level" per ANSI C136.2. An optional MOV pack provides 10kV/5kA "Enhanced Level."

MECHANICAL

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Autobahn Series ATBM

Roadway

ORDERING INFORMATION

ATBM	P30	MVOLT	R3	
Series	Performance Packages	Voltage	Options	Mounting
ATBM Autobahn LED Roadway	P05 9,700 lumens P10 11,000 lumens P20 12,800 lumens P30 15,500 lumens P40 17,400 lumens P50 18,700 lumens P60 20,000 lumens P70 21,500 lumens	MVOLT Multi-volt, 120-277V 347 347V 480 480V	R2 Roadway Type II R3 Roadway Type III R4 Roadway Type IV R5 Roadway Type V	(Blank) 2 Bolt Mounting 4B 4 Bolt Mounting

3K MP P7

Options

Color Temperature (CCT)

(Blank)	4000K CCT, 70 CRI Min.
3K	3000K CCT, 70 CRI Min.
5K	5000K CCT, 70 CRI Min.

Paint

(Blank)	Gray
BK	Black
BZ	Bronze
DOB	Dark Bronze
GI	Graphite
WH	White

Surge Protection

(Blank)	Standard 20kV/10kA SPD
MP	MOV Pack

Miscellaneous Options

HSS	House Side Shield
NL	NEMA Label Indicating Wattage
XL	Not CSA Certified - No Terminal Block Cover
UMR-XX	8" Horizontal Arm for Round Pole, Painted to match Fixture
UMS-XX	8" Horizontal Arm for Square Pole, Painted to match Fixture
UMR-GALV	8" Horizontal Arm for Round Pole, Galvanized
UMS-GALV	8" Horizontal Arm for Square Pole, Galvanized

Control Options

(Blank)	3 Pin NEMA Photocontrol Receptacle
P7	7 Pin Photocontrol Receptacle (dimable driver included) ¹
NR	No Photocontrol Receptacle
AO	Field Adjustable Output ³
DM	0-10V Dimmable Driver ²
PCSS	Solid-State Lighting Photocontrol ⁴
PCLL	Solid-State Long Life Photocontrol
PCCC	Solid-State Long Life Photocontrol with remote control on/off ⁴
SH	Shunting Cap

Packages

(Blank)	Standard Pack
JP	Job Pack (36/pallet)

Accessories

ATBMHSS	House Side Shield
ATBMLTS	Light Trespass Shield
RKATBMMVOLTSPD	ATBM Acuity SPD, MVOLT
RKATBMHVSPD	ATBM Acuity SPD, 347/480V
RKATBMMVOLTMP	ATBM MOV Pack, MVOLT
RKATBMHVMP	ATBM MOV Pack, 347/480V

Notes:

- 1 Dimmable Driver included. Not available with DM or NR.
- 2 Controls by others. Not available with P7 or AO.
- 3 Not available with DM.
- 4 MVOLT only.



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Warranty Five-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/warranty/industrial-commercial-and-landscape
 Actual performance may differ as a result of end-user environment and application. Specifications subject to change without notice.

Please contact your sales representative for the latest product information.

Roadway

PERFORMANCE PACKAGE

Performance Package	Distribution	Input Watts	3K (3000K CCT, 70 CRI)					4K/5K (4000K/5000K CCT, 70 CRI)					LLD @ 25°C		
			Lumens	LPW	B	U	G	Lumens	LPW	B	U	G	25k Hours	75k Hours	100k Hours
P05	R2	68	8,396	138	1	0	2	9,718	143	1	0	2	0.93	0.86	0.83
	R3		8,366	138	1	0	3	9,688	142	1	0	3			
	R4		9,030	133	1	0	3	9,340	137	1	0	3			
	R5		10,234	152	2	0	3	10,689	157	2	0	2			
P10	R2	81	10,626	131	2	0	3	11,298	139	2	0	3	0.93	0.86	0.83
	R3		10,675	132	2	0	3	11,302	140	2	0	3			
	R4		10,391	128	2	0	4	10,994	136	2	0	4			
	R5		11,504	142	3	0	2	12,086	149	3	0	2			
P20	R2	94	12,073	128	2	0	3	12,874	137	2	0	3	0.93	0.86	0.83
	R3		12,065	128	2	0	3	12,878	136	2	0	3			
	R4		11,940	127	2	0	4	12,525	133	2	0	4			
	R5		13,085	139	4	0	2	13,776	147	4	0	2			
P30	R2	118	14,627	124	2	0	3	15,514	131	2	0	3	0.93	0.86	0.83
	R3		14,631	124	2	0	3	15,462	131	2	0	3			
	R4		14,317	121	2	0	4	15,151	128	2	0	5			
	R5		16,779	134	4	0	2	16,885	141	4	0	2			
P40	R2	135	16,233	120	2	0	3	17,493	130	2	0	3	0.93	0.86	0.83
	R3		16,402	127	2	0	3	17,367	129	2	0	3			
	R4		15,911	118	2	0	5	17,008	126	2	0	5			
	R5		17,507	130	4	0	2	18,595	138	4	0	2			
P50	R2	152	17,541	115	2	0	3	18,748	123	2	0	3	0.93	0.86	0.83
	R3		17,677	118	2	0	4	18,712	123	2	0	4			
	R4		17,154	112	2	0	5	18,246	120	2	0	5			
	R5		19,008	125	4	0	2	20,088	132	4	0	2			
P60	R2	168	18,770	112	2	0	3	20,095	120	3	0	3	0.93	0.86	0.83
	R3		18,820	112	2	0	4	20,094	120	3	0	4			
	R4		18,269	109	2	0	5	19,648	117	2	0	5			
	R5		20,350	121	4	0	2	21,505	128	4	0	2			
P70	R2	190	20,190	106	3	0	3	21,565	114	3	0	3	0.93	0.86	0.83
	R3		20,142	106	3	0	4	21,564	113	3	0	4			
	R4		19,680	103	2	0	5	21,024	111	3	0	5			
	R5		21,388	118	4	0	2	23,026	121	4	0	2			

Note: Individual future performance may vary. Specifications subject to change without notice.



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Warranty Five-year limited warranty. Complete warranty terms located at www.acer.com

www.pearsoned.com/collegebusiness

Actual performance may differ as a result of end-user environment and application.

Specifications subject to change without notice.

Please contact your sales representative for the latest product information.

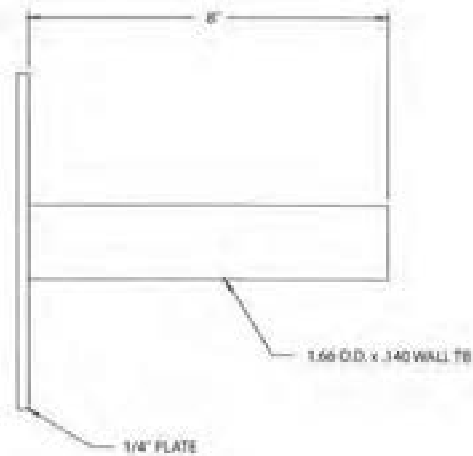
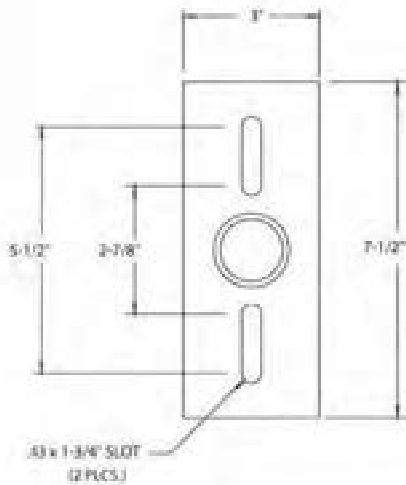
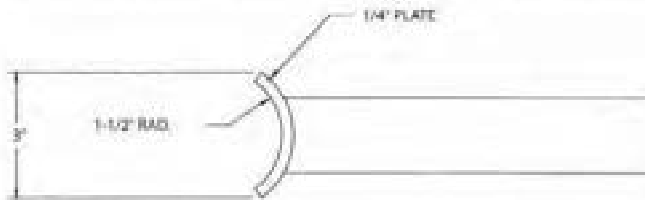
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Autobahn Series ATBM

Roadway

UMR POLE ADAPTOR

RECOMMENDED FOR USE WITH POLES OF 4" DIAMETER OR SMALLER



UMS POLE ADAPTOR



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www.acuitybrands.com/support/warranty/terms-and-conditions

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ATBM



Consistent with LEED® goals
& Green Globes® criteria
for light pollution reduction

Autobahn Series ATBX

Roadway & Security Lighting

PRODUCT OVERVIEW



Applications:

Residential streets
Parking lots
General security lighting

DIMENSIONS



Effective Projected Area (EPA) The EPA for the ATBX is .26 sq. ft.
Approx. Wt. = 8lbs.

STANDARDS

DesignLights Consortium® (DLC) qualified product. Not all versions of this product may be DLC qualified. Please check the DLC Qualified Products List at www.designlights.org/QPL to confirm which versions are qualified.

Color temperatures of $\leq 3000\text{K}$ must be specified for International Dark-Sky Association certification.

Rated for -40°C to 40°C ambient

CSA Certified to U.S. and Canadian standards

Complies with ANSI: C136.2, C136.10, C136.14, C136.31, C136.15, C136.37

Note: Actual performance may differ as a result of end-user environment and application. Specifications subject to change without notice.

Features:

OPTICAL

Same Light: Performance is comparable to 50W – 150W HPS and up to 175W Mercury Vapor roadway and security lighting luminaires.

White Light: Correlated color temperature – 4000K, 70 CRI minimum, 3000K, 70 CRI minimum or optional 5000K, 70 CRI minimum.

IP66 rated borosilicate glass optics ensure longevity and minimize dirt depreciation. Unique IP66 rated LED light engines provide 0% uplight and restrict backlight to within sidewalk depth, providing optimal application coverage and optimal pole spacing.

Available distributions are Type II, III, IV, and V roadway distributions. When used with the optional acrylic refractor the unit provides approximately 10% uplight and increased vertical foot-candles.

ELECTRICAL

Expected Life: LED light engines are rated $>100,000$ hours at 25°C , L70. Electronic driver has an expected life of 100,000 hours at a 25°C ambient.

Lower Energy: Saves an expected 40-60% over comparable HID luminaires.

Standard surge protection is 20kV/10kA "Extreme Level" per ANSI C136.2. An optional MOV pack provides 10kV/5kA "Enhanced Level."

MECHANICAL

Includes standard AEL lineman-friendly features such as tool-less entry, 3 station terminal block and quick disconnects. Bubble level located inside the electrical compartment for easy leveling at installation.

Rugged die-cast aluminum housing and door are polyester powder-coated for durability and corrosion resistance. Rigorous five-stage pre-treating and painting process yields a finish that achieves a scribe creepage rating of 8 (per ASTM D1654) after over 5000 hours exposure to salt fog chamber (operated per ASTM B117).

Mast arm mount is adjustable for arms from 1-1/4" to 2" (1-5/8" to 2-3/8" O.D.) diameter. The 2-bolt clamping mechanism provides 3G vibration rating per ANSI C136.31.

CONTROLS

NEMA 3 pin photocontrol receptacle is standard, with the Acuity designed ANSI standard 7 pin receptacle optionally available.

Premium solid state locking-style photocontrol – PCSS (10 year rated life) Extreme long life solid state locking-style photocontrol – PCL1 (20 year rated life)

Optional onboard Adjustable Output module allows the light output and input wattage to be modified to meet site specific requirements, and also can allow a single fixture to be flexibly applied in many different applications.

Autobahn Series ATBX

Roadway & Security Lighting

ORDERING INFORMATION

P30	MVOLT		3K MP P7
Series	Performance Packages	Voltage	Optics
ATBX Autobahn LED Roadway & Security	P10 2,000 lumens P20 2,500 lumens P30 3,200 lumens P40 3,900 lumens P50 5,600 lumens P60 6,600 lumens P70 7,400 lumens	MVOLT Multi-volt, 120-277V	R2 Roadway Type II R3 Roadway Type III R4 Roadway Type IV R5 Roadway Type V D3 Type III, Drop Refractor included D5 Type V, Drop Refractor included

MP 3K P7

Options		
Color Temperature (CCT) (Blank) 4000K CCT, 70 CRI Min. 3K 3000K CCT, 70 CRI Min. 5K 5000K CCT, 70 CRI Min. Paint Blank Gray (Standard) 8K Black WH White BZ Bronze Surge Protection Blank Standard 20kV/10kA SPD MP MDV Pack Misc. VR Visual Comfort Refractor HSS House Side Shield NL NEMA Label XL Not CSA Certified	Controls (Blank) 3 Pin NEMA Photocontrol Receptacle NR No Photocontrol Receptacle DM 0V-10V Dimmable Driver P7 7 Pin Photocontrol Receptacle (dimming driver included) PCSS DTL DSS Photocontrol PCLL DTL DLL Photocontrol 120-277V AD Field Adjustable Output SH Shorting Cap Packages (Blank) Standard Pack JP Job Pack Install Packages PKGS DTL DSS Photocontrol PKGL DTL DLL Photocontrol Packages ship with selected photocontrol, 24", 1 1/4" diameter arm, 5' of prewire and mounting hardware	Accessories ATBXREF Drop Refractor for field installation ATBXHSS House Side Shield for field installation ATBXLTS Light Trespass Shield for field installation ATBXVR-XX Comfort Refractor & Uplight Skirt, Select Paint (XX) to Match Fixture

Notes

1. Not available with Install Packages.
2. Not available with AD option.



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Warranty Five-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/warranty/led-roadway-security-lights-and-conduits. Actual performance may differ as a result of end-user environment and application. All values are design or typical values, measured under laboratory conditions at 25 °C. Specifications subject to change without notice.

