

**CITY OF SANTA FE
AMENDMENT # 1 TO
THE LEASE AGREEMENT BETWEEN THE CITY OF SANTA FE AND THE FOOD DEPOT, INC.**

This Amendment No. 1 (the "Amendment") is an amendment to the City of Santa Fe Lease Agreement ("Lease"), Item # 16-0725, dated July 29, 2016, between the CITY OF SANTA FE, New Mexico ("City", "Lessor") and THE FOOD DEPOT, INC., a New Mexico nonprofit corporation ("Lessee") (collectively the "Parties") shall be effective on August 26, 2020.

RECITALS:

A. The Lessor and Lessee are parties to the Lease under which the Lessee leases Lessor-owned real property, to use, occupy, and develop, subject to the terms and conditions of the Item #16-0725 Lease Agreement, a certain parcel of land known as "Lease Parcel B" consisting of 1.643 acres of land located at 1222-A Siler Road, Santa Fe, New Mexico lying and being situate within a portion of Tract 2 as shown on a "Plat of Survey" for the City of Santa Fe "City Yards", prepared by Richard E. Smith, PS No. 5837 in February 1984 and having his Project No. 2411, recorded in the records of Santa Fe County, New Mexico as Document No. 553116 on October 16, 1984 in Plat Book 146, Page 007 (the Premises), as shown on Exhibit A of the Item #16-0725 Lease Agreement. Lessee currently owns a building known as the "Food Depot Building" along with associated site improvements upon the Premises.

B. Lessee would like to enter into an Agreement with Solar Photovoltaic System Power to place a Solar Photovoltaic (PV) system on the Food Depot Building, which may include: solar panels; a tracking system; inverters; generator offtake leads or wires; a metering device; and digital monitoring equipment connected to the meter to allow for internet tracking and monitoring of system performance basics. The goal of the Solar PV system is to make the building energy efficient and to save the Lessee money so they may direct more money towards its mission.

C. The Parties to the Lease wish to modify their existing Lease Agreement to allow for the installation of the Solar PV system.

D. The Parties wish to solely modify Sections 4 and 5 of the Agreement and to keep all remaining Sections of the Agreement intact.

WITNESSETH:

In consideration of Lessee's promises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the Lease be amended as follows.

AMENDMENT:

I. Amendment to Section 4, "Lease Term," which removes and replaces Section 4 with the following:

The term of this Lease Agreement shall commence at 12:00 a.m. on the Effective Date. The term of this Lease Agreement shall consist of an "Initial Term", which began on August 1, 2016 (Effective Date), for a period of Twenty-Nine (29) years with One (1) "Optional Additional Term" of Eleven (11) years. Initial Term and any Optional Additional Terms are hereinafter referred to collectively as the "Term".

Lessee's exercise of the Optional Additional Term is contingent upon compliance with this Lease Agreement and with proper written notice made by Lessee to Lessor at least One Hundred and Eighty (180) days prior to the expiration of the Initial Term. In the event Lessee remains in possession of the Premises after the expiration of the Term of this Lease Agreement, such possession may, at the sole option of Lessor, be continued as a month-to-month tenancy. During any such month-to-month tenancy, the Rent due shall be prorated and payable on a monthly basis, and Lessor may terminate the month-to-month tenancy with Thirty (30) days written notice to Lessee. The terms and conditions of the Lease Agreement shall be otherwise applicable.

2. Amendment to Section 5, "Use of Premises," of the Lease.

A. By this Amendment, Section 5 (C), "Ownership of Improvements," of the Lease is hereby removed and replaced with the following:

C. Ownership of Improvements. Lessee shall own any improvements that the Lessee or its Sublessee(s) hereafter place, or cause to be placed, on the Premises during the Term of this Lease Agreement, unless the Parties agree otherwise in writing. With regard to improvements, which include a Solar PV system and any renewable energy certificates (RECs) as defined by NMSA 1978, sec. 62-16-3(G)(2019) as it may be amended, Lessee may enter into a lease purchase agreement for such improvements, but upon termination of this Lease, the Solar PV system and any RECs must be owned by Lessee to be passed to Lessor, or must be removed if not owned by Lessee. Upon termination of this Lease Agreement, title to any and all such improvements shall pass to Lessor.

Except as specifically provided in this Amendment #1, the Agreement remains and shall remain in full force and effect, in accordance with its term.

IN WITNESS WHEREOF, the parties have executed this Amendment #1 as of this 9 day of September, 2020.

LESSOR:
CITY OF SANTA FE



ALAN WEBBER, MAYOR

APPROVED AS TO FORM FOR LEGAL SUFFICIENCY:

/s/ Andrea Salazar for
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED AS TO FINANCE:

Mary McCoy
MARY T. MCCOY, FINANCE DIRECTOR

ATTEST:

Yolanda Y. Vigil
YOLANDA Y. VIGIL, CITY CLERK
GB Mtg 08/26/2020 GC
GC

LESSEE:
THE FOOD DEPOT, INC.

David Barton
DAVID BARTON, PRESIDENT

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) ss.

