

**PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT**

**THIS PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT** (the “Agreement”), is dated as of March 20, 2021, between **PERFORMANCE SERVICES, INC.**, a corporation organized and existing under the laws of the State of Indiana, as Lessor (“Lessor”), and the **CITY OF MISSION, TEXAS**, a political subdivision existing under the laws of the State of Texas, as Lessee (“Lessee”), wherein the parties hereby agree as follows:

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

“**Act**” means Section 271.005 of the Local Government Code, as amended.

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

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

“**Commencement Date**” is the date when the term of this Agreement and Lessee’s obligation to pay rent commences, which date will be the earlier of (i) the date on which the Personal Property is accepted by Lessee in the manner described in **Section 13**, or (ii) the date on which sufficient moneys to purchase the Personal Property are deposited for that purpose with an escrow agent.

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

“**Insurance Policy**” means the insurance policy issued by the Insurer guaranteeing the scheduled payment of the principal component and interest component of the Rental Payments (but excluding all other amounts payable under this Agreement, including, without limitation, any Default Rate Amounts, Event of Taxability Amounts and Purchase Price) when due.

“**Insurer**” or “**BAM**” means Build America Mutual Assurance Company or any successor thereto.

“**Issuance Year**” is the calendar year in which the Commencement Date occurs.

“**Lease Term**” means the period from the Commencement Date until the last Rental Payment Date.

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

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

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

“**Payment Schedule**” means the schedule of Rental Payments and Purchase Price set forth on **Exhibit B**.

“**Personal Property**” means the property described on the Personal Property Schedule attached hereto as **Exhibit A**, and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.

“**Purchase Price**” means the amount set forth on the Payment Schedule that Lessee may, at its option, pay to Lessor to purchase the Personal Property.

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

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

**“State”** means the State of Texas.

**“Vendor”** means the manufacturer of the Personal Property as well as the agents or dealers of the manufacturer from whom the Personal Property is or has been purchased, as listed on **Exhibit A**.

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

(a) Lessee is a political subdivision duly organized and existing under the constitution and laws of the State and constitutes a “governmental agency” under the Act. Lessee will do or cause to be done all things to preserve and keep in full force and effect its existence as a political subdivision. Lessee has a substantial amount of one or more of the following sovereign powers: (i) the power to tax, (ii) the power of eminent domain, and (iii) police power.

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

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

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

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

(f) Lessee has complied with such public bidding requirements and laws and regulations, including the Act, as may be applicable to this Agreement and the acquisition by Lessee of the Personal Property hereunder.

(g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition, operations or properties of Lessee.

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

(i) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Personal Property pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(j) The Personal Property described in this Agreement is essential to the function of Lessee or to the service Lessee provides to its citizens. Lessee has an immediate need for, and expects to make immediate use of, substantially all the Personal Property, which need is not temporary or expected to diminish in the foreseeable future. The Personal

Property will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority.

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

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

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

(n) Lessee has never failed to pay payments coming due under any bond issue, contract, lease purchase agreement or other indebtedness obligation of Lessee, whether secured by the City's ad valorem taxes or otherwise.

(o) The useful life of the Personal Property will not be less than the Lease Term.

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

(q) Lessee has provided Lessor with audited financial statements through September 30, 2019. Lessee has experienced no material change in its financial condition or in the revenues expected to be utilized to meet Rental Payments due under this Agreement since September 30, 2019.

(r) Lessee shall pay the excess (if any) of the actual costs of acquiring the Personal Property under this Agreement over the amount deposited by Lessor in the acquisition fund, if any, established under any related escrow agreement and interest earnings thereon.

(s) Lessee is the fee owner of the real estate where the Equipment is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate. The Equipment is not a replacement, repair, substitution or proceeds of any equipment or personal property subject to a prior lien or security interest of a third party.