Please contact your sales representative for the latest product information. **Page 26**

Autobahn Series ATBX

Roadway & Security Lighting

PERFORMANCE PACKAGE

Performance Package	Distribution	Input Watts	3000K CCT, 70 CRI					4000K & 5000K CCT, 70 CRI					LLD @ 25C		
			Lumens	LPW	B	U	G	Lumens	LPW	B	U	G	50K Hours	75K Hours	100K Hours
P10	R2	14	1,956	140	1	0	1	2,030	145	1	0	1	0.92	0.89	0.85
	R3		1,955	140	0	0	1	2,011	144	0	0	1			
	R4		1,962	142	1	0	1	1,974	141	1	0	1			
	R5		2,145	153	1	0	0	2,160	154	1	0	0			
	D3		1,908	136	1	2	1	1,963	140	1	2	1			
	D5		2,077	148	1	2	1	2,092	149	1	2	1			
P20	R2	18	2,455	136	1	0	1	2,575	143	1	0	1	0.92	0.89	0.85
	R3		2,473	137	1	0	1	2,547	142	1	0	1			
	R4		2,505	139	1	0	1	2,497	139	1	0	1			
	R5		2,715	151	2	0	0	2,735	152	2	0	0			
	D3		2,414	134	1	2	1	2,486	138	1	2	1			
	D5		2,629	146	1	2	1	2,648	147	1	2	1			
P30	R2	23	3,162	135	1	0	1	3,243	141	1	0	1	0.92	0.89	0.85
	R3		3,125	136	1	0	1	3,232	141	1	0	1			
	R4		3,153	127	1	0	1	3,150	127	1	0	1			
	R5		3,422	149	2	0	1	3,431	149	2	0	1			
	D3		3,050	130	1	2	1	3,155	137	1	2	1			
	D5		3,214	144	1	2	1	3,332	144	1	2	1			
P40	R2	28	3,603	129	1	0	1	3,790	135	1	0	1	0.92	0.89	0.85
	R3		3,705	132	1	0	1	3,890	139	1	0	1			
	R4		3,640	130	1	0	2	3,817	136	1	0	2			
	R5		3,971	142	2	0	1	4,167	149	2	0	1			
	D3		3,817	129	1	2	2	3,797	136	1	2	2			
	D5		3,845	137	2	2	1	4,035	144	2	2	1			
P50	R2	41	5,426	132	2	0	2	5,425	132	2	0	2	0.92	0.89	0.85
	R3		5,248	128	1	0	2	5,615	137	1	0	2			
	R4		5,300	129	1	0	2	5,462	133	1	0	2			
	R5		5,647	138	3	0	1	6,033	147	3	0	1			
	D3		5,123	125	1	3	2	5,481	134	1	3	2			
	D5		5,468	133	2	3	2	5,842	142	2	3	2			
P60	R2	51	6,262	125	2	0	2	6,416	126	2	0	2	0.92	0.88	0.84
	R3		6,208	122	1	0	2	6,535	130	1	0	2			
	R4		6,267	123	1	0	2	6,432	126	1	0	2			
	R5		6,690	131	3	0	1	7,127	140	3	0	1			
	D3		6,059	119	1	3	2	6,677	127	1	3	2			
	D5		6,478	127	2	3	2	6,901	135	3	3	2			
P70	R2	60	7,123	140	2	0	2	7,246	142	2	0	2	0.92	0.88	0.84
	R3		6,967	137	1	0	2	7,449	146	1	0	2			
	R4		6,957	136	1	0	2	7,235	142	1	0	2			
	R5		7,492	147	3	0	1	7,939	156	3	0	1			
	D3		6,800	133	2	3	2	7,271	143	2	3	2			
	D5		7,255	142	3	3	2	7,688	151	3	3	2			



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Autobahn Series ATBX

Roadway & Security Lighting

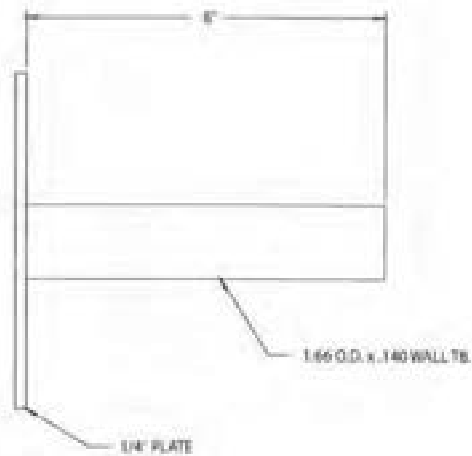
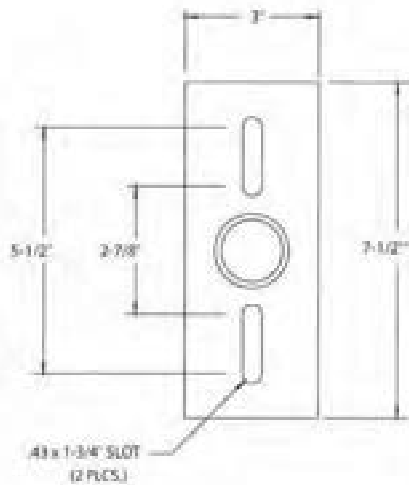
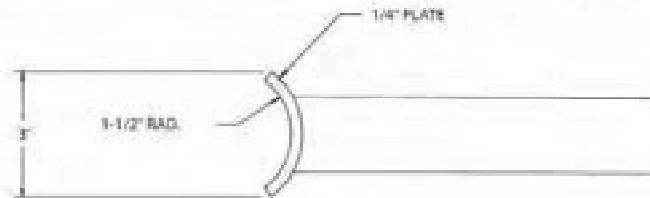
PERFORMANCE DATA with VISUAL COMFORT REFRACTOR

Performance Package	Distribution	Input Watts	3000K CCT, 70 CRI					4000K & 5000K CCT, 70 CRI					LLD @ 25C		
			Lumens	LPW	B	U	G	Lumens	LPW	B	U	G	50K Hours	75K Hours	100K Hours
P10	R2 with VR	14	1,686	120	1	0	1	1,747	125	1	0	1	0.92	0.89	0.85
	R3 with VR		1,669	119	1	0	1	1,688	121	1	0	1			
	R4 with VR		1,602	114	1	0	1	1,626	116	1	0	1			
	R5 with VR		1,614	120	1	0	1	1,662	123	1	0	1			
P20	R2 with VR	18	2,124	116	1	0	1	2,295	123	1	0	1	0.92	0.89	0.85
	R3 with VR		2,104	117	1	0	1	2,128	119	1	0	1			
	R4 with VR		2,019	112	1	0	1	2,053	114	1	0	1			
	R5 with VR		2,290	127	1	0	1	2,348	130	1	0	1			
P30	R2 with VR	23	2,684	117	1	0	1	2,788	121	1	0	1	0.92	0.89	0.85
	R3 with VR		2,659	116	1	0	1	2,699	117	1	0	1			
	R4 with VR		2,553	111	1	0	1	2,594	113	1	0	1			
	R5 with VR		2,892	126	2	0	1	2,969	129	2	0	1			
P40	R2 with VR	28	3,240	116	1	0	1	3,388	120	1	0	1	0.92	0.89	0.85
	R3 with VR		3,204	114	1	0	1	3,261	116	1	0	1			
	R4 with VR		3,061	110	1	0	2	3,124	112	1	0	2			
	R5 with VR		3,495	125	2	0	1	3,584	128	2	0	1			
P50	R2 with VR	41	4,633	113	1	0	2	4,818	118	1	0	2	0.92	0.89	0.85
	R3 with VR		4,499	110	1	0	2	4,617	113	1	0	2			
	R4 with VR		4,343	106	1	0	2	4,504	110	1	0	2			
	R5 with VR		4,869	119	2	0	1	5,117	125	2	0	1			
P60	R2 with VR	51	5,485	108	2	0	2	5,716	112	2	0	2	0.92	0.88	0.84
	R3 with VR		5,330	105	1	0	2	5,490	108	1	0	2			
	R4 with VR		5,145	101	1	0	2	5,328	104	1	0	2			
	R5 with VR		5,771	113	3	0	1	6,061	119	3	0	1			
P70	R2 with VR	60	6,167	121	2	0	2	6,396	125	2	0	2	0.92	0.88	0.84
	R3 with VR		5,978	117	1	0	2	6,110	120	1	0	2			
	R4 with VR		5,772	113	1	0	2	5,962	117	1	0	2			
	R5 with VR		6,482	127	3	0	1	6,799	133	3	0	2			

Autobahn Series ATBX

Roadway & Security Lighting

UMR POLE ADAPTOR RECOMMENDED FOR USE WITH POLES OF 4" DIAMETER OR SMALLER



UMS POLE ADAPTOR



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Warranty Five-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/support/american-electric-lighting
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Ubicell Model 2.0 Smart Streetlight Controller



Specifications

Lamp Interface

LED, CF and HID

Lamp Power

960W@480V, 554W@277V, 480W@240V, 240W@120V

On/Off

Photo-cell control, software programmable

Dimming Controls

PWM, 0-10V, DALI, DALI2

Dimming Range

DIM 1 - 0-10V PWM, ability to detect stray voltage but prohibits external sensor use

DIM 2 - 0-10V PWM, ability to hardwire an external sensor, but prohibits the ability to detect stray voltage

DIM 3 - DALI enabled, ability to hardwire an external sensor, plus the ability to detect stray voltage

DALI/DALI 2

LTE CAT 3

External Sensor Interface

Communication Module

Location Based Services

GPS, WiFi traffic movement, Bluetooth info beacons

OTA Updates

Yes

Security

AES 128/256-bit encryption

Voltage Detection

Real-time detection of "energized" metal poles

Power Surge Protection

10KV/5KA

Power Supply

90V to 506V (50/60Hz)

Average Power Consumption

1W

IP Ratings

IP66

Impact Rating

IK07

Operating Temperature Range

-30C to +70C

Dimensions

Diameter: 82.5mm (3.25 in) Height: 98mm (3.86 in)

Weight

290 grams

Network Protocol

IPv4 and IPv6 network compliant

Utility Power Metering

Accuracy

ANSI C12.20 Class 0.5

Accuracy Verification

Infrared pulse

Line Voltage

90V to 506V (50/60Hz)

Line Voltage Accuracy

+/- 0.5%

Current Accuracy

+/- 0.5%

Power

Active/reactive/power factor

Energy Consumption

kWh

Sag & Swell Detection

Yes

On/Off Cycles

Cycle count and cycle violation (fault detection)

Running Hour

0-10 years

Programmable Parameters

- Customer device management
- Scheduling controls
- Alert thresholds
- Sunrise/sunset offsets
- Tilt detection
- Vibration detection
- Voltage detection
- Power detection
- Photocell levels
- Luminaire fault detection
- Power loss after power failure
- Network communication failure
- Wireless network configuration

Warranty

5-Year Warranty

10-Year Optional Warranty



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UBICELL-001-000001-000001-000001-000001

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APPROVED FOR PUBLIC USE

Project Recycling

Concurrent with the upgrade installations, Dalkia will dismantle and recycle all parts of the existing luminaires. Components that will be recycled include the fixture housing, lamp, ballast, and all internal wiring as shown in the image. Dalkia will work with the City of Santa Fe to properly dispose of recyclables with licensed local vendors.

Dalkia will provide recycling certificates for recycled components to the City of Santa Fe.



Community Engagement and Public Outreach

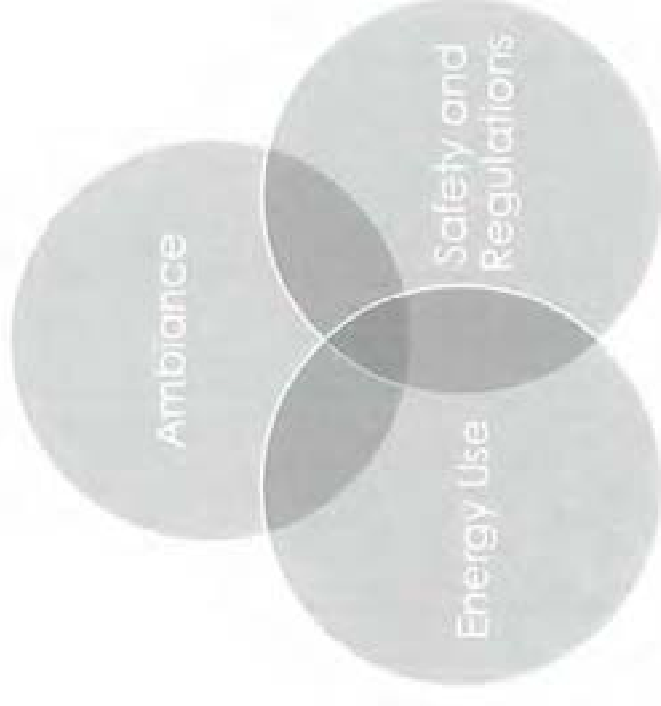
Dalkia will begin a its community engagement during the lighting design finalization phase:

- Create demonstrations and engage neighbors
- Analyze options and tradeoffs
- Ensure regulatory compliance

The lighting design will be submitted to the governing body for its approval before the work phase begins.