The foregoing instrument was acknowledged before me this 3rd day of September
2020, by DAVID BARTON, the President of THE FOOD DEPOT, INC., New Mexico nonprofit corporation.

Ramona Ruark
Notary Public

My commission expires:
August 3, 2021



DATE: July 28, 2020

TO: Finance Committee – 8/17
Quality of Life Committee – 8/19
Governing Body – 8/26

FROM: Richard Brown, Director - Office of Economic Development *RB*

ITEMS: REQUEST FOR APPROVAL OF AMENDMENT # 1 TO THE
LEASE AGREEMENT BETWEEN THE CITY OF SANTA FE AND
THE FOOD DEPOT, INC.

SUMMARY:

Since 2016, The Food Depot, Inc. has been leasing land from the City of Santa Fe. Their Board of Directors is considering a solar project with Affordable Solar. An amendment to their lease would provide the ability to meet their solar company's agreement while staying in compliance with City of Santa Fe lease terms.

The City lease has the following areas of conflict with their Affordable Solar Agreement

First, the Term of the Lease did not match the term of the Affordable Solar Agreement, so an amendment to Section 4, "Lease Term" which does not change the full term allowed by the lease when the initial term and optional terms are added together:

- The City lease w/o options is for 20 years and it was signed in 2016 or ends in 2036:
 - *If an option is exercised then the lease would go until 2046*
 - *Finally, if the 2nd option was exercised the lease would go to 2056*
- To take advantage of the Federal Tax Credit (26%), they would like to sign an Affordable Solar Agreement by 2020, which requires the following provisions:
 - *25 year agreement starting in 2020, plus an additional 5 years; the agreement would run until 2045*
 - *If the extension on the agreement was exercised, then 2045, plus an additional five (5) years, it would go until 2050*
- The amendment to Section 4 allows the 40 year term to be broken into an initial term of 29 years and an 11 year optional term. This allows for the full term of the Affordable Solar Agreement to coincide with the lease term.

Second, the ownership of the improvements is in conflict with the Affordable Solar Agreement, so an amendment to Section 5 "Use of Premises" was required for the following reasons:

- The current lease only allowed for the Lessee to own the improvements during the term of the lease, not allowing for the Affordable Solar Agreement. The terms of the Affordable Solar Agreement make it possible for the Food Depot to afford the solar installation, but without having to take ownership of the improvements at the time of installation.
- The amendment of the lease focuses on the improvements at the time of the end of the lease rather than during the term, so that the improvements are either removed or given to the City at the end of the term.

RECOMMENDED ACTION:

To facilitate the improvements to the leased building and rectify the concerns addressed with the current lease to enter into a sub-lease with Affordable Solar, the City staff recommends the Finance Committee, Quality of Life Committee and Governing Body approval of Amendment #1 to the Lease Agreement between the City of Santa Fe and the Food Depot, Inc.

Attachments:

- Proposed Amendment 1 to the City of Santa Fe and Food Depot Inc., Lease Agreement
- Item # 16-0725 Lease Agreement between the City of Santa Fe and Food Depot, Inc.



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Muris Contract # 3202108

Contractor: The Food Depot, Inc.

Description: Lessee would like to enter into an Agreement with Solar Photovoltaic System Power to place a Solar Photovoltaic (PV) system on the Food Depot Building

Contract ☐ Agreement ☐ Lease / Rent ☒ Amendment ☐

Term Start Date: 08/01/2016

Term End Date: 07/29/2036

☒ Approved by Council

Date: 07/27/2016

Contract / Lease: Lease property - 1222-A Siler Road

Amendment # 1 to the Original Contract / Lease # 16-0725

Increase/(Decrease) Amount \$

Extend Termination Date to: 07/29/2045 with Optional Additional Term of Eleven (11) years

☒ Approved by Council

Date:

Amendment is for: Solar Photovoltaic system

2. HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

There is not a financial impact. The lease amendment is authorizing the lessee to install Solar Panels at no cost to the City.

3. Procurement History:

Aug 25, 2020

Aug 25, 2020

Purchasing Officer Review:

Date:

Comment & Exceptions: Lease not a Purchasing function. City is Lessor-Revenue Generated

4. Funding Source:

Aug 25, 2020

Org / Object: City There is not a financial impact to the

Aug 25, 2020

Budget Officer Approval:

Date:

Comment & Exceptions:

Staff Contact who completed this form: Jessica Sandoval Phone # 505-690-5382

Email: jmsandoval@santafenm.gov

To be recorded by City Clerk:

Clerk #

Date of Execution:



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: The Food Depot, Inc

Procurement Title: Lease Agreement - Amend #1

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 Economic Development Staff Name Rich Brown

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

Jessica Sandoval Administrative Manager 08/17/2020

Department Rep Printed Name (attesting that all information included) Title Date

Purchasing Officer (attesting that all information is reviewed) Title Date

Include all other substantive documents and records of communication that pertain to the procurement and contract.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/13/2020

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
Daniels Insurance, Inc.-Santa Fe
805 St. Michaels Drive
Santa Fe NM 87505

CONTACT NAME: Ed Risley
PHONE: (505) 982-4392 FAX: (505) 982-9166
EMAIL: edrisley@danelsinsuranceinc.com

INSURED
Food Depot, Inc.
1222A Siler Road
Santa Fe NM 87507

INSURER: Cincinnati Insurance Companies
INSURER: New Mexico Assurance Company 11675
INSURER: United States Liability Insura 28835
INSURER:
INSURER:

COVERAGES

CERTIFICATE NUMBER: Cert ID 26930

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.