(t) Lessee hereby confirms that this Agreement is a written contract stating the essential terms of an agreement for providing goods or services to Lessee under Section 271.151(2) of the Texas Local Government Code, and this Agreement is a waiver of Lessee's governmental immunity from suit under this Agreement, but only to the extent permitted under Section 271.153, Texas Government Code.

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

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

(b) The Personal Property has been ordered or is expected to be ordered within six months of the Commencement Date, and the Personal Property is expected to be delivered and installed, and the Vendor fully paid, within twenty-four months of the Commencement Date.

(c) Other than the Payment Fund (defined herein), Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments.

(d) The Personal Property has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments.

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

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

**Section 5. Tax Levy.** During each year of the Contract Term, the City shall compute and ascertain, as a part of the City's maintenance tax, a rate and amount of ad valorem tax which will be sufficient to raise and produce the money required (i) to pay the interest component of each Payment as such interest comes due and (ii) to pay the principal component of each Payment as such principal becomes due. Such tax shall be based on the latest approved tax rolls of the City, with full allowance being made for tax delinquencies and the cost of tax collection. Such rate and amount of ad valorem tax is hereby levied out of the maintenance tax of the City and ordered to be levied against all taxable property within the boundaries of the City for each year of the Contract Term; and such tax shall be assessed and collected during each such year. Such ad valorem taxes sufficient to provide for the payment of the Payments, as they become due, are hereby pledged irrevocably from the maintenance tax of the City for such payment, within the limits prescribed by law.

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

(a) the exercise by Lessee of the option to purchase the Personal Property under the provisions of **Section 31** and payment of the Purchase Price, all amounts due and payable to the Insurer and all amounts payable in connection therewith;

(b) a default and Lessor's election to terminate, with the prior written consent of the Insurer, this Agreement under **Section 36**; or

(c) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Lease Term and the payment of all other amounts required to be paid hereunder, including all amounts due to the Insurer.

**Section 7. Levy of Taxes; Budgeting.** During the Lease Term, Lessee covenants that prior to adopting a budget for any ensuing fiscal year Lessee shall place in its proposed budget for such ensuing fiscal year an amount necessary to pay the Rental Payments and all other amounts payable hereunder for such ensuing fiscal year and that the final budget for each fiscal year shall set aside and appropriate out of revenues generated from Lessee's Article IX, Section 5, Texas Constitution (the "Limited Tax") revenues and other revenues and funds lawfully available therefor an amount sufficient to pay the Rental Payments and all other amounts payable hereunder and shall deposit all such funds in accordance with **Section 8**. Lessee hereby levies and agrees to assess and collect, a continuing direct annual Limited Tax on all taxable property within the boundaries of Lessee, within the limitations prescribed by law, at a rate from year to year sufficient, together with such other revenues and funds lawfully available to Lessee for the payment of Rental Payments and all other amounts payable hereunder, to provide funds each year to pay the Rental Payments and all other amounts payable hereunder, full allowance being made for delinquencies and costs of collection. The Limited Tax and such revenues and funds in an amount sufficient to pay Rental Payments and all other amounts

payable hereunder are pledged to Lessor and the Insurer for such purpose as the same shall become due and payable under this Agreement.

**Section 8. Deposit into the Payment Fund.**

(a) On or before the Commencement Date, Lessee shall establish a payment fund (the "Payment Fund"), which shall be maintained by Lessee as long as any Rental Payments are unpaid. Lessee hereby pledges the Payment Fund for the exclusive purpose of securing the Rental Payments and shall apply the funds therein to the payment of Rental Payments as such payments come due.

(b) Each year in which Rental Payments come due, Lessee shall, not later than the day preceding any such due date, deposit into the Payment Fund, from Lessee's Limited Tax or other lawfully available funds (within the limits prescribed by law) an amount sufficient to make such payment. Lessee hereby pledges its Limited Tax as security for this obligation.

(c) The Payment Fund shall be depleted at least once a year except for a carryover amount not to exceed one twelfth (1/12) of the amount of the Rental Payments expected to come due in the following year.