During the work phase Dalkia will coordinate its public outreach effort with the City and PHM. The goals of this coordinated public outreach will be to

- 1) Educate the Citizens of Santa Fe about the benefits of upgrading existing lamps to LED technology
- 2) Provide regular updates to the upgrade phasing schedule
 - a. Including neighborhoods and anticipated road closures
 - b. Significant road closures will be announced with additional press releases beyond publication on the website
- 3) Provide a means for public feedback and FAQs
- 4) Establish means for public communication post install



Commissioning/Acceptance of Work

Within forty-five (45) days of the Commencement Date, Dalkia will provide a written Commissioning and Quality Assurance Plan to include testing, inspection, and operational validation procedures. The Commissioning and Quality Assurance Plan will establish procedures for commissioning each Segment. Upon completion of a Segment of the Works Phase, Dalkia will commission the completed work in partnership with the City in accordance with the agreed upon plan. Key elements of this plan may include:

- Detailed micro-schedules to inform the City of Santa Fe and PNM of weekly activity and forecast of upcoming conversions.
- Coordinated inspections for Traffic Safety and Quality of Work.
- Formal transmittal of completed assets to the City of Santa Fe and PNM.
- Real-time data entry into Dalkia's CMMS system for tracking inventory and maintenance.
- Electronic transmission of asset conversion completion to PNM for billing rate changes.

Dalkia will run two concurrent processes of acceptance and commissioning. One with the City to validate completion of the works and hand off ownership, and one with PNM in order to commence billing under the LED tariff.

- The City will participate with Dalkia in the commissioning plan on a bi-weekly basis

January 27, 2021

Re: Bonding Capacity for - Dalkia Energy Solutions, LLC
200 Cummings Center, Suite 177-C
Beverly, MA 01915

To whom it may concern:

It has been the privilege of Liberty Mutual Insurance Company to provide surety bonds for Dalkia Energy Solutions, LLC for many years. During that time they have completed and we have bonded various projects in size and scope. At present time, Liberty Mutual Insurance Company provides a \$5,000,000 single/\$20,000,000 aggregate surety program for Dalkia Energy Solutions, LLC.

This letter is not to be construed as an agreement to provide surety bonds for any particular project but is offered as an indication of Liberty Mutual Insurance Company's past experience and confidence in the firm. We reserve the right to review terms and conditions of any proposals, contract documents, bond forms, financial arrangements and other underwriting considerations at the time the contract is awarded. We assume no liability to third parties or to you if for any reason we do not execute the said bond.

Liberty Mutual Insurance Company is listed on the U.S. Treasury Departments list of acceptable sureties and is rated "A" by A.M. Best.

If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Liberty Mutual Insurance Company

Melissa L. Fortier

Melissa L. Fortier
Attorney In Fact

PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES

16TH REVISED RATE NO. 20
CANCELING 15TH REVISED RATE NO. 20

INTEGRATED SYSTEM STREETLIGHTING
AND FLOODLIGHTING SERVICE

Page 1 of 9

APPLICABILITY: Applicable to any municipal corporation or other political subdivision within the State of New Mexico (for purposes of this Rate Schedule, "Customer") that receives service for streetlighting and floodlighting systems within all areas served by the company in New Mexico.

x
x
x

AVAILABILITY: Available within all areas served by the company in New Mexico.

A. Appendix A: Appendix A shall be a list of Company-owned LED streetlights that are operational substitutes for standard Mercury Vapor ("MV"), Low Pressure Sodium ("LPS") and High Pressure Sodium ("HPS") fixtures. Appendix A shall be publicly available on the Company's website and shall be updated periodically by the Company to reflect updates for operational substitutes currently available from suppliers.

x
x
x
x
x

B. Operational Substitute No. 1: Operational Substitute No. 1 shall be a Company-owned LED light identified in Appendix A to this tariff that is an operational substitute for the existing 175W MV, 55W LPS, 70W HPS and 100W HPS streetlight fixtures.

x
x

C. Operational Substitute No. 2: Operational Substitute No. 2 shall be a Company-owned LED light identified in Appendix A to this tariff that is an operational substitute for the existing 400W MV, 135W LPS, 200W HPS and 250W HPS streetlight fixtures.

x
x
x

D. Operational Substitute No. 3: Operational Substitute No. 3 shall be a Company-owned LED light identified in Appendix A to this tariff that is an operational substitute for a 400W HPS streetlight fixture.

x
x
x
x

MINIMUM CHARGE: Payment for lamps, standards, and lighting fixtures installed in accordance with the rates specified below.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

NET RATE PER MONTH OR PART THEREOF: The charge per month will be the sum of the applicable components of A, B, C, D, E, F and G. All monthly kWh listed for unmetered lighting assumes dusk-to-dawn operation at an average of 355.5 hours per month.

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REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT

Advice Notice No. 545

Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development
GCG#524210

PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES

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AND FLOODLIGHTING SERVICE

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- A. LIGHT CHARGE (for unmetered lights where maintenance is provided by the Company and included in the Monthly Charge):

Standard Light Type	Monthly kWh Usage	Monthly Charge (Company Owned)	Monthly Charge (Customer Owned)
<u>Mercury Vapor Lights (1)</u>			
175W MV	73	\$14.14	\$ 5.54
400W MV	162	\$21.47	\$12.30
<u>Low Pressure Sodium Lights (1)</u>			
55W LPS	28	\$12.70	\$ 2.13
135W LPS	63	\$17.13	\$ 4.78
<u>High Pressure Sodium Lights</u>			
70W HPS	31	\$10.95	\$ 2.35
100W HPS	45	\$12.02	\$ 3.42
200W HPS	89	\$14.99	\$6.76
250W HPS	107	\$17.29	\$8.12
400W HPS	165	\$21.70	\$12.53

(1) Service under this rate is restricted to those installations and customers receiving service as of August 21, 2011.

- B. METERED SERIES STREET LIGHTING: For PNM owned and maintained metered lights, and customer owned metered lights where maintenance is provided by the Company and is included in the monthly charge.

Description	Monthly Rate (Company Owned (1))	Monthly Rate (Customer Owned)
Metered Lighting	\$0.1940070	\$0.0561839

(1) Service under this rate is restricted to those installations receiving service as of August 21, 2011.

- C. COMPANY OWNED AND MAINTAINED LED LIGHTING, AND CUSTOMER OWNED AND MAINTAINED LIGHTING (for unmetered lights where maintenance is not provided by the Company and is not included in the Monthly Charge):

Advice Notice No. 545

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Vice President, PNM Regulatory Affairs and Economic Development
GCG#524210

PUBLIC SERVICE COMPANY OF NEW MEXICO
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Fixture Wattage Range			Monthly kWh Usage (1), (2)	Company Owned And Maintained Option for LED Lighting-Monthly Charge Per Unit	Customer Owned and Maintained Lighting-Monthly Charge Per Unit
(Wattage includes all ballast or driver losses (if applicable)				Monthly kWh Usage * (\$0.0561839 per kWh + \$0.1441851 per kWh)	Monthly kWh Usage * \$0.0561839 per kWh
0.0	to	10.0 Watts	3.6	\$ 0.71	\$ 0.20
10.1	to	20.0 Watts	7.1	\$ 1.42	\$ 0.40
20.1	to	30.0 Watts	10.7	\$ 2.14	\$ 0.60
30.1	to	40.0 Watts	14.2	\$ 2.85	\$ 0.80
40.1	to	50.0 Watts	17.8	\$ 3.56	\$ 1.00
50.1	to	60.0 Watts	21.3	\$ 4.27	\$ 1.20
60.1	to	70.0 Watts	24.9	\$ 4.99	\$ 1.40
70.1	to	80.0 Watts	28.4	\$ 5.70	\$ 1.60
80.1	to	90.0 Watts	32.0	\$ 6.41	\$ 1.80
90.1	to	100.0 Watts	35.6	\$ 7.12	\$ 2.00
100.1	to	110.0 Watts	39.1	\$ 7.84	\$ 2.20
110.1	to	120.0 Watts	42.7	\$ 8.55	\$ 2.40
120.1	to	130.0 Watts	46.2	\$ 9.26	\$ 2.60
130.1	to	140.0 Watts	49.8	\$ 9.97	\$ 2.80
140.1	to	150.0 Watts	53.3	\$ 10.68	\$ 3.00
150.1	to	160.0 Watts	56.9	\$ 11.40	\$ 3.20
160.1	to	170.0 Watts	60.4	\$ 12.11	\$ 3.40
170.1	to	180.0 Watts	64.0	\$ 12.82	\$ 3.60
180.1	to	190.0 Watts	67.5	\$ 13.53	\$ 3.79
190.1	to	200.0 Watts	71.1	\$ 14.25	\$ 3.99
200.1	to	210.0 Watts	74.7	\$ 14.96	\$ 4.19
210.1	to	220.0 Watts	78.2	\$ 15.67	\$ 4.39
220.1	to	230.0 Watts	81.8	\$ 16.38	\$ 4.59
230.1	to	240.0 Watts	85.3	\$ 17.10	\$ 4.79
240.1	to	250.0 Watts	88.9	\$ 17.81	\$ 4.99

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Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development
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250.1	to	260.0	Watts	92.4	\$ 18.52	(5)	\$ 5.19
260.1	to	270.0	Watts	96.0	\$ 19.23		\$ 5.39
270.1	to	280.0	Watts	99.5	\$ 19.94		\$ 5.59
280.1	to	290.0	Watts	103.1	\$ 20.66		\$ 5.79
290.1	to	300.0	Watts	106.7	\$ 21.37		\$ 5.99
300.1	to	310.0	Watts	110.2	\$ 22.08		\$ 6.19
310.1	to	320.0	Watts	113.8	\$ 22.79		\$ 6.39
320.1	to	330.0	Watts	117.3	\$ 23.51		\$ 6.59
330.1	to	340.0	Watts	120.9	\$ 24.22		\$ 6.79
340.1	to	350.0	Watts	124.4	\$ 24.93		\$ 6.99
350.1	to	360.0	Watts	128.0	\$ 25.64		\$ 7.19
360.1	to	370.0	Watts	131.5	\$ 26.36		\$ 7.39
370.1	to	380.0	Watts	135.1	\$ 27.07		\$ 7.59
380.1	to	390.0	Watts	138.6	\$ 27.78		\$ 7.79
390.1	to	400.0	Watts	142.2	\$ 28.49		\$ 7.99

(1) Monthly kWh usage = Maximum Wattage in range x 355.5 hours per month / 1,000 Watts per kW.

For lights larger than 400W, the applicable usage and rate shall be the sum of the 390.1 - 400.0 Watts row in the table above plus a wattage range such that the resulting range encompasses the actual wattage of the light (Example: for a 600 Watt light, the applicable usage and charge is determined by adding the 390.1 - 400.0 Watts row and the 190.1 - 200.0 Watts row together, resulting in a 590.1 - 600.0 Watt Range with a monthly usage of 213.300 kWh.).

C.1 CUSTOMER OWNED AND MAINTAINED METERED LIGHTING: For Customer-owned metered lights (excluding B above) where maintenance is not provided by the Company and is not included in the monthly charge:

Description	Monthly Rates (Customer Owned)
Metered Lighting	\$ 0.0561839


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Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development

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- D. POLE CHARGE: For company owned lighting attached to a dedicated street lighting pole.

Description	Monthly Charge (Company Owned)
Wood Pole	\$ 4.86
Non-Wood Pole	\$ 9.45

- E. FUEL AND PURCHASED POWER COST ADJUSTMENT: All kWh usage under this tariff will be subject to the Fuel and Purchase Power Cost Adjustment Clause ("FPPCAC") factors calculated according to the provisions in PNM's Rider 23.

The appropriate FPPCAC factors will be applied to all kWh appearing on bills rendered under this tariff.

- F. OTHER APPLICABLE RIDERS: Any other PNM riders that may apply to this tariff shall be billed in accordance with the terms of those riders.

- G. SPECIAL TAX AND ASSESSMENT ADJUSTMENT: Billings under this Schedule may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the utility and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

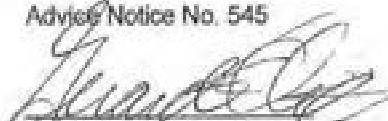
SPECIAL CONDITIONS:

- I. Installation and Ownership of Lighting Facilities:

- a) Company Owned Lighting Facilities-

Upon request from the Customer, the Company shall convert or install Company owned streetlighting fixtures at its own expense up to the limits provided by the Installation Allowance Table below, with any remaining expenses being the responsibility of the Customer. All lighting facilities shall be and remain the property of the Company.