TYPE OF INSURANCE	POLICY NUMBER	POLICY PERIOD (MM/DD/YYYY)	LIMITS
A <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	EPP 0214646	10/12/2019 10/12/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG \$ 2,000,000 Empl Benefits Liab \$ 1M/3M COMBINED SINGLE LIMIT (EA accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	EPP 0214646	10/12/2019 10/12/2020	BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> QED <input checked="" type="checkbox"/> RETENTIONS \$000	EPP 0214646	10/12/2019 10/12/2020	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
B WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER MEMBER EXCLUDED? <input type="checkbox"/> Y/N N/A If yes, describe under DESCRIPTION OF OPERATIONS below	20870.122	10/13/2019 10/13/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 100,000 EL DISEASE - EA EMPLOYEE \$ 100,000 EL DISEASE - POLICY LIMIT \$ 500,000
C Directors and Officers	MD015597458	09/20/2019 10/13/2020	Limit \$ 1,000,000
C Employment Practices Liab	MD015597458	09/20/2019 10/13/2020	Limit \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
General liability policy contain a Blanket Additional Insured provision that establishes the scope of Additional Insured coverage granted to the Certificate Holder. Where permitted by state law, and per a Blanket Waiver of Subrogation Endorsement, the Insurer waives its right to subrogate against the Certificate Holder by reason of payments made under the General liability policy but only under the circumstances stated in the policies.

CERTIFICATE HOLDER

City of Santa Fe
Community Services Department
200 Lincoln Ave Room 122
Santa Fe NM 87501

CANCELLATION

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

[Signature]

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City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0809
505-955-8551

BUSINESS REGISTRATION

Business Name: THE FOOD DEPOT
DBA: THE FOOD DEPOT

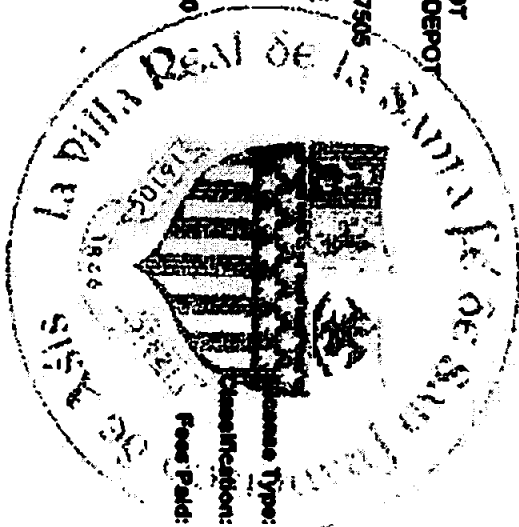
Business Location: 1222 SILER RD
SANTA FE, NM 87505

Owner: JUDITH SCARVE

License Number: 225105

Issued Date: February 10, 2020

Expiration Date: December 31, 2020



License Type: Business License - Renewable

Classification: Business Registration - Food Sales

Fees Paid: \$35.00

THE FOOD DEPOT
1222 SILER RD A
SANTA FE, NM 87505

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

ITEM # 16-0725

**LEASE AGREEMENT
BETWEEN
THE CITY OF SANTA FE AND THE FOOD DEPOT, INC.**

This LEASE AGREEMENT (Lease Agreement) is made and entered into this 29th day of JULY, 2016 by and between the CITY OF SANTA FE, a municipal corporation (City or Lessor) and THE FOOD DEPOT, INC., a New Mexico nonprofit corporation (Lessee), collectively the "Parties".

WHEREAS, the City intends to make a determination that The Food Depot, Inc., as intended Lessee, qualifies under the procurement code as the sole source for providing Services through programs and activities upon the Premises, as described in Article 5.A of this Lease Agreement.

WITNESSETH:

In consideration of the Lessee's promises herein, Lessor hereby gives Lessee a Lease Agreement, revocable and terminable as hereinafter provided, to enter on, make use of, and develop the real property of Lessor as follows:

1. PRIOR AGREEMENTS

The Parties agree that this Lease Agreement replaces in its entirety the previous Lease Agreement between the City and The Food Depot and Kitchen Angels, Inc. entitled "LEASE AGREEMENT" dated February 9, 2000 (City Item #00-0039) and the amendment to the previous Lease Agreement entitled "REVISED AMENDMENT NO. 1 TO THE LEASE AGREEMENT BETWEEN THE CITY OF SANTA FE AND THE KITCHEN ANGELS AND THE FOOD DEPOT" dated October 16, 2009 (City Item #09-0991).