**Section 9. Rental Payments.** Lessee will pay Rental Payments, exclusively from the Limited Tax and legally available funds, in lawful money of the United States of America to Lessor in the amounts and on the dates set forth on the Payment Schedule. Rental Payments will be in consideration for Lessee's use of the Personal Property during the fiscal year in which such payments are due. Any Rental Payment not received on or before its due date will bear interest at the rate of 10% per annum or the maximum amount permitted by law, including Section 1204.006 of the Texas Government Code, as amended, whichever is less, from its due date (the "Default Rate Amount").

In the event that it is determined that any of the interest components of Rental Payments may not be excluded from gross income for purposes of federal income taxation, Lessee agrees to pay to Lessor promptly after any such determination and on each Rental Payment Date thereafter an additional amount determined by Lessor to compensate Lessor for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive absent manifest error (the "Event of Taxability Amounts").

**Section 10. Interest Component.** As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest.

**Section 11. Rental Payments To Be Unconditional.** The obligations of Lessee to pledge, levy and collect the Limited Tax, to make Rental Payments and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Personal Property to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the equipment or any accident, condemnation or unforeseen circumstances or the failure of Lessor or any other person or entity to perform its obligations under this Agreement or any other agreement, including the performance guaranty.

**Section 12. [Reserved].**

**Section 13. Delivery, Installation and Acceptance of the Personal Property.** Lessee will order the Personal Property, cause the Personal Property to be delivered and installed at the location specified on **Exhibit A** and pay any and all delivery and installation costs in connection therewith. When the Personal Property has been delivered and installed, Lessee will immediately accept the Personal Property and evidence said acceptance by executing and delivering to Lessor an acceptance certificate in form and substance acceptable to Lessor. After it has been delivered and installed, the Personal Property will not be moved from the location specified on **Exhibit A** without Lessor's consent, which consent will not be unreasonably withheld.

**Section 14. Enjoyment of Personal Property.** Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Personal Property during the Lease Term, and Lessee will peaceably and quietly have and hold and

enjoy the Personal Property during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.

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

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

**Section 17. Maintenance of Personal Property.** Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Personal Property in good repair, working order and condition. Lessor will have no responsibility to maintain, or repair or to make improvements or additions to the Personal Property. If requested to do so by Lessor, Lessee will enter into a maintenance contract for the Personal Property with Vendor.

**Section 18. Title to the Personal Property.** During the Lease Term, title to the Personal Property and any and all additions, repairs, replacements or modifications will vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title will thereafter immediately and without any action by Lessee vest in Lessor, and Lessee will immediately surrender possession of the Personal Property to Lessor upon (a) any termination of this Agreement other than termination pursuant to **Section 31** or **Section 6(c)** or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section will occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee will, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee's true and lawful attorney (and agent in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's or such assignee's name, to endorse the name of Lessee upon any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Personal Property in order to vest title in Lessor and transfer possession to Lessor.

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

As further security therefor, Lessee grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time comprising the acquisition fund, if any, established under any related escrow agreement and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party.

**Section 20. Personal Property; No Encumbrances.** Lessor and Lessee agree that the Personal Property is and will remain personal property. The Personal Property will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Personal Property or any part thereof may be or hereafter become in any manner physically affixed or attached to such real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Personal Property from any party having an interest in any such real estate or building. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback

arrangement of such real estate without the prior written consent of Lessor; provided, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not unreasonably withheld.

**Section 21. Liens, Taxes, Other Governmental Charges and Utility Charges.** Lessee will keep the Personal Property free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Personal Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Personal Property will be exempt from all property taxes and other similar charges. If the use, possession or acquisition of the Personal Property is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Personal Property. Lessee will pay all utility and other charges incurred in the use and maintenance of the Personal Property. Lessee will pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee will be obligated to pay only such installments that accrue during the Lease Term. This Agreement is intended to be a “net-net-net contract” and Lessee hereby agrees that the Rental Payments are an absolute net return to Lessor, free and clear of any expenses, charges or set-offs whatsoever.