Advice Notice No. 545


Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development

GCG#524210

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PUBLIC SERVICE COMPANY OF NEW MEXICO
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Company Owned Light & Pole Installation Allowances

High Pressure Sodium Lighting Facilities

70W High Pressure Sodium Street Light	\$ 920.00
100W High Pressure Sodium Street Light	\$ 920.00
200W High Pressure Sodium Street Light	\$ 880.00
250W High Pressure Sodium Street Light	\$ 980.00
400W High Pressure Sodium Flood Light	\$ 980.00
400W High Pressure Sodium Street Light	\$ 980.00

Light Emitting Diode ("LED") Lighting Facilities

Operational Substitute No. 1	\$ 160.00
Operational Substitute No. 2	\$ 480.00
Operational Substitute No. 3	\$ 1,040.00

Dedicated Streetlight Poles

Wood Pole	\$ 520.00
Non-Wood Pole	\$ 1,010.00

b) Customer Owned Lighting Facilities-

- i. The Customer shall be obligated to install its own streetlighting fixtures and poles at its own expense. The Company shall inspect and approve all Customer installed streetlighting prior to it being placed under this Rate.
- ii. If requested by the Customer, poles or fixtures may be installed by the Company or an agent approved by the Company. Customer shall pay the Company for all installation costs of the facilities where such installation is done by the Company or the Company's agent.
- iii. All facilities installed to provide electric service to customer owned streetlights under this tariff shall be and remain the property of the Company.
- iv. The Customer is required to provide specific performance data on the total energy consumption of each non-standard fixture installed.

II. Highway Signs:

No service to or maintenance of highway signs connected to the lighting system is included under this schedule.

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BY Commission Order Case #16-00276-UT

Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development
GCG#524210

**INTEGRATED SYSTEM STREETLIGHTING
AND FLOODLIGHTING SERVICE**

III. Changes and Additions:

A. Company-owned:

1. Except as otherwise provided by state regulation or law, the Customer shall pay all costs for:
 - a. Any conversions of Company-owned Lights or Poles made at the request of the Customer, subject to the allowances set forth in this rate schedule; and
 - b. Any move or relocation of Company-owned Lights and Poles, including but not limited to regrading, rerouting, improvement or widening, that is undertaken for aesthetic purposes.
2. Except as otherwise provided by state regulation or law, the Company shall include in its rates, all costs of:
 - a. Repairs, fixture replacements or knock-down replacements of the Company's Lights and Poles that are necessitated by accidents, vandalism, projectiles, thefts or acts of nature.
 - b. Mandatory replacement of or alterations to working luminaire to bring into compliance with changes in federal or state laws to serve the public health and safety.
 - c. Any move or relocation of Company-owned Lights and Poles, including but not limited to regrading, rerouting, improvement or widening, that is undertaken by the Customer for reasons associated with municipal, county or other local improvement projects required in the interest of public health and safety. The Customer must inform the Company in writing that any move or relocation is being undertaken for public health and safety reasons.
 - i. After written notification from the Customer, if the Company disputes that any move or relocation of Company-owned Lights and Poles benefits public health and safety, the Company shall be required to notify the Customer in writing within fourteen (14) business days.
 - ii. If the Customer and the Company cannot reach agreement as to whether any support, disconnect, relocation or removal of Company-owned Lights and Poles benefits public health and safety, the Customer shall file an application with the NMPRC, requesting the NMPRC to determine if the public interest would be better served if the costs of such support, disconnect, relocation or removal should be deemed a cost of service item for the Company.

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Gerard T. Ortiz
Vice President, PNM Regulatory Affairs & Economic Development
GCG#524210

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B. Customer-owned:

1. If requested by the Customer, Company agrees to make all repairs, alterations, fixture replacements or knock-downs replacements of Customer-owned Lights and Poles necessitated by accidents, vandalism, projectiles, thefts, acts of nature or existing or future laws or ordinances. The Customer shall pay all costs associated with such replacements.
2. Customer agrees to coordinate recovery efforts with Company in instances where Company has potential legal liability from claims of the parties responsible for Customer-owned Light and Pole damage.

The Company will, upon receipt of any information pertaining to the identity and circumstances of a knock-down or a copper theft associated with a Customer-owned Light or Pole, furnish to the customer a copy of that information.

X
X
X
X
X
X
X
X
X
X

IV. Operation and Maintenance:

A. Total Company-Owned System:

The Company will perform normal operation and maintenance of the lighting system which includes routine maintenance, repairs and fixture servicing including all spot lamp replacement required by faulty lamps.

Mandatory replacement of or alterations to working luminaire to bring them into compliance with existing or future laws or ordinances that are not otherwise specifically addressed by other provisions of this tariff will be performed by the Company at the expense of the customer.


X
X

It shall be the duty of the customer to report to the Company the failure of any lamp covered by the Rate to burn, or to burn adequately, and it shall thereafter be the obligation of the Company to at once restore such lamp to service subject, however, to the provisions of Special Conditions I, above and to subsequent provisions of this item as to replacements. Any lamp so reported as failing to burn, or to burn adequately, shall be replaced or repaired and returned to regular operation within seventy-two (72) hours from the time of notice of such failure to the Company. Pole hits and failures due to the loss of underground conductors or control equipment are excluded from the 72 hour requirement and shall be repaired as material availability and scheduling permits.

B. Total Customer-Owned System:

Page 1; Section A - "Light Charge (for unmetered lights where maintenance is provided by the Company and included in the Monthly Charge". Maintenance under this section includes faulty photoelectric cell replacement, faulty lamp replacement, faulty fixture fuse replacement, and

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Gerard T. Ortiz
Vice President, PNM Regulatory Affairs and Economic Development

GCG#524210

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incidental lens cleaning.

Page 2; Sections B - "Metered Series Street Lighting", and C - "Customer Owned and Maintained Lighting". Maintenance under these sections is the responsibility of the customer.

All other operation and maintenance, including traffic control costs and troubleshooting customer owned systems may be done by the Company at the request and expense of the customer. The Company will not stock maintenance items that are considered nonstandard by the Company for use in maintaining customer-owned lighting systems. Stocking of these nonstandard items is the sole responsibility of the customer.

V. Termination:

Service to any lamp installed hereunder shall be terminated by the Company upon receipt of thirty (30) days notice and coincident with such notice, payment of the Company's depreciated investment for any lamp and/or pole associated with the removal of any Company owned lighting facilities.

VI. In the event of a conflict between the terms of this rate schedule and any provision contained in the streetlighting contract in effect, the relevant terms of the rate schedule shall control.

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Advice Notice No. 545



Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development
ODG#524210



January 22, 2021

Fran Dunaway, Chief Procurement Officer, City of Santa Fe, New Mexico.

We understand that the City of Santa Fe is using a "Procurement under Existing Contracts" methodology under Section XIV(B) of the City of Santa Fe Procurement Manual 2020. As a representative of Dalkia Energy Solutions, LLC, I confirm that we agree to extend the pricing, terms, and conditions of the "Global Management Performance Contract" (City of Albuquerque, Request for Proposals, Solicitation Number: P2016000023, Evaluation and Implementation of Energy Efficiency and Reduced Maintenance on City Owned and Maintained Street Lighting, October 09, 2015 between City of Albuquerque and Citelum and subsequently assigned to Dalkia) to the City of Santa Fe.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lee Vardakas".

Lee Vardakas

CEO



City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: DALKIA ENERGY SOLUTIONS, LLC.
DBA: DALKIA ENERGY SOLUTIONS,
LLC

Business Location: 200 CUMMINGS CTR SUITE 177C
BEVERLY, MA 01915

Owner: DALKIA ENERGY SOLUTIONS

License Number: 229388

Issued Date: February 01, 2021

Expiration Date: February 01, 2022

CRS Number: 03-526533-00-7

License Type: Business License - Renewable

Classification: Out of Jurisdiction Contractor -
Specialty

Fees Paid: \$10.00

DALKIA ENERGY SOLUTIONS, LLC
200 CUMMINGS CTR
BEVERLY, MA 01915

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/21/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis Towers Watson Northeast, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: Willis Towers Watson Certificate Center PHONE (A/C No. Ext): 1-877-945-7378 FAX (A/C No): 1-888-467-2378 E-MAIL ADDRESS: certificates@willis.com														
INSURED Dalkia Energy Solutions, LLC 200 Cummings Center, Suite 177C Beverly, MA 01915	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: Zurich American Insurance Company</td> <td style="text-align: center;">16535</td> </tr> <tr> <td>INSURER B: American Guarantee and Liability Insurance</td> <td style="text-align: center;">26247</td> </tr> <tr> <td>INSURER C: Ironshore Specialty Insurance Company</td> <td style="text-align: center;">25445</td> </tr> <tr> <td>INSURER D: Berkley Assurance Company</td> <td style="text-align: center;">39462</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Zurich American Insurance Company	16535	INSURER B: American Guarantee and Liability Insurance	26247	INSURER C: Ironshore Specialty Insurance Company	25445	INSURER D: Berkley Assurance Company	39462	INSURER E:		INSURER F:	
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INSURER E:															
INSURER F:															

COVERAGES

CERTIFICATE NUMBER: W19914307

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY		GLO 4443746-00	06/30/2020	06/30/2021	EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
						MED EXP (Any one person) \$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	AUTOMOBILE LIABILITY		BAP 4443747-00	06/30/2020	06/30/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR		AUC 4334449-00	06/30/2020	06/30/2021	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$ 5,000,000
	DED RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					PER STATUTE OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N <input type="checkbox"/>				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$
C	Contractors Environmental Legal		002306605	06/30/2020	06/30/2021	Each Occurrence 5,000,000 Aggregate 5,000,000 Ded 10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

SEE ATTACHED

CERTIFICATE HOLDER

CANCELLATION

The City of Santa Fe 200 Lincoln Avenue Santa Fe, NM 87504-0909	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Willis Towers Watson Northeast, Inc.		NAMED INSURED Dalkia Energy Solutions, LLC 200 Cummings Center, Suite 177C Beverly, MA 01915	
POLICY NUMBER See Page 1		EFFECTIVE DATE: See Page 1	
CARRIER See Page 1	NAIC CODE See Page 1		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

INSURER AFFORDING COVERAGE: Berkley Assurance Company

NAIC#: 39462

POLICY NUMBER: PCAB-5012196-0620

EFF DATE: 06/30/2020

EXP DATE: 06/30/2021

TYPE OF INSURANCE:

Professional Liability

LIMIT DESCRIPTION:

Limit

SIR

Aggregate

LIMIT AMOUNT:

3,000,000

50,000

3,000,000



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/22/21

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services, Inc of Florida 1001 Brickell Bay Drive, Suite #1100 Miami, FL 33131-4937	CONTACT NAME: Aon Risk Services, Inc of Florida	
	PHONE (A/C, No, Ext): 800-743-8130	FAX (A/C, No): 800-522-7514
	EMAIL ADDRESS: ADP.COI.Center@Aon.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED ADP TotalSource DE IV, Inc. 10200 Sunset Drive Miami, FL 33173 ALTERNATE EMPLOYER Dalkia Energy Solutions, LLC 200 Cummings Center Suite 177C Beverly, MA 01915	INSURER A : New Hampshire Ins Co	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER: 3212779

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **LIMITS SHOWN ARE AS REQUESTED.**

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	\$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG	\$
	<input type="checkbox"/> OTHER							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR						EACH OCCURRENCE	\$
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE	\$
	<input type="checkbox"/> DEC <input type="checkbox"/> RETENTION \$							
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC 027115075 NM	07/12/20	07/01/21	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N <input type="checkbox"/> N / A						E.L. EACH ACCIDENT	\$ 2,000,000
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	\$ 2,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

All worksite employees working for DALKIA ENERGY SOLUTIONS, LLC, paid under ADP TOTALSOURCE, INC.'s payroll, are covered under the above stated policy. DALKIA ENERGY SOLUTIONS, LLC is an alternate employer under this policy.

CERTIFICATE HOLDER**CANCELLATION**

The City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87504-0909

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services, Inc of Florida

ACTION SHEET	
PUBLIC WORKS AND UTILITES COMMITTEE MEETING OF 01/25/2021	
ISSUE NO. 8C Consideration of Bill No. 2021-____: An Ordinance Approving Global Management Performance Contract with Dalkia Energy Solutions, LLC, Subject to City Council Approval of a Separate Financing Transaction to Finance the Cost of the Global Management Performance Contract. (Mayor Alan Webber, Councilor Lindell and Councilor Rivera) (Brad Fluetsch, City of Santa Fe Cash and Investment Manager, bjfluetsch@santafenm.gov, 955-6885)	
COMMITTEE REVIEW: Public Works and Utilities Committee – 01/25/21 Governing Body (Request to Publish) – 01/27/21 Finance Committee – 02/15/21 Governing Body (Public Hearing) – 02/24/21	
PUBLIC WORKS AND UTILITES COMMITTEE ACTION: Approved on Consent Agenda to forward to 01/27/2021 Governing Body	
SPECIAL CONDITIONS OR AMENDMENTS:	
STAFF FOLLOW UP:	

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR	X		
COUNCILOR GARCIA	X		
COUNCILOR ABEYTA	X		
COUNCILOR LINDELL	X		
COUNCILOR VIGIL COPPLER	X		

1 AN ABSTRACT OF PROCEEDINGS

2 STATE OF NEW MEXICO)

3 COUNTY OF SANTA FE) ss.

4 CITY OF SANTA FE)

5 The Governing Body (the “Governing Body”) of the City of Santa Fe (the “City”) in the County
6 of Santa Fe, State of New Mexico, met in regular session in full conformity with law and ordinances
7 and rules of the City, at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico, being the regular
8 meeting place of the Governing Body, at the hour of 5:00 p.m., on Wednesday, the ____day of
9 February, 2021.