2. PREMISES

Lessor allows Lessee to use, occupy, and develop, subject to the terms and conditions of this Lease Agreement, a certain parcel of land known as "Lease Parcel B" consisting of 1.643 acres of land located at 1222-A Siler Road, Santa Fe, New Mexico lying and being situate within a portion of Tract 2 as shown on a "Plat of Survey" for the City of Santa Fe "City Yards", prepared by Richard E. Smith, PS No. 5837 in February 1984 and having his Project No. 2411, recorded in the records of Santa Fe County, New Mexico as Document No. 553116 on October 16, 1984 in Plat Book 146, Page 007 (the Premises), as shown on Exhibit A of this Lease Agreement.

Lessee currently owns a building known as the "Food Depot Building" along with associated site improvements upon the Premises. Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises.

3. EFFECTIVE DATE

This Lease Agreement shall become effective August 1, 2016 (the Effective Date).

4. LEASE TERM

The term of this Lease Agreement shall commence at 12:00 a.m. on the Effective Date. The term of this Lease Agreement shall consist of an "Initial Term" of twenty years (20) years with two (2) "Optional Additional Terms" of ten (10) years each. The Initial Term and any Optional Additional Terms are hereinafter referred to collectively as the "Term".

Lessee's exercise of any Optional Additional Term is contingent upon compliance with this Lease Agreement and with proper written notice by Lessee to Lessor at least one hundred eighty (180) days prior to the expiration of the Initial Term or any Optional Additional Term. In the event Lessee remains in possession of the Premises after the expiration of the Term of this Lease Agreement, such possession may, at the sole option of Lessor, be continued as a month-to-month tenancy. During any such month-to-month tenancy, the Rent due shall be prorated and payable on a monthly basis, and the terms and conditions of the Lease Agreement shall be otherwise applicable.

5. USE OF PREMISES

A. Provision of Specific Services. Lessee shall use and develop the Premises, and/or cause the Premises to be used and developed, solely for the specific purpose of providing services to the residents of the City and County of Santa Fe by collecting food and related products through collaborative relationships with the food industry, governments, other food banks, and the community; distributing collections through a network of charitable food providers to feed those who are experiencing hunger; providing support for numerous partner nonprofit programs by providing resources and educational opportunities to both agency representatives and their clients; and conducting activities directly related to these services (the Services). Lessee agrees to actively use and develop the Premises, and/or cause the Premises to be actively used and developed, to deliver the above Services. The Services provided by Lessee may be modified from time to time by written agreement of the Parties to account for changes in community needs, changes in Lessee's and/or Lessee's Sublessee's capacities to provide new or different services, or other similar changes attributable to the passage of time.

B. Development of the Premises. Lessee may, with the prior written consent of Lessor and at no cost to Lessor, develop the Premises as it deems necessary in furtherance of the intended use of the Premises as provided in Section 5.A above. For the purposes of this Lease Agreement, development shall include: (i) construction of new buildings, structures or site improvements; and/or (ii) improvements or alterations to the existing Premises.

C. Ownership of Improvements. Lessee shall own any improvements that the Lessee or its Sublessee(s) hereafter place, or cause to be placed, on the Premises during the Term of this Lease Agreement, unless the Parties agree otherwise in writing. Upon termination of this Lease Agreement, title to any and all such improvements shall pass to Lessor.

D. Trade Fixtures. All trade fixtures installed by Lessee after the Effective Date of this Lease Agreement shall remain the property of Lessee, who may remove the same upon termination of this Lease Agreement, provided that removal shall be done in such a manner as not to injure or damage the Premises.

In the event that Lessee fails to remove the trade fixtures, Lessor may require Lessee to remove the same. In the event that Lessee fails to remove said trade fixtures after receipt of notice from Lessor, Lessor may remove and dispose of the same as it sees fit and Lessee agrees to sell, assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to said trade fixtures and any personal property not removed by Lessee. Lessee further agrees that should Lessor remove said trade fixtures pursuant to this paragraph, that Lessee shall pay Lessor upon demand the cost of such removal, plus the cost of transportation and disposal thereof.

E. Repairs and Maintenance. Lessee shall not cause or permit any waste, damage or injury to the Premises or to any improvements made to the Premises. Lessee shall, at its sole

SFC CLERK RECORDED 08/12/2016

expense, keep and maintain the Premises in good and clean condition at all times and shall be responsible for the costs of any and all required repairs and replacements that arise during the Term of this Lease Agreement.

In the event Lessee fails to maintain the Premises at a standard acceptable to the Lessor as determined in Lessor's sole discretion, Lessor may terminate this Lease Agreement, in accordance with Section 14 herein.

F. Compliance with Laws. Use of the Premises shall at all times be in compliance with the City of Santa Fe Municipal Code and other applicable local, state and federal regulations including but not limited to compliance with the City of Santa Fe Integrated Pest Management Policy (§10-7 SFCC 1987) (the Pest Management Policy).

