

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: | <u>Alan Webber</u> |
| 13 | | Councilor: | <u>Roman Abeyta</u> |
| 14 | | Councilor: | <u>Jamie Cassutt-Sanchez</u> |
| 15 | | Councilor: | <u>Michael J. Garcia</u> |
| 16 | | Councilor: | <u>Signe I. Lindell</u> |
| 17 | | Councilor: | <u>Chris Rivera</u> |
| 18 | | Councilor: | <u>Carol Romero-Wirth</u> |
| 19 | | Councilor: | <u>JoAnne Vigil Coppler</u> |
| 20 | | Councilor: | <u>Renee Villarreal</u> |

21 ABSENT: _____

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

23 PUBLIC HEARINGS

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25 CONSIDERATION OF BILL NO. 2021-4

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ADOPTION OF ORDINANCE NO. 2021-5

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

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2021-5

3
4
5 AN ORDINANCE

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

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

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

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

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

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

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.

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GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO

(SEAL)



ALAN WEBBER, MAYOR

ATTEST:



[Kristine Mihelcic \(Mar 3, 2021 10:02 MST\)](#)

KRISTINE MIHELICIC, CITY CLERK

Bill No. 2021-4

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