10 Upon roll call the following were found to be present, constituting a quorum of the Governing
11 Body:

12 PRESENT: Mayor: Alan Webber

13 Councilor: Roman Abeyta

14 Councilor: Jamie Cassutt-Sanchez

15 Councilor: Michael J. Garcia

16 Councilor: Signe I. Lindell

17 Councilor: Chris Rivera

18 Councilor: Carol Romero-Wirth

19 Councilor: JoAnne Vigil Coppler

20 Councilor: Renee Villarreal

21 ABSENT:

22 _____

23 Thereupon the following proceedings, among others, were had and taken:

24 PUBLIC HEARINGS

25 ***

1 CONSIDERATION OF BILL NO. 2021-2

2 ADOPTION OF ORDINANCE NO. 2021-3

3 **Approval of Global Management Performance Contract with Dalkia Energy Solutions, LLC**

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CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2021-3

INTRODUCED BY:

AN ORDINANCE

APPROVING A GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC (THE “AGREEMENT”) FOR THE INSTALLATION OF STREETLIGHT UPGRADES, SUBJECT TO CITY COUNCIL APPROVAL OF A SEPARATE FINANCING TRANSACTION TO FINANCE THE COSTS OF THE AGREEMENT; AUTHORIZING THE PLEDGE OF UTILITY COST SAVINGS AS SECURITY FOR THE TRANSACTION FOR THE FINANCING OF THE AGREEMENT, AND THE EXECUTION AND DELIVERY OF CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE EPC; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE AGREEMENT; REPEALING ALL ORDINANCES AND PRIOR ACTION IN CONFLICT HEREWITH; AND RELATED MATTERS.

Capitalized terms used in the following preambles have the same meaning as set forth in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the City of Santa Fe, New Mexico (the “City”) is a legally created, established, organized and existing incorporated charter municipality with home-rule powers under the constitution and laws of the State of New Mexico; and

WHEREAS, Dalkia Energy Solutions, LLC, a Massachusetts limited liability company (“Contractor”) has agreed to perform Street Light LED Upgrade and Maintenance (the “Project”) for the City per the pricing structure and the contractual terms of the Global Management

1 Performance Contract by and between Citelum US, Inc. and the City of Albuquerque, New Mexico
2 dated September 28, 2017, as agreed to by the letter submitted by the Contractor to the City dated
3 September 10, 2019; and

4 **WHEREAS**, the amount of savings to be realized through the implementation of the
5 Project appears to be sufficient to cover all costs associated with the Project; and

6 **WHEREAS**, the Contractor has proposed that the City and the Contractor enter into a
7 Global Management Agreement (the “Agreement”), a copy of which has been presented to the City
8 Council in connection with its consideration of this Ordinance, and pursuant to which the
9 Contractor will complete the Project at a total cost not to exceed \$3,187,337.78, including gross
10 receipts taxes; and

11 **WHEREAS**, the Project consists of the installation and maintenance of LED streetlight
12 conversion and routine and non-routing maintenance of the converted streetlights; and

13 **WHEREAS**, the City recognizes the need to regulate street lighting in order to preserve
14 our dark skies, reduce light pollution, reduce or prevent glare, reduce or prevent light trespass,
15 conserve energy, promote a sense of safety and security and ensure aesthetically appropriate street
16 lighting in keeping with the character of Santa Fe; and

17 **WHEREAS**, the City intends to finance the costs of the Project through a separate
18 financing arrangement with a third-party financial institution (the “Financing Transaction”) which
19 will be paid from pledged Utility Cost Savings as authorized pursuant to the Act, and pursuant to
20 which the Pledged Utility Cost Savings are net revenues of the Project (the “Pledged Revenues”)
21 which constitute a special fund; and

22 **WHEREAS**, the Governing Body intends to approve the Agreement and authorize its
23 execution, delivery, and assignment of the Pledged Revenues, subject to the terms and provisions
24 of this Ordinance.

25 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**

1 **CITY OF SANTA FE, NEW MEXICO:**

2 **Section 1. Definitions.** The terms in this section are defined for all purposes of this
3 Ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and
4 of any instrument or document appertaining hereto, except where the context by clear implication
5 herein otherwise requires, shall have the following meanings:

6 “Act” means the general laws of the State, including the home-rule charter of the City,
7 Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, and enactments of the Governing Body
8 relating to the Agreement and the Financing Transaction, including this Ordinance.

9 “Authorized Officer” means the following officers of the City: Mayor, City Manager, City
10 Finance Director, or other officer of the City when designated by a certificate signed by the Mayor
11 of the City from time to time, a certified copy of which shall be delivered to the Paying Agent.

12 “Bond Counsel” means an attorney or firm of attorneys nationally recognized for expertise
13 in the area of municipal bonds and the exemption of interest on municipal bonds from federal
14 income taxation.

15 “City,” “Municipal,” or “Municipality” means the municipal corporation and body
16 corporate and politic known as the City of Santa Fe, Santa Fe County, New Mexico.

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

19 “Contract Price” means \$3,187,337.78, including gross receipts taxes, which is the
20 maximum amount payable pursuant to the Agreement.

21 “Contractor” means Dalkia Energy Solutions, LLC, a Massachusetts limited liability
22 company.

23 “Costs of Issuance” means all costs relating to the execution and delivery of the Agreement
24 and the Financing Transaction, including, without limitation, costs of advertising and publication,
25 costs of fees and expenses of the financial advisor, Bond Counsel, the Paying Agent, and other

1 reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the
2 execution and delivery of the Agreement and the Financing Transaction.

3 “Financing Transaction” means the transaction to be entered into by and between the City
4 and the Lender, proceeds of which shall be applied to pay the Contract Price; the principal of,
5 interest on and other payments due in connection with the Financing Transaction shall be payable
6 solely from Pledged Revenues; provided, that the Financing Transaction may be in the form of a
7 lease-purchase agreement, a loan agreement or other form of debt obligation.

8 “Governing Body” means the members of the governing body designated as councilors
9 who, together with the mayor, are the governing body of the City.

10 “Lender” means the bank or other financial institution serving as the lender in connection
11 with the Financing Transaction; if applicable, the Lender may be the lessor if the Financing
12 Transaction is a lease-purchase transaction.

13 “Ordinance” means this City Ordinance as amended or supplemented from time to time.

14 “Placement Agent” means D.A. Davidson & Co., Kansas City, Missouri.

15 “Placement Agent Agreement” means the professional services agreement by and between
16 the City and the Placement Agent for the placement of the Financing Transaction with the Lender.

17 “Pledged Revenues” means amounts generated by Utility Cost Savings pursuant to the
18 Agreement, which constitute net revenues of the Project, which shall be deposited monthly to the
19 Pledged Revenue Fund as provided in Section 6 of this Ordinance.

20 “Pledged Revenue Fund” means the fund created pursuant to Section 6 of this Ordinance.

21 “Project” means the implementation of LED streetlight upgrades and associated routine
22 and non-routine maintenance for the purpose of achieving Utility Cost Savings: the following
23 energy savings measures:

24 (1) LED Streetlight conversion:

25 The Contractor will upgrade all City owned lights that are not currently LED to LED. The

1 estimated type and amount of lights to be converted will be confirmed by the Contractor in
2 the field through the course of installation.

3 (2) Routine Street light Maintenance:

4 The Contractor will perform routine maintenance of City-owned streetlights, including
5 regular maintenance, including bulbs, photocells, minor wiring & fuses, and cleaning, night
6 patrols.

7 Management of Computerized Maintenance Management System (“MUSE”).

8 The Contractor will manage lights-out hotline including coordination with PNM regarding
9 PNM owned street lights.

10 Provide emergency response 24 hours a day 7 days a week.

11 The Contractor will maintain accurate inventory of changes to City owned lighting system.

12 (3) Non-Routine Street light Maintenance and Installation:

13 The Contractor will provide on-call street light maintenance and construction services for
14 non-routine maintenance and installation of City Street Lights that are not otherwise
15 covered under Routine Street Light Maintenance. The Contractor will perform this work
16 upon written authorization to proceed,

17 “Related Documents” means, as applicable, the lease-purchase agreement, loan agreement,
18 promissory note, escrow agreement, account control agreement and any other document or
19 agreement containing an obligation of the City as may be required by the Lender or otherwise in
20 connection with the Agreement pursuant to the Financing Transaction.

21 “Utility Cost Savings” means the amounts saved by the City in the purchase of electricity
22 or water that are a direct result of the Conservation Measures.

23 **Section 2. Ratification of Prior Action.** All action heretofore taken (not
24 inconsistent with the express provisions of this Ordinance) by the Governing Body and officers of
25 the City directed toward the Project, the Agreement and the Financing Transaction, including,

1 without limitation, the publication of a notice of public meeting and intent to adopt this Ordinance
2 authorizing the execution and delivery of the Agreement, and the engagement of D.A Davidson as
3 Placement Agent pursuant to the Placement Agent Agreement, and the same hereby is ratified,
4 approved and confirmed, notwithstanding any inconsistent prior action.

5 **Section 3. Findings.** The Governing Body hereby finds:

6 A. The amount that the City would spend on the Project is not likely to exceed the
7 cumulative amount of Utility Cost Savings over the ten year term of the Agreement from the date
8 of installation of streetlight upgrades, including the financing of those costs pursuant to the
9 Financing Transaction, and excluding the cost of normal repair and replacement of components of
10 the streetlight upgrades; and

11 B. The streetlight upgrades, and the routine and non-routine maintenance thereof
12 pursuant to the Agreement which constitute the Project will generate Utility Cost Savings equal to
13 or greater than the costs of the Project, including the financing of those costs pursuant to the
14 Financing Transaction.

15 C. The Project is a revenue-producing project, the Conservation Measures are
16 reasonably related to and constitute a substantial part of the Project, and the Utility Cost Savings
17 constitute net revenues of the Project, each within the meaning of Section 3-31-1(F) NMSA 1978.

18 **Section 4. Authorization of the Project; Financing Transaction Condition.** The

19 Project is hereby authorized at a total cost not to exceed the Contract Price, excluding any such cost
20 defrayed or to be defrayed by any source other than proceeds of the Financing Transaction allocable
21 to the Contract Price; provided, that the Project and execution and delivery of the Agreement shall
22 be subject to the authorization and closing of the Financing Transaction.

23 **Section 5. Execution and Delivery of Agreement.** The Mayor or, in the absence of

24 the Mayor, the Mayor pro tempore, is authorized to execute and delivery the Agreement, which
25 shall be attested by the City Clerk or an assistant City Clerk, in substantially the form presented to

1 the Governing Body in its consideration of this Ordinance, with such modifications or revisions as
2 the Mayor, in consultation with the City's municipal advisor and bond counsel, determines are
3 necessary or convenient to implement the Project, and the execution and delivery of the Agreement
4 by the Mayor, or in the absence of the Mayor, the Mayor pro tempore, shall be conclusive evidence
5 of the City's approval thereof, as may be modified or revised.

6 **Section 6. Establishment and Administration of Pledged Revenue Fund;**
7 **Assignment as Security for Financing Transaction.** A special revenue fund is hereby
8 established, to be identified as the "City of Santa Fe/Dalkia Project Revenue Fund (the "Pledged
9 Revenue Fund"). In the first month following substantial completion of the installation of streetlight
10 upgrades as described in Appendix 2A to Schedule 2 of the Agreement, the City shall deposit
11 Pledged Revenues to the Pledged Revenue Fund. The assignment of the Pledged Revenues as
12 security for the payment of debt service in connection with the Financing Transaction is hereby
13 authorized, with such details as shall be provided in the Financing Transaction documentation
14 authorized by the Governing Body.

15 **Section 7. Period of Project's Usefulness.** It is hereby determined and recited that
16 the average useful life of the Project is not less than 15 years.

17 **Section 8. Authorization to Execute Related Documents and Delegated**
18 **Authority.**

19 A. Approval of Documents; Ratification. The form, terms, and provisions of the
20 Related Documents are in all respects approved, authorized, and confirmed, with such changes
21 therein not inconsistent with this Ordinance as the Authorized Officers of the City deem necessary
22 or desirable.

23 B. Delegated Authority and Execution of Documents. The officers, agents, and
24 employees of the City are authorized, empowered and directed to take all action required by this
25 Ordinance, and all such other action as may be necessary or appropriate to effectuate the provisions

1 of this Ordinance, the Related Documents, and any other documents as may be necessary or
2 appropriate to carry out and comply with the provisions of this Ordinance.

3 **Section 9. Severability.** If any Section, paragraph, clause or provision of this
4 Ordinance shall be held to be invalid or unenforceable, the invalidity or unenforceability of such
5 Section, paragraph, clause or provision shall not affect any of the remaining provisions of this
6 Ordinance.

7 **Section 10. Repealer Clause.** All ordinances or parts of ordinances inconsistent
8 herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be
9 construed to revive any ordinance or part of any ordinance heretofore repealed.

10 **Section 11. Effective Date, General Summary for Publication.** Upon due adoption
11 of this Ordinance, the ordinance shall be recorded and preserved by the City Clerk, authenticated
12 by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the
13 title and general summary of the subject matter contained in this Ordinance (set out below) shall
14 be published in a newspaper which maintains an office and is of general circulation in the City and
15 this Ordinance shall be in full force and effect after its publication in accordance with law.

16 Pursuant to Section 3-17-5 NMSA 1978, as amended, the title and a general summary of
17 the subject matter contained in this Ordinance shall be published in substantially the following
18 form:

19 (Form of Summary of Ordinance for Publication)

20 CITY OF SANTA FE, NEW MEXICO

21 NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter
22 contained in an ordinance duly adopted and approved by the Governing Body of the City of Santa
23 Fe on February 24, 2021. A complete copy of the ordinance is available for public inspection
24 during the normal and regular business hours of the City Clerk in the office of the City Clerk, City
25 Hall, 200 Lincoln Avenue, Santa Fe, New Mexico and is available online at santafe.primegov.com.