6. SUBLEASE

A. Lessee's Right to Sublease. In furtherance of Lessee's use and development of the Premises pursuant to Section 5 of this Lease Agreement, with the prior written consent of the Lessor, Lessee may sublease portions of the Premises to other not-for-profit organizations, community groups, or governmental entities (each hereinafter a Sublessee) that provide Services. Lessee shall be the "Sublessor" to any Sublessee(s) of the Premises. Lessee shall include a provision in all subleases that the subtenant shall attorn to Lessor as landlord upon termination or expiration of this Lease Agreement. Lessee shall provide copies of all Sublease agreements to Lessor upon request.

7. RENT

Rent shall be paid as follows:

A. Rent during Initial Term. During the Term of and in consideration of this Lease Agreement and the demise of the Premises by Lessor to Lessee, Lessee hereby agrees and covenants with Lessor to pay for said Premises the annual fair market rent (the Rent) as established by a real estate appraisal prepared by an MAI-certified appraiser licensed by the State of New Mexico (the 2016 Appraisal), to be provided for Lessor's approval by and at Lessee's sole expense within sixty (60) days after the Effective Date of this Lease Agreement. Rent during the Initial Term shall be subject to increases in accordance with Section 7.C below.

The Parties agree that Lessee may use and occupy the Premises beginning on the Effective Date provided that at the time Rent is established by the approved 2016 Appraisal, the Rent will be applied retroactively to the Effective Date.

B. Rent during any Optional Additional Term(s). The Rent for any Optional Additional Term(s) of this Lease Agreement shall be established by a real estate appraisal prepared by an MAI-certified appraiser licensed by the State of New Mexico to be provided and paid for by Lessee for Lessor's approval at least forty-five (45) days prior to the commencement of any such Optional Additional Term(s). In no case shall the Rent for any Optional Additional Term(s) be less than the Rent during the last year of the previous term plus two and one-half percent (2.5%). Rent during any Optional Additional Term(s) shall be subject to increases in accordance with Section 7.C below.

C. Increases in Rent. Rent shall be adjusted every five (5) years during the Term of this Lease Agreement, beginning on August 1, 2021. At each time of adjustment the Rent shall be increased by an amount calculated by multiplying the previous year's Rent by twelve and one-half percent (12.5%).

D. Provision of Services to Offset Monetary Rent. During the Term of and in consideration of this Lease Agreement, Lessee may offset the monetary Rent due by providing to the residents of the City and County of Santa Fe the Services described in Section 5 of this Lease Agreement. In addition, Lessee shall permit its Sublessee(s) to provide such Services in lieu of or in addition to monetary Rent and to the extent that it does so, Lessee may apply the value of such Services to the Rent due by Lessee hereunder. The monetary value of the Services provided by Lessee during any lease year shall meet or exceed the Rent due for that lease year.

E. Annual Service Value Statement. Beginning on September 1, 2017 and on September 1 of each subsequent lease year during the Term of this Lease Agreement, Lessee shall submit to Lessor a statement (the Annual Service Value Statement) itemizing each type and corresponding monetary value of Services delivered during the prior lease year and the amount of Services that it proposes to credit toward Rent due, and containing a statement from an independent third-party auditor that the provision of Services for the prior lease year has met the requirements of this Section 7. Lessor may adopt a required form for the Annual Service Value Statement and such adopted form may be modified from time to time by Lessor.

F. Exclusions. Lessee shall exclude from the value of any Services that it proposes to credit toward Rent the amount of any governmental subsidy and other payment for Services received by Lessee for providing such Services and the amount paid by Service recipients to receive the Services.

G. Review by Lessor. Lessor shall evaluate Lessee's Annual Service Value Statement and provide a written acceptance or rejection of the Annual Service Value Statement to Lessee. Lessee may request that Lessor review the methodology that Lessee intends to use to prepare the Annual Service Value Statement prior to its submission to Lessor. Lessor may, in its sole discretion, request any such additional information and documentation as it deems necessary to evaluate any Annual Service Value Statement. Lessee's failure to provide such requested information within forty-five (45) days of Lessor's request is cause for Lessor's termination of this Lease Agreement. Lessor's determination regarding the monetary value of Services shall be final and binding and not subject to challenge by Lessee in any forum.

Notwithstanding anything in this Section 7 to the contrary, Lessor's failure provide written acceptance or rejection of the Annual Service Value Statement or to request additional information and documentation from the Lessee within forty-five (45) days of Lessor's receipt of any Annual Service Value Statement shall be deemed to be acceptance of such Annual Service Value Statement by Lessor.

H. Rent Shortfalls. Should the monetary value of the Services in any year not equal or exceed the Rent due in that year (a Rent Shortfall), then Lessee shall pay to Lessor the amount of the Rent Shortfall in monetary Rent. Notwithstanding anything to the contrary in the foregoing sentence, Lessor may agree to allow Lessee to provide within a reasonable amount of time additional Services to offset any Rent Shortfall, and in such event the Parties agree to negotiate in good faith to determine the nature, extent, and schedule for provision of such additional Services.

I. No Compensation by Lessor. In no event shall Lessor be required at any time, including at the end of the Lease Term, to compensate Lessee in any way for any excess Services. In the event of the termination of this Lease Agreement prior to the end of the Term, for any cause, Lessee shall forfeit any excess Services not applied to Rent.