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

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

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

**Section 24. Financial Information.** Upon request, Lessee shall furnish or cause to be furnished to Lessor, at Lessee’s expense, as soon as available after the close of each fiscal year, the audited financial statement of Lessee at the close of and for such fiscal year, all in reasonable detail, with supporting schedules, audited by and with the report of Lessee’s auditor (the “Audit”), which may be in electronic .pdf format. In the event the Audit is filed on the MSRB’s “EMMA” website, to satisfy this requirement Lessee may email a link to the posted Audit to Lessor. In the event that the Audit is not available, Lessee will furnish unaudited financial statements to Lessor in the manner described in this Section, and will then supply the Audit immediately upon the availability thereof.

**Section 25. Release and Indemnification.** To the extent permitted by law, Lessee will indemnify, protect and hold harmless Lessor and the Insurer from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel

fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement by Lessee, (b) the ownership of any item of the Personal Property, (c) the manufacturing, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Personal Property, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Personal Property resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein, unless said breach of covenant or misrepresentation is made by Lessor. The indemnification arising under this paragraph will continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

**Section 26. Risk of Loss.** Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Personal Property from any cause whatsoever. No such loss of or damage to the Personal Property nor defect therein nor unfitness or obsolescence thereof will relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

**Section 27. Damage, Destruction, Condemnation; Use of Proceeds.** If (a) the Personal Property or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Personal Property or any part thereof or the interest of Lessee or Lessor in the Personal Property or any part thereof will be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Personal Property, unless Lessee has exercised its option to purchase the Personal Property pursuant to **Section 31**. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Lessee.

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

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

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



**Section 31. Purchase Option; Prepayment.**

(a) Lessee will have the option to purchase the Personal Property, upon giving written notice to Lessor at least 30 days before the date of purchase, at the following times and upon the following terms:

(i) On April 1, 2028, and any Rental Payment Date thereafter, upon payment in full of the Rental Payment then due hereunder plus all other amounts due hereunder plus the then-applicable Purchase Price to Lessor; or

(ii) In the event of substantial damage to or destruction or condemnation (other than by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Personal Property, on the day Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payment and all other amounts then due hereunder plus (i) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (ii) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360-day year of twelve 30-day months. In the event there is no applicable Purchase Price set forth in the Payment Schedule, the Purchase Price for any such prepayment set forth in (A) or (B) above shall include an amount equal to 102% of the outstanding principal balance.

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

(b) In the event monies remain in any acquisition fund established under an escrow agreement, upon receipt by the escrow agent under such escrow agreement of a duly executed disbursement request identified as the final such request, the remaining monies in such acquisition fund shall, first be applied to all reasonable fees and expenses incurred by such escrow agent, if applicable, in connection with such acquisition fund as evidenced by its statement forwarded to Lessor and Lessee; and, second be paid to Lessor, for application against any Rental Payments then due or coming due in the succeeding twelve (12) months, and any remaining amounts shall be applied by Lessor against the outstanding principal components of Rental Payments, including prepayment of Rental Payments hereunder, in inverse order of Rental Payments due, unless Lessor, with the prior written consent of the Insurer, directs that payment of such amount be made in such other manner that, in the opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is applied against the outstanding principal components of Rental Payments, the Payment Schedule attached hereto will be revised accordingly.