1 The title of the ordinance is:

2 **AN ORDINANCE**

3 **APPROVING A GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND**
4 **BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC (THE**
5 **“AGREEMENT”) FOR THE INSTALLATION OF STREETLIGHT UPGRADES,**
6 **SUBJECT TO CITY COUNCIL APPROVAL OF A SEPARATE FINANCING**
7 **TRANSACTION TO FINANCE THE COSTS OF THE AGREEMENT;**
8 **AUTHORIZING THE PLEDGE OF UTILITY COST SAVINGS AS SECURITY FOR THE**
9 **TRANSACTION FOR THE FINANCING OF THE AGREEMENT, AND THE**
10 **EXECUTION AND DELIVERY OF CERTAIN OTHER AGREEMENTS AND**
11 **DOCUMENTS IN CONNECTION WITH THE EPC; RATIFYING ACTION**
12 **PREVIOUSLY TAKEN IN CONNECTION WITH THE AGREEMENT; REPEALING**
13 **ALL ORDINANCES AND PRIOR ACTION IN CONFLICT HERewith; AND RELATED**
14 **MATTERS.**

15 A general summary of the subject matter contained in such ordinance is set forth in the
16 title. COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE
17 CITY CLERK AT THE CITY HALL, 200 LINCOLN AVENUE, SANTA FE, NEW MEXICO,
18 ARE AVAILABLE ONLINE AT SANTAFE.PRIMEGOV.COM, AND ARE AVAILABLE FOR
19 INSPECTION AND/OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE
20 ALSO CONSTITUTES COMPLIANCE WITH SECTION 3-17-5 AND SECTIONS 6-14-4
21 THROUGH 6-14-7, NMSA 1978.

22 WITNESS my hand and the seal of the City on February 24, 2021.
23
24
25

1 CITY OF SANTA FE

3 (SEAL)



KRISTINE MIHELIC, CITY CLERK

5 (End of Form of Ordinance for Publication)

6 PASSED, APPROVED, and ADOPTED this 24th day of February, 2021.

7 GOVERNING BODY OF THE CITY OF SANTA FE

9 (SEAL)



ALAN WEBBER, MAYOR

11 ATTEST:



14 KRISTINE MIHELIC, CITY CLERK

15 APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

16 Modrall, Sperling, Roehl, Harris & Sisk, P.A. as Bond Counsel

17 
18 By: [Peter Franklin \(Feb 28, 2021 19:59 MST\)](#)

19 PETER FRANKLIN

20 After discussion, Councilor Lindell moved for approval, with Councilor Romero-Wirth seconding
21 the motion. Bill No. 2021-2 passed upon the following roll call vote:

22 Those voting AYE:

23 Mayor: Alan Webber

24 Councilor: Roman Abeyta

25 Councilor: Jamie Cassutt-Sanchez

1 Councilor: Michael J. Garcia
2 Councilor: Signe I. Lindell
3 Councilor: Chris Rivera
4 Councilor: Carol Romero-Wirth
5 Councilor: JoAnne Vigil Coppler
6 Councilor: Renee Villarreal

7 Those voting NAY: _____

8 Those not present: _____

9 The presiding officer thereupon declared that at least three-fourths of all the members of
10 the Governing Body having voted in favor of adoption of Bill No. 2021-2 the motion was carried
11 and Ordinance No. 2021-3 was duly passed and adopted.

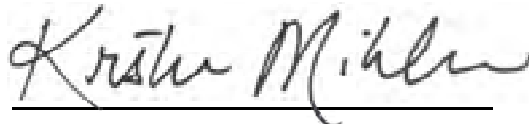
12 After consideration by the Governing Body of other business the meeting was duly
13 adjourned.

14 GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO
15 (SEAL)



ALAN WEBBER, MAYOR

18 ATTEST:

19 
20 _____

21 KRISTINE MIHELIC, CITY CLERK

24 *Bill No. 2021-2*

25 *Legislation/2021/Ordinances/2021-3 Dalkia Energy Solutions GPC*

ACTION SHEET	
PUBLIC WORKS AND UTILITIES COMMITTEE MEETING OF 01/25/2021	
ISSUE NO. 8E Consideration of Bill No. 2021-____: An Ordinance Approving Lease-Purchase Agreement and Escrow Agreement with Sterling National Bank for the Purpose of Financing the Installation of Energy Efficiency Measures in City Facilities Pursuant to the Energy Savings Performance Contract with Yearout Energy Services, LLC and the Global Management Performance Contract with Dalkia Energy Solutions, LLC. (Mayor Alan Webber, Councilor Lindell and Councilor Rivera) (Brad Fluetsch, City of Santa Fe Cash and Investment Manager, bjfluetsch@santafenm.gov, 955-6885)	
COMMITTEE REVIEW: Public Works and Utilities Committee – 01/25/21 Governing Body (Request to Publish) – 01/27/21 Finance Committee – 02/15/21 Governing Body (Public Hearing) – 02/24/21	
PUBLIC WORKS AND UTILITIES COMMITTEE ACTION: Approved on Consent Agenda to forward to 01/27/2021 Governing Body	
SPECIAL CONDITIONS OR AMENDMENTS:	
STAFF FOLLOW UP:	

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR	X		
COUNCILOR GARCIA	X		
COUNCILOR ABEYTA	X		
COUNCILOR LINDELL	X		
COUNCILOR VIGIL COPPLER	X		

1 AN ABSTRACT OF PROCEEDINGS

2 STATE OF NEW MEXICO)

3 COUNTY OF SANTA FE) ss.

4 CITY OF SANTA FE)

5 The Governing Body (the “Governing Body”) of the City of Santa Fe (the “City”) in the County
6 of Santa Fe, State of New Mexico, met in regular session in full conformity with law and ordinances
7 and rules of the City, at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico, being the regular
8 meeting place of the Governing Body, at the hour of 5:00 p.m., on Wednesday, the 24th day of February,
9 2021.

10 Upon roll call the following were found to be present, constituting a quorum of the Governing
11 Body:

12 PRESENT: Mayor: Alan Webber

13 Councilor: Roman Abeyta

14 Councilor: Jamie Cassutt-Sanchez

15 Councilor: Michael J. Garcia

16 Councilor: Signe I. Lindell

17 Councilor: Chris Rivera

18 Councilor: Carol Romero-Wirth

19 Councilor: JoAnne Vigil Coppler

20 Councilor: Renee Villarreal

21 ABSENT: _____

22 Thereupon the following proceedings, among others, were had and taken:

23 PUBLIC HEARINGS

24 ***

25 CONSIDERATION OF BILL NO. 2021-4

1 ADOPTION OF ORDINANCE NO. 2021-5

2 **Approval of Lease Purchase Agreement with Sterling National Bank, as Lessor**

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CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2021-5

AN ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE, NEW MEXICO (THE “CITY”) AND STERLING NATIONAL BANK (THE “LESSOR”), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY AN AMOUNT OF UP TO \$20,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF ACQUIRING, INSTALLING, AND EQUIPPING ENERGY EFFICIENCY MEASURES THROUGHOUT THE CITY; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE AMOUNTS DUE UNDER THE LEASE-PURCHASE AGREEMENT SOLELY FROM THE UTILITY COST AND WATER CONSERVATION SAVINGS AND PAYMENTS RECEIVED BY THE CITY PURSUANT TO (1) THE ENERGY PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND YEAROUT ENERGY SERVICES COMPANY, LLC, AND (2) THE GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC; PROVIDING THAT CERTAIN TERMS OF THE LEASE-PURCHASE AGREEMENT WILL BE ESTABLISHED IN A PRICING CERTIFICATE TO BE EXECUTED AND DELIVERED AS AUTHORIZED PURSUANT TO SECTION 6-14-10.2 NMSA 1978; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LEASE-PURCHASE AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as set forth in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the City of Santa Fe, New Mexico (the “City”) is a legally created, established, organized and existing incorporated charter municipality with home-rule powers under the constitution and laws of the State of New Mexico; and

WHEREAS, the City has authorized the execution and delivery of (1) an Energy Savings Performance Contract with Yearout Energy Services Company, LLC, a New Mexico limited liability company (the “Yearout Agreement”) for the installation, implementation, monitoring and maintenance of energy savings measures and water conservation measures throughout City owned facilities (the “Yearout Project Component”); and (2) a Global Management Performance Contract by and between the City and Dalkia Energy Solutions, LLC, a Massachusetts limited liability company (“the Dalkia Agreement”) for the installation, implementation and maintenance of street light LED upgrades to street light improvements owned and operated by the City (the “Dalkia Project Component”); and

WHEREAS, the execution and delivery of the Yearout Agreement and the Dalkia Agreement (collectively, the “Energy Savings Agreements”) is subject to the condition that a financing transaction be authorized and completed to finance the aggregate contract prices of the Energy Savings Agreements and the Costs of Issuance; and

WHEREAS, the Governing Body has determined and hereby determines that the Yearout Project Component and the Dalkia Project Component (each a “Project Component” and collectively, the “Energy Savings Project”) may be financed by and completed by entering into the Lease-Purchase Agreement, a copy of which has been presented to the City Council in connection with its consideration of this Ordinance, and that it is in the best interest of the City and its residents that the Lease-Purchase Agreement be executed and delivered, and that the financing occur by executing and delivering the Lease-Purchase Agreement; and

1 **WHEREAS**, the energy cost savings and water conservation-related cost savings derived
2 from each Project Component exceed the cost of implementing that Project Component, and
3 collectively, the aggregate cost of the Energy Savings Project, and constitute the net revenues of
4 the Energy Savings Project; and

5 **WHEREAS**, the Energy Savings Project is a “revenue producing project” within the
6 meaning of the Act; and

7 **WHEREAS**, the City may pledge the energy cost savings and water conservation-related
8 cost savings derived from the Energy Savings Project (the “Pledged Revenues”), which constitute
9 a special fund; and

10 **WHEREAS**, the City may lawfully pledge the Pledged Revenues for the payment of
11 amounts due pursuant to the Lease-Purchase Agreement; and

12 **WHEREAS**, the Pledged Revenues have not heretofore been pledged to secure the
13 payment of any obligation which is currently outstanding; and

14 **WHEREAS**, the Lease-Purchase Agreement shall be a special, limited obligation of the
15 City, payable solely from the Pledged Revenues and shall not constitute a general obligation of the
16 City, or a debt or pledge of the full faith and credit of the City or the State; and

17 **WHEREAS**, the Lease-Purchase Agreement shall be executed and delivered pursuant to
18 the Act, with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged
19 Revenues; and

20 **WHEREAS**, the Governing Body intends by this Ordinance to authorize the execution and
21 delivery of the Lease-Purchase Agreement for the purposes set forth therein; and

22 **WHEREAS**, the Governing Body expects to receive an offer from the Lessor to enter into
23 the Lease-Purchase Agreement, as approved pursuant to the terms of the Pricing Certificate; and

24 **WHEREAS**, the Governing Body hereby determines that the Energy Savings Project to
25 be financed with the Lease-Purchase Agreement is to be used for governmental purposes of the

1 City and will not be used for purposes which would cause the Lease-Purchase Agreement to be
2 deemed a “private activity bond” as defined by the Internal Revenue Code of 1986, as amended;
3 and

4 **WHEREAS**, all required authorizations, consents and approvals in connection with (i) the
5 use and pledge of the Pledged Revenues to the Lessor (or its assigns) for the payment of amounts
6 due under the Lease-Purchase Agreement, (ii) the financing of the Energy Savings Project pursuant
7 to the Lease-Purchase Agreement and the Energy Savings Agreements, and (iii) the authorization,
8 execution and delivery of the Lease-Purchase Agreement, the Energy Savings Agreements, and the
9 Escrow Agreement (if determined in the Pricing Certificate to be necessary), which are required
10 to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected
11 to be obtained.

12 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**
13 **CITY OF SANTA FE, NEW MEXICO:**

14 **Section 1. Definitions.** The terms in this section are defined for all purposes of this
15 Ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and
16 of any instrument or document appertaining hereto, except where the context by clear implication
17 herein otherwise requires, shall have the following meanings:

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

21 “Authorized Officer” means the following officers of the City: Mayor, City Manager, City
22 Finance Director, or other officer of the City when designated by a certificate signed by the Mayor
23 of the City from time to time, a certified copy of which shall be delivered to the Paying Agent.

24 “Bond Counsel” means an attorney or firm of attorneys nationally recognized for expertise
25 in the area of municipal bonds and the exemption of interest on municipal bonds from federal

1 income taxation.

2 “City,” “Municipal,” or “Municipality” means the municipal corporation and body
3 corporate and politic known as the City of Santa Fe, Santa Fe County, New Mexico.

4 “Closing Date” means the date of execution, delivery and funding of the Lease-Purchase
5 Agreement.

6 “Code” means the Internal Revenue Code of 1986, as amended, and the applicable
7 regulations thereunder.

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

10 “Costs of Issuance” means all costs relating to the execution and delivery of the of the
11 Lease-Purchase Agreement and the Energy Savings Agreements, including, without limitation,
12 costs of advertising and publication, costs of fees and expenses of the City’s municipal advisor,
13 Bond Counsel, the Paying Agent, and other reasonable and necessary fees and costs, including
14 applicable gross receipts taxes, related to the execution and delivery of the Lease-Purchase
15 Agreement and the Energy Savings Agreements.