8. UTILITIES

Beginning on the Effective Date and until the termination of this Lease Agreement, the costs of any and all natural gas, electricity, telephone, cable or satellite television, internet or wireless, or security alarm services and any and all domestic or irrigation water, sanitary sewer, and solid waste collection fees shall be paid by Lessee. Lessee may assess and collect from its Sublessees portions of the above costs on a pro rata basis as Lessee deems necessary.

9. TAXES

Lessee shall pay all taxes levied and assessed, if any, upon any personal property, buildings, fixtures and improvements belonging to Lessee and located upon the demised premises, and all leasehold and possessory interest taxes levied or assessed by any proper taxing authority.

10. ASSIGNMENT OR TRANSFER

Lessee shall not assign or otherwise transfer this Lease Agreement, without the prior written consent of the Lessor. Any such actions taken by Lessee shall result in the immediate termination of this Lease Agreement.

11. INSURANCE

Lessee shall at all times maintain and provide adequate insurance coverage which includes, without limitation, each of the following:

A. Casualty Insurance. Lessee shall carry and maintain in full force and effect during the term of this Lease Agreement casualty insurance ("extended coverage" and "additional extended coverage") as may be available for all improvements to the Premises in an amount sufficient to restore and replace existing structures and improvements if lost or damaged by any form of casualty. Lessee shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance.

B. Liability Insurance. Lessee shall carry and maintain in full force and effect during the term of this Lease Agreement, public liability insurance covering bodily injury and property damage, in a form and with an insurance company acceptable to Lessor, with limits of coverage not less than as stated in the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property, against all claims and lawsuits arising from Lessee's use of the Premises. Lessee shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance.

C. Certificates of Insurance. Within ten (10) days of the Effective Date of this Lease Agreement, and thereafter at any time during the Term of this Lease Agreement that Lessor requests, Lessee shall provide Lessor with certificates of insurance for each policy evidencing that the coverage required hereunder is current. Such policy shall provide that the coverage evidenced thereby shall not be terminated or modified for any reason without thirty (30) days prior written notice to the Lessor. A certificate or policy which states that failure to give such notice imposes no obligation on the part of the insurer shall be unacceptable to Lessor, and Lessee shall be responsible for removing such language from such certificate or policy.

D. Sublease Agreements. Lessee shall cause any and all Sublease agreements, or other agreements related to use, occupation, or development of the Premises, that Lessee enters into to contain language that requires the City of Santa Fe to be named as an additional insured on such

policies of insurance as provided in this Section 11.

12. INDEMNIFICATION

Lessee shall indemnify, hold harmless and defend Lessor, its agents, officers, and employees against all losses, damages, claims or judgments, including payment of all attorney's fees and costs, on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Lessee's use of the Premises hereunder, including use of the Premises by Lessee's employees, agents, representatives, Sublessees, tenants, contractors, agents, guests, invitees or permitted assigns. Lessee shall cause any and all agreements that Lessee enters into with any of the above parties to contain language indemnifying the Lessor as provided in this Section.

13. EASEMENTS

A. Lessor's Right to Grant Easements. Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises. Lessor shall notify Lessee in writing prior to Lessor's grant of any easement through the Premises.

B. Reciprocal Easements - Lessor's Adjacent Lease Parcel. Notwithstanding Section 13.A above, Lessor hereby acknowledges and consents to the "RECIPROCAL GRANT OF EASEMENTS" between Lessee and the lessee of Lessor's adjacent "Lease Parcel A" effective June 20, 2016 (the Reciprocal Easements Agreement) attached hereto as Exhibit B. The Parties agree that the Reciprocal Easements Agreement shall not be terminated or amended during the Term of this Lease Agreement without the prior written consent of Lessor.

14. TERMINATION BY LESSOR

Lessor may terminate this Lease Agreement upon Lessee's failure to comply with any provisions contained herein. Prior to termination, Lessor shall hand deliver or mail notice to Lessee via certified or registered mail specifying:

- A. the breach;
- B. the action required to cure the breach;
- C. a date, not less than fifteen (15) days from the date the notice is hand delivered or mailed to Lessee, by which such breach must be cured; and
- D. that failure to cure such breach on or before the date specified in the notice will result in termination of the Lease Agreement.

15. NOTICE

Any required notice will be deemed delivered, given and received (i) when personally hand delivered, or (ii) five days after the same are deposited in the United States mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

To Lessor:
City Manager
City of Santa Fe
P. O. Box 909
Santa Fe, NM 87504-0909

To Lessee:
Executive Director
The Food Depot, Inc.
1222-A Siler Road
Santa Fe, NM 87507

SFC CLERK RECUMED 06/12/2019

16. NO WAIVER

No waiver of a breach of any of the provisions contained in this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other provisions.

17. SEVERABILITY

In the event that one or more of the provisions contained in this Lease Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

18. ENTIRE AGREEMENT

The foregoing constitutes the entire Lease Agreement between the Parties, represents their entire understanding, and defines all of their respective rights, title and interests as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the Parties related to the Premises, if any, are merged herein. This Lease Agreement shall not be modified or amended except by a written document signed by the Parties hereto.

19. BINDING EFFECT

This Lease Agreement shall be binding upon and insure to the benefit of the Parties hereto and their respective successors and permitted assigns.

20. LITIGATION EXPENSE

In the event of litigation between the Parties or litigation between Lessee and its Sublessees in which Lessor is named, Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which Lessor shall incur in enforcing this Lease Agreement or in recovering any and all damages caused to the Premises by Lessee, or Lessee's Sublessees, contractors, agents, employees or permitted assigns.

21. RECORDING

This Lease Agreement shall be recorded in its entirety. Lessee shall bear all costs for recording of the Lease Agreement and any other associated costs.

22. HEADINGS

The section headings contained in this Lease Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Lease Agreement.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of this
29th day of JULY, 2016.

CITY OF SANTA FE

Javier M. Gonzales
JAVIER M. GONZALES, MAYOR

ATTEST:

Yolanda Y. Vigil
YOLANDA Y. VIGIL, CITY CLERK *ccnty* 7/27/16

APPROVED AS TO FORM:

Kelley A. Brennan
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

Oscar S. Rodriguez
OSCAR S. RODRIGUEZ, FINANCE DIRECTOR

BUSINESS UNIT/LINE ITEM: 21117.460150

THE FOOD DEPOT, INC.

Jill Rhymes
JILL RHYMES, M.D., PRESIDENT

ACKNOWLEDGEMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 29th day of July
2016, by Jill Rhymes, M.D., President of the Board of Directors of The Food Depot, Inc., a New
Mexico non-profit corporation.

My Commission Expires: 8-11-2019

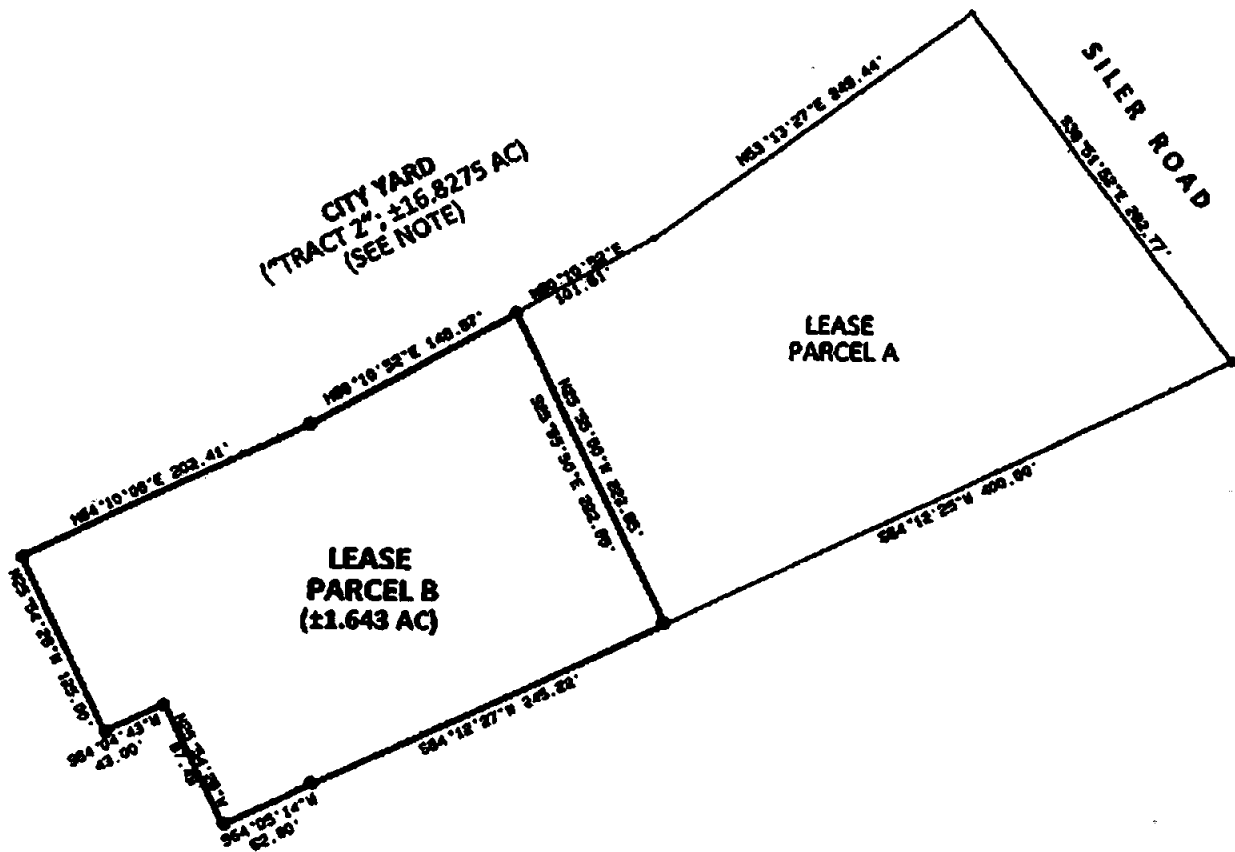
(Seal)