16 “Dalkia Agreement” means the Global Management Performance Contract by and between
17 the City and Dalkia Energy Solutions, a Massachusetts limited liability company, for
18 implementation of the Dalkia Project Component.

19 “Dalkia Project Component” means the installation, implementation, monitoring, and
20 maintenance of upgrades to street light improvements leased to, and operated by, the City by Public
21 Service Company of New Mexico.

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

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

1 “Escrow Agreement” means, if required by the Lessor, the escrow agreement relating to
2 the Energy Savings Project among the City, the Lessor and the Escrow Agent, into which the
3 proceeds received by the City pursuant to the Lease-Purchase Agreement shall be deposited for
4 payment of Energy Savings Project costs.

5 “Escrow Fund” means, if required by the Lessor, the “City of Santa Fe, New Mexico
6 2021 Lease-Purchase Agreement Escrow Fund” created by Section 8 hereof.

7 “Governing Body” means the members of the governing body designated as councilors
8 who, together with the mayor, are the governing body of the City.

9 “Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the
10 entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which
11 such word is used.

12 “Lease-Purchase Agreement” means the Lease-Purchase Agreement dated the Closing
13 Date between the Lessor and the City which provides for the financing of the Energy Savings
14 Project and requires payments by or on behalf of the City to the Lessor, and any amendments or
15 supplements thereto, and including the exhibits attached to the Lease-Purchase Agreement.

16 “Lease-Purchase Transaction” means the financing of the Energy Savings Project through
17 the execution and delivery of the Lease-Purchase Agreement and the Related Documents.

18 “Lessor” means Sterling National Bank in connection with the Lease-Purchase Agreement.

19 “NMSA 1978” means the New Mexico Statutes Annotated, 1978 compilation, as amended
20 and supplemented.

21 “Ordinance” means this City Ordinance as amended or supplemented from time to time.

22 “Placement Agent” means D.A. Davidson & Co., Kansas City, Missouri.

23 “Placement Agent Agreement” means the professional services agreement by and between
24 the City and the Placement Agent for the placement of the Financing Transaction with the Lessor.

25 “Pledged Energy Cost Savings Revenues” or “Pledged Revenues” means amounts

1 generated by Utility Cost Savings pursuant to the Energy Savings Agreements, which constitute
2 net revenues of the Energy Savings Project, which shall be deposited monthly to the Pledged
3 Revenue Fund as provided in Section 8 of this Ordinance.

4 “Pledged Energy Cost Savings Revenue Fund” or “Pledged Revenue Fund” means the fund
5 created pursuant to Section 8 of this Ordinance.

6 “Pricing Certificate” means the certificate executed and delivered by the any of the Mayor,
7 City Manager or Finance Director of the City subsequent to the date of this Ordinance which shall
8 specify the exact principal amount of the Lease-Purchase Agreement, the rental payment dates, the
9 amounts payable on each rental payment date, the interest rate, and the prepayment features
10 applicable to the Lease-Purchase Agreement and which shall approve the final forms of the Lease-
11 Purchase Agreement, the Escrow Agreement (if applicable), Energy Savings Agreements, and
12 other documents and which may contain such other terms and provisions as set forth in the Pricing
13 Certificate; provided that in no event shall the Pricing Certificate specify a principal amount of the
14 Lease-Purchase Agreement in excess of \$20,000,000 or a net effective interest rate on the Lease-
15 Purchase Agreement in excess of the statutory maximum of twelve percent (12%) per annum.

16 “Project Component” or “Project Components” means, as the context requires, each or all
17 of the Yearout Project Component and the Dalkia Project Component.

18 “Related Documents” means, as applicable, the Escrow Agreement, account control
19 agreement, closing documents, including, without limitation, a tax compliance certificate, and any
20 other document or agreement containing a representation, certification or obligation of the City as
21 may be required by the Lessor or otherwise in connection with the Lease-Purchase Agreement
22 pursuant to the Lease-Purchase Financing.

23 “Rental Payment Fund” means the “City of Santa Fe, New Mexico 2021 Lease-Purchase
24 Agreement Rental Payment Fund” created by Section 8 hereof.

25 “State” means the State of New Mexico.

1 “Utility Cost Savings” means the amounts saved by the City in the purchase of electricity
2 or water that are a direct result of the Conservation Measures.

3 “Yearout Agreement” means the Energy Savings Performance Contract with Yearout
4 Energy Services Company, LLC for implementation of the Yearout Project Component.

5 “Yearout Project Component” means the installation, implementation, monitoring and
6 maintenance of energy savings measures and water conservation measures throughout City owned
7 facilities.

8 **Section 2. Ratification of Prior Action.** All action heretofore taken (not
9 inconsistent with the express provisions of this Ordinance) by the Governing Body and officers of
10 the City directed toward the Energy Savings Agreements, the Energy Savings Project, the Lease-
11 Purchase Agreement, including, without limitation, the publication of a notice of public meeting
12 and intent to adopt this Ordinance authorizing the execution and delivery of the Lease-Purchase
13 Agreement, and the engagement of D.A Davidson as Placement Agent pursuant to the Placement
14 Agent Agreement, and the same hereby is ratified, approved and confirmed, notwithstanding any
15 inconsistent prior action.

16 **Section 3. Authorization of the Lease-Purchase Transaction.** The Energy Savings
17 Project and the financing of the Energy Savings Project through the Lease-Purchase Transaction
18 are hereby approved, the final terms of which shall be as provided in the Pricing Certificate. The
19 Lease-Purchase Agreement, in substantially the form presented to the Governing Body in
20 connection with this Ordinance, is hereby approved. The Mayor, or in the Mayor’s absence, the
21 Mayor *Pro Tem*, is hereby authorized to execute and deliver the Lease-Purchase Agreement, as
22 modified by the Pricing Certificate. The Lease-Purchase Agreement shall be attested by the City
23 Clerk or Deputy Clerk.

24 **Section 4. Findings; Parameters for Lease-Purchase Transaction.** The Governing
25 Body hereby declares that it has considered all relevant information and data and hereby makes the

1 following findings:

2 A. The Energy Savings Project is needed to meet the needs of the City and its
3 residents and the execution and delivery of the Lease-Purchase Agreement and the Escrow
4 Agreement (if determined to be required for the Lease-Purchase Transaction as set forth in the
5 Pricing Certificate) is necessary and advisable.

6 B. Moneys available and on hand for the Energy Savings Project from all
7 sources other than the Lease-Purchase Agreement are not sufficient to defray the cost of the Energy
8 Savings Project.

9 C. The Pledged Revenues may lawfully be pledged to secure the payment of
10 amounts due under the Lease-Purchase Agreement.

11 D. It is economically feasible to defray, in whole or in part, the costs of the
12 Energy Savings Project by the execution and delivery of the Lease-Purchase Agreement.

13 E. The Energy Savings Project and the execution and delivery of the Lease-
14 Purchase Agreement pursuant to the Act to provide funds for the financing of the Energy Savings
15 Project are necessary and in the interest of the public health, safety, and welfare of the residents of
16 the City and will result in energy and water conservation savings and other economies for the City.

17 F. The Energy Savings Project is a revenue-producing project within the
18 meaning of the Act. Implementation of the Energy Savings Project pursuant to the Energy Savings
19 Agreements will generate utility cost savings equal to or greater than the costs of the Energy
20 Savings Project, including the financing of those costs pursuant to the Lease-Purchase Transaction,
21 and constitute net revenues of the Energy Savings Project within the meaning of the Act. The
22 Conservation Measures are reasonably related to and constitute a substantial part of the Energy
23 Savings Project.

24 G. The average economic life of the Project Components comprising the
25 Energy Savings Project will be at least 20 years.

- 1 H. The Lease-Purchase Agreement shall be within the following parameters:
- 2 (i) the net effective interest rate on the Lease-Purchase Agreement
- 3 shall not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State
- 4 law.
- 5 (ii) The maximum term of the Lease-Purchase Agreement shall not
- 6 exceed 25 years.
- 7 (iii) The maximum principal amount of the Lease-Purchase
- 8 Agreement shall not exceed \$20,000,000.

9 **Section 5. Authorization of the Lease-Purchase Transaction.**

10 A. Authorization. This Ordinance has been adopted by the affirmative vote

11 of a three-fourths (3/4) majority of all of the members of the Governing Body. For the purpose of

12 protecting the public health, conserving the property, protecting the general welfare and prosperity

13 of the residents of the City and completing the Energy Savings Project, it is hereby declared

14 necessary that the City, pursuant to the Act, execute and deliver the Lease-Purchase Agreement,

15 evidencing a special, limited obligation of the City to pay an amount of up to \$20,000,000, plus

16 interest, and the execution and delivery of the Lease-Purchase Agreement is hereby authorized.

17 The City shall use the proceeds of the Lease-Purchase Agreement to finance the Energy Savings

18 Project and pay Costs of Issuance.

19 B. Detail. The Lease-Purchase Agreement shall be in form consistent with

20 this Ordinance, as supplemented by the Pricing Certificate. The Lease-Purchase Agreement shall

21 be in an aggregate principal amount of up to \$20,000,000, shall be payable in installments or rent

22 and interest due on the dates set forth in the Pricing Certificate.

23 **Section 6. Approval of the Lease-Purchase Agreement; Execution and Delivery.**

24 The Mayor or, in the absence of the Mayor, the Mayor *pro tem*, is authorized to execute and delivery

25 the Lease-Purchase Agreement, which shall be attested by the City Clerk or a deputy City Clerk,

1 in substantially the form presented to the Governing Body in its consideration of this Ordinance,
2 with such modifications or revisions as the Mayor, in consultation with the City's municipal advisor
3 and Bond Counsel, determines are necessary or convenient to implement the Energy Savings
4 Project, and the execution and delivery of the Lease-Purchase Agreement by the Mayor, or in the
5 absence of the Mayor, the Mayor *pro tem*, shall be conclusive evidence of the City's approval
6 thereof, as may be modified or revised.

7 **Section 7. Special Limited Obligations.** The Lease-Purchase Agreement and the
8 Energy Savings Agreements shall be secured by the pledge of the Pledged Energy Cost Savings
9 Revenues as set forth in the Lease-Purchase Agreement and the Energy Savings Agreements,
10 respectively, and shall be payable solely from the Pledged Energy Cost Savings Revenues. The
11 Lease-Purchase Agreement, together with interest thereon and other obligations of the City
12 thereunder, and the Energy Savings Agreements, shall be special, limited obligations of the City,
13 payable solely from the Pledged Energy Cost Savings Revenues as provided in this Ordinance, the
14 Lease-Purchase Agreement and the Energy Savings Agreements and shall not constitute a general
15 obligation of the City or the State, and the holders of the Lease-Purchase Agreement or the Energy
16 Savings Agreements may not look to any general or other fund of the City for payment of the
17 obligations thereunder. Nothing contained in this Ordinance or in the Lease-Purchase Agreement,
18 the Energy Savings Agreements, or any other instruments, shall be construed as obligating the City
19 (except with respect to the application of the Pledged Energy Cost Savings Revenues), as incurring
20 a pecuniary liability or a charge upon the general credit of the City or against its taxing power, nor
21 shall a breach of any agreement contained in this Ordinance, the Lease-Purchase Agreement, the
22 Energy Savings Agreements or any other instrument impose any pecuniary liability upon the City
23 or any charge upon its general credit or against its taxing power. The Lease-Purchase Agreement
24 and the Energy Savings Agreements shall never constitute an indebtedness of the City within the
25 meaning of any State constitutional provision or statutory limitation and shall never constitute or

1 give rise to a pecuniary liability of the City or a charge against its general credit or taxing power.
2 Nothing herein shall prevent the City from applying other funds of the City legally available
3 therefor to payments required by the Lease-Purchase Agreement or the Energy Savings
4 Agreements, in its sole and absolute discretion.

5 **Section 8. Creation of Funds and Accounts; Disposition of Proceeds:**
6 **Completion of the Energy Savings Project.**

7 A. Rental Payment Fund, Escrow Fund and Pledged Revenue Fund. The City
8 hereby consents to creation of: (i) the special fund known as the Rental Payment Fund to be held
9 and maintained by the City, (ii) if applicable, the Escrow Fund to be held and maintained by the
10 Escrow Agent pursuant to the Escrow Agreement and (iii) the Pledged Revenue Fund to be held
11 and maintained by the City, each in connection with the Lease-Purchase Agreement.

12 B. Disposition of Proceeds of Lease-Purchase Agreement. The proceeds
13 derived from the execution and delivery of the Lease-Purchase Agreement shall be deposited
14 promptly upon the receipt thereof in the Escrow Fund, as provided in the Escrow Agreement.

15 C. Completion of Energy Savings Project. The City will cause the
16 installation of the Project Components with all due diligence, and in any event within three years
17 after the date of execution and delivery of the Lease-Purchase Agreement.

18 **Section 9. Deposit of Pledged Energy Cost Savings Revenues and Flow of Funds.**

19 A. Pledged Revenue Fund. So long as payments are due under the Lease-
20 Purchase Agreement, the City shall credit all Pledged Energy Cost Savings Revenues to the Pledged
21 Revenue Fund. As a first charge on the Revenue Fund, amounts due under the Lease-Purchase
22 Agreement shall be withdrawn from the Pledged Revenue Fund and shall be credited to the Rental
23 Payment Fund on the dates and in the amounts set forth in the Lease-Purchase Agreement.