Anne G. Padilla
NOTARY PUBLIC



OFFICIAL SEAL
ANNE G. PADILLA
NOTARY PUBLIC-State of New Mexico
My Commission Expires 8-11-2019

EXHIBIT A



SFC CLERK RECORDED 08/12/2010



***NOTE:** "TRACT 2" AS SHOWN ON A "PLAT OF SURVEY" FOR THE CITY OF SANTA FE "CITY YARDS", PREPARED BY RICHARD E. SMITH, PS NO. 5837 IN FEBRUARY 1984 AND HAVING HIS PROJECT NO. 2411, RECORDED IN THE RECORDS OF SANTA FE COUNTY, NEW MEXICO AS DOCUMENT NO. 553116 ON OCTOBER 16, 1984 IN PLAT BOOK 146, PAGE 007.

EXHIBIT B

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

LEASE AGREEMENT
PAGES: 12

I Hereby Certify That This Instrument Was Filed for
Record On The 12TH Day Of August, 2016 at 01:09:23 PM
And Was Duly Recorded as Instrument # 1801338
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy Yolanda Duran County Clerk, Santa Fe, NM



SFC CLERK RECORDED 08/12/2016

RECIPROCAL EASEMENTS AGREEMENT

RECIPROCAL GRANT OF EASEMENTS

THIS AGREEMENT is made effective as of June 20, 2016, between The Food Depot ("Depot") and Kitchen Angels ("Angels"), each a New Mexico nonprofit corporation. In consideration of the mutual promises set out below, Seller and Purchaser agree as follows:

1. Relations between the Parties. Depot and Angels were co-tenants of Parcel A, located at 1222 Siler Road, Santa Fe, New Mexico and shown on Exhibit A, under a Lease Agreement from the City of Santa Fe, New Mexico, Lease Agreement dated February 9, 2000, as amended. There is a building on Parcel A which is known as the Coll-Green Angel Depot. Depot has sold its interest in that building to Angels. Depot is the tenant of Parcel B as shown on Exhibit D under a Lease Agreement from the City of Santa Fe dated 1 August 2016. Parcel B is located west of Parcel A and does not have direct access to Siler Road or other public street. The parties each make use of the paved area between their buildings, as shown on Exhibit E and wish to confirm their understandings and agreements with respect to access, parking and other matters, as set out in this Agreement.

2. Angels grants to Depot an easement for ingress to and egress from Parcel B over the area on either side (north and south) of the Coll-Green Angel Depot building. Depot shall use this easement only for ingress and egress by its employees and invitees and shall not obstruct the easement area by parking or otherwise. Depot shall not use the area in front of the Coll-Green Angel Depot building, fronting on Siler Road, for parking or other purposes without the express prior consent of Angels.

3. Each party grants to the other party an easement over the vacant space between the building on Parcel A and the building on Parcel B for access to its own loading dock.

4. Neither party shall obstruct the other party's access to its own building or the parking spaces for that building.

5. The parties will share equally in the cost of snow removal from and maintenance of the areas on either side of the Coll-Green Angel Depot building and the vacant area between the buildings, based on the square footage of those areas. Maintenance includes but is not limited to resealing, painting and striping, and repaving, as and when mutually agreed, and any other improvements, such as gates and lighting, as may be mutually agreed.

SFC CLERK RECORDED 88/81/2515

SFC CLERK RECORDED 08/12/2016

6. Each party will add the areas it is permitted to use under this Agreement to the insured premises under its commercial liability insurance policy and shall cause its insurer to name the other party as an additional insured under its policy with respect to the areas it is permitted to use under this Agreement.

7. The terms of this Agreement shall not be affected by the removal of Depot as a co-tenant of Parcel A.

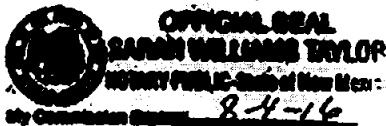
IN WITNESS WHEREOF, the parties have executed this Agreement.

James Brack
Kitchen Angels
Sherry F. Hooper
The Food Depot

6-20-16
Date
6-20-16
Date

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) ss:

The foregoing instrument was acknowledged before me on June 20, 2016, by James Brack, the Vice President of Kitchen Angels, a New Mexico nonprofit corporation, on its behalf.



Sarah Williams Taylor
Notary Public

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) ss:

The foregoing instrument was acknowledged before me on June 20, 2016, by Sherry F. Hooper, the Exec. Director of The Food Depot, a New Mexico nonprofit corporation, on its behalf.



Sarah Williams Taylor
Notary Public

SFC CLERK RECORDED 88/81/2915

SFC CLERK RECORDED 08/12/2016

Signature:

Email: gfcardenas@santafenm.gov

Signature: Geralyn Cardenas
Geralyn Cardenas (Sep 9, 2020 08:34 EDT)

Email: gfcardenas@santafenm.gov