24 B. Credit. In making the deposits required to be made into the Rental
25 Payment Fund, if there are any amounts then on deposit in the rental Payment Fund available for

1 the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to
2 paragraph (A) above shall be reduced by the amount available in such fund for such purpose.

3 C. Transfer of Money out of Rental Payment Fund. Each payment due on the
4 Lease-Purchase Agreement shall be transferred from the Rental Payment Fund to the Lessor on the
5 due date of such payment.

6 D. Termination Upon Deposits to Maturity. No payment shall be made into
7 the Rental Payment Fund if the moneys in such fund totals a sum at least equal to the entire
8 aggregate amount due on the Lease-Purchase Agreement, in which case moneys in said fund in an
9 amount at least equal to such payment requirements shall be used solely to pay such obligations as
10 the same become due, and any moneys in excess thereof in said funds and any other moneys derived
11 from the Pledged Energy Cost Savings Revenues may be used in any lawful manner determined by
12 the City.

13 E. Defraying Delinquencies in the Rental Payment Fund. If, on any payment
14 date, the amount on deposit in the Rental Payment Fund is insufficient to make the payments due
15 on the Lease-Purchase Agreement, then an amount shall be paid into the Rental Payment Fund
16 from the first Pledged Energy Cost Savings Revenues thereafter received that are not required to
17 be deposited in the Rental Payment Fund as set forth in Paragraph C of this Section.

18 F. Payment from Other Sources. Notwithstanding any other provisions of
19 this Ordinance, the City may, in its sole discretion, choose to apply other legally available funds to
20 the payment of the Lease-Purchase Agreement.

21 G. Surplus Revenues. After making all the payments hereinabove required
22 to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other
23 lawful purpose, as the City may from time to time determine.

24 **Section 10. Lien on Pledged Energy Cost Savings Revenues.** Pursuant to this
25 Ordinance and the Lease-Purchase Agreement, the Pledged Energy Cost Savings Revenues are

1 hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest
2 therein for, the payment of the rent, interest, and any other amounts due under the Lease-Purchase
3 Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance.
4 The Lease-Purchase Agreement constitutes an irrevocable and first lien on the Pledged Energy Cost
5 Savings Revenues.

6 **Section 11. Authorized Officers.** Authorized Officers are hereby individually
7 authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits
8 and other documents and to do and cause to be done any and all acts and things necessary or proper
9 for carrying out this Ordinance, the Lease-Purchase Agreement and the Related Documents, and
10 all other transactions contemplated hereby and thereby. Authorized Officers are hereby
11 individually authorized to do all acts and things required of them by this Ordinance, the Lease-
12 Purchase Agreement and the Related Documents for the full, punctual and complete performance
13 of all the terms, covenants and agreements contained in this Ordinance, the Lease-Purchase
14 Agreement and the Related Documents, the execution and delivery of closing documents in
15 connection with the execution and delivery of the Lease-Purchase Agreement, the Escrow
16 Agreement (if applicable), and the publication of the summary of this Ordinance set out in Section
17 18 of this Ordinance (with such changes, additions and deletions as may be necessary).

18 **Section 12. Amendment of Ordinance.** Prior to the Closing Date, the provisions of
19 this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body
20 with respect to any changes which are not inconsistent with the substantive provisions of this
21 Ordinance. Following the Closing Date, this Ordinance may be amended by ordinance of
22 Governing Body without receipt by the City of any additional consideration, but only with the prior
23 written consent of the Lessor.

24 **Section 13. Ordinance Irrepealable.** After the Lease-Purchase Agreement has been
25 executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due

1 under the Lease-Purchase Agreement shall be fully paid, canceled and discharged, as provided
2 therein.

3 **Section 14. Severability Clause.** If any section, paragraph, clause or provision of this
4 Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or
5 unenforceability of such section, paragraph, clause or provision shall not affect any of the
6 remaining provisions of this Ordinance.

7 **Section 15. Repealer Clause.** All bylaws, orders, resolutions and ordinances, or parts
8 thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This
9 repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof,
10 heretofore repealed.

11 **Section 16. Effective Date, General Summary for Publication.** Upon due adoption
12 of this Ordinance, the ordinance shall be recorded and preserved by the City Clerk, authenticated
13 by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the
14 title and general summary of the subject matter contained in this Ordinance (set out below) shall
15 be published in a newspaper which maintains an office and is of general circulation in the City and
16 this Ordinance shall be in full force and effect after its publication in accordance with law.

17 Pursuant to Section 3-17-5 NMSA 1978, as amended, the title and a general summary of
18 the subject matter contained in this Ordinance shall be published in substantially the following
19 form:

20 (Form of Summary of Ordinance for Publication)

21 CITY OF SANTA FE, NEW MEXICO

22 NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter
23 contained in an ordinance duly adopted and approved by the Governing Body of the City of Santa
24 Fe on February 24, 2021. A complete copy of the ordinance is available for public inspection
25 during the normal and regular business hours of the City Clerk in the office of the City Clerk, City

1 Hall, 200 Lincoln Avenue, Santa Fe, New Mexico and is available online at santafe.primegov.com.

2 The title of the ordinance is:

3 **AN ORDINANCE**

4 **AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE**
5 **AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE, NEW MEXICO**
6 **(THE “CITY”) AND STERLING NATIONAL BANK (THE “LESSOR”),**
7 **EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY AN**
8 **AMOUNT OF UP TO \$20,000,000, TOGETHER WITH INTEREST THEREON,**
9 **FOR THE PURPOSE OF ACQUIRING, INSTALLING, AND EQUIPPING**
10 **ENERGY EFFICIENCY MEASURES THROUGHOUT THE CITY; PROVIDING**
11 **FOR THE PLEDGE AND PAYMENT OF THE AMOUNTS DUE UNDER THE**
12 **LEASE-PURCHASE AGREEMENT SOLELY FROM THE UTILITY COST AND**
13 **WATER CONSERVATION SAVINGS AND PAYMENTS RECEIVED BY THE**
14 **CITY PURSUANT TO (1) THE ENERGY PERFORMANCE CONTRACT BY AND**
15 **BETWEEN THE CITY AND YEAROUT ENERGY SERVICES COMPANY, LLC,**
16 **AND (2) THE GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND**
17 **BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC; PROVIDING**
18 **THAT CERTAIN TERMS OF THE LEASE-PURCHASE AGREEMENT WILL BE**
19 **ESTABLISHED IN A PRICING CERTIFICATE TO BE EXECUTED AND**
20 **DELIVERED AS AUTHORIZED PURSUANT TO SECTION 6-14-10.2 NMSA**
21 **1978; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL**
22 **ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING**
23 **THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE**
24 **EXECUTION AND DELIVERY OF THE LEASE-PURCHASE AGREEMENT.**

25 A general summary of the subject matter contained in such ordinance is set forth in the

1 title. COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE
2 CITY CLERK AT THE CITY HALL, 200 LINCOLN AVENUE, SANTA FE, NEW MEXICO,
3 ARE AVAILABLE ONLINE AT SANTAFE.PRIMEGOV.COM, AND ARE AVAILABLE FOR
4 INSPECTION AND/OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE
5 ALSO CONSTITUTES COMPLIANCE WITH SECTION 3-17-5 AND SECTIONS 6-14-4
6 THROUGH 6-14-7, NMSA 1978.

7 WITNESS my hand and the seal of the City on February 24, 2021.

8 CITY OF SANTA FE

9 

10 (SEAL)

Kristine Mihelcic (Mar 3, 2021 10:02 MST)

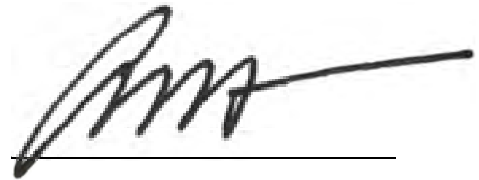
11 KRISTINE MIHELIC, CITY CLERK

12 (End of Form of Ordinance for Publication)

13 PASSED, APPROVED, and ADOPTED this 24th day of February, 2021.

14 GOVERNING BODY OF THE CITY OF SANTA FE

15
16
17 (SEAL)



18 ALAN WEBBER, MAYOR

19 ATTEST:

20 

21 Kristine Mihelcic (Mar 3, 2021 10:02 MST)

22 KRISTINE MIHELIC, CITY CLERK
23
24
25

1 APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

2 Modrall, Sperling, Roehl, Harris & Sisk, P.A. as Bond Counsel

3 Peter Franklin

4 By: Peter Franklin (Feb 26, 2021 18:00 MST)

5 PETER FRANKLIN

6 After discussion, Councilor Lindell moved for approval, with Councilor Romero-Wirth seconding
7 the motion. Bill No. 2021-4 passed upon the following roll call vote:

8 Those voting AYE:

9 Mayor: Alan Webber

10 Councilor: Roman Abeyta

11 Councilor: Jamie Cassutt-Sanchez

12 Councilor: Michael J. Garcia

13 Councilor: Signe I. Lindell

14 Councilor: Chris Rivera

15 Councilor: Carol Romero-Wirth

16 Councilor: Renee Villarreal

17 Those voting NAY: JoAnne Vigil Coppler

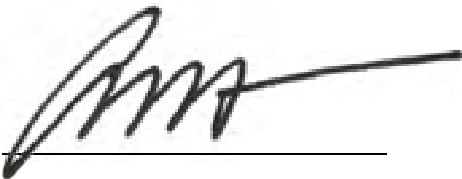
18 Those not present: _____

19 The presiding officer thereupon declared that at least three-fourths of all the members of
20 the Governing Body having voted in favor of adoption of Bill No. 2021-4 the motion was carried
21 and Ordinance No. 2021-5 was duly passed and adopted.

22 After consideration by the Governing Body of other business the meeting was duly
23 adjourned.

GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO

(SEAL)



ALAN WEBBER, MAYOR

ATTEST:



~~Kristine Mihelcic (Mar 3, 2021 10:02 MST)~~

KRISTINE MIHELIC, CITY CLERK

Bill No. 2021-4

Legislation/2021/Ordinances/2021-5 Energy Efficiency Lease Purchase Agreement

Signature: 
Geraldyn Cardenas (Mar 22, 2021 15:18 MDT)

Email: gfcardenas@santafenm.gov











GB 21-0105 PWD DALKIA -PLEASE EXPEDITE R-1


Final Audit Report

2021-03-23


Created:	2021-03-22
By:	Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAtWSGMtrLogveE7aEjdpzW_ABJa3MK56M

"GB 21-0105 PWD DALKIA -PLEASE EXPEDITE R-1" History


-  Document created by Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
2021-03-22 - 3:02:39 PM GMT- IP address: 63.232.20.2
-  Document emailed to Alexis Lotero (aclotero@santafenm.gov) for signature
2021-03-22 - 3:09:45 PM GMT
-  Email sent to Jimmy Tapia (jptapia@ci.santa-fe.nm.us) bounced and could not be delivered
2021-03-22 - 3:10:56 PM GMT
-  Email sent to yocatanach@santafenm.gov bounced and could not be delivered
2021-03-22 - 3:11:01 PM GMT
-  Email sent to clgrosse@santafenm.gov bounced and could not be delivered
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-  Email sent to Curt Temple (cetemple@santafenm.gov) bounced and could not be delivered
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-  Email viewed by Alexis Lotero (aclotero@santafenm.gov)
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-  Document e-signed by Alexis Lotero (aclotero@santafenm.gov)
Signature Date: 2021-03-22 - 7:19:55 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to Fran Dunaway (fadunaway@santafenm.gov) for signature
2021-03-22 - 7:20:05 PM GMT
-  Email sent to Jimmy Tapia (jptapia@ci.santa-fe.nm.us) bounced and could not be delivered
2021-03-22 - 7:23:46 PM GMT

 Email viewed by Fran Dunaway (fadunaway@santafenm.gov)

2021-03-22 - 7:32:06 PM GMT- IP address: 104.47.64.254

 Document e-signed by Fran Dunaway (fadunaway@santafenm.gov)

Signature Date: 2021-03-22 - 7:33:45 PM GMT - Time Source: server- IP address: 63.232.20.2

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2021-03-22 - 7:33:56 PM GMT

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2021-03-22 - 8:00:34 PM GMT- IP address: 104.47.65.254

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Signature Date: 2021-03-22 - 9:16:45 PM GMT - Time Source: server- IP address: 63.232.20.2

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2021-03-22 - 9:17:52 PM GMT- IP address: 104.47.65.254

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 Document e-signed by Geralyn Cardenas (gfcardenas@santafenm.gov)

Signature Date: 2021-03-22 - 9:18:46 PM GMT - Time Source: server- IP address: 63.232.20.2

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2021-03-22 - 9:20:16 PM GMT

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2021-03-22 - 11:12:41 PM GMT- IP address: 63.232.20.2

 Document e-signed by Alan Webber (awebber@santafenm.gov)

Signature Date: 2021-03-22 - 11:13:15 PM GMT - Time Source: server- IP address: 63.232.20.2

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2021-03-22 - 11:13:25 PM GMT

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2021-03-22 - 11:14:56 PM GMT

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2021-03-23 - 0:05:13 AM GMT- IP address: 174.237.133.157

 Document e-signed by Kristine Mihelcic (kmmihelcic@santafenm.gov)

Signature Date: 2021-03-23 - 0:06:53 AM GMT - Time Source: server- IP address: 174.237.133.157

 Agreement completed.

2021-03-23 - 0:06:53 AM GMT