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

**Section 33. Assignment by Lessor.**

(a) Subject to the provisions set forth in **Section 43**, Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the related escrow agreement, its security

interest in the Personal Property and any acquisition fund, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law, including but not limited to Texas Local Government Code Ann. §334.043. Nothing in this Section 33 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust. Notwithstanding the foregoing, any certificates of participation may be sold only on a private placement basis (and not pursuant to any “public offering”) to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 33 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor but shall have the right to bring such claim against the Vendor notwithstanding assignment of Lessor’s interest as authorized in this Section. Assignments in part may include without limitation assignment of all of Lessor’s security interest in and to the Personal Property and all rights in, to and under this Agreement related to such Personal Property, and all of Lessor’s security interest in and to any acquisition fund, or all rights in, to and under the related escrow agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a notice and acknowledgement of assignment in substantially the form provided by Lessor, within five (5) business days after its receipt of such request.

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

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

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

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

unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

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

(d) Any provision of this Agreement will at any time for any reason cease to be valid and binding on Lessee, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee will deny that it has any further liability or obligation under this Agreement;

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

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

**Section 36. Remedies on Default.** Whenever any Event of Default exists, subject to the provisions set forth in **Section 43**, Lessor will have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

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

(b) With or without terminating this Agreement, Lessor may enter the premises where the Personal Property is located and retake possession of the Personal Property or require Lessee at Lessee's expense to promptly return any or all of the Personal Property to the possession of Lessor at a place specified by Lessor, and sell or lease the Personal Property or, for the account of Lessee, sublease the Personal Property, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder to the end of the Lease Term, plus the applicable Purchase Price, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Personal Property and all brokerage, auctioneers' and attorneys' fees); and

(c) Lessor may provide written notice of the occurrence of an Event of Default to the escrow agent under any related escrow agreement, and the escrow agent shall thereupon promptly remit to Lessor the entire balance of the acquisition fund established thereunder; and

(d) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Personal Property.

In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

**Section 37. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor or the Insurer is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any

right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor or the Insurer to exercise any remedy reserved to it in this Agreement it will not be necessary to give any notice, other than such notice as may be required in this Agreement.

**Section 38. Notices.** All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto will designate in writing to the other for notices to such party), to any assignee at its address as it appears on the register maintained by Lessee.

**Section 39. Binding Effect.** This Agreement will inure to the benefit of and will be binding upon Lessor and Lessee and their respective successors and assigns.

**Section 40. Severability.** In the event any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

**Section 41. Entire Agreement.** This Agreement constitutes the entire agreement between Lessor and Lessee.

**Section 42. Amendments.** Subject to **Section 43**, this Agreement may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Agreement or any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

**Section 43. Insurer Provisions.** Notwithstanding anything to the contrary, the following terms and provisions shall control.

(a) Any amendment, supplement, modification to, or waiver of, this Agreement, the escrow agreement or any other transaction document, including any underlying security agreement (each a "Related Document"), shall be subject to the prior written consent of the Insurer. In addition, wherever any Related Document requires the consent or approval of Lessor, the Insurer's consent shall also be required.

(b) This Agreement shall remain in full force and effect and shall not terminate until all Rental Payments hereunder have been made in full and all amounts due and payable, or that may become due and payable to the Insurer, have been paid in full.

(c) Neither Lessee nor Lessor shall terminate, assign, transfer, sublease or encumber this Agreement, the Personal Property or the Rental Payments or any portion of this Agreement, the Personal Property or the Rental Payments without the prior written consent of the Insurer.

(d) No release, sale, disposition or substitution of the Personal Property or any portion of the Personal Property by Lessee or Lessor shall occur without the prior written consent of the Insurer.

(e) So long as the Policy is in effect and BAM is not in default in respect of its payment obligations thereunder, upon the occurrence of a default or Event of Default, BAM shall be entitled to direct and control the enforcement of all rights and remedies granted hereunder. No default or Event of Default may be waived without BAM's prior written consent.

(f) The Insurer shall be deemed to be Lessor for the purpose of exercising any right or privilege or giving any consent or direction or taking any other action that Lessor is entitled to take pursuant to this Agreement or any other Related Document pertaining to defaults and remedies. In addition, Lessor appoints the Insurer as its agent and attorney-in-fact and agrees that the Insurer may at any time during the continuation of any proceeding by or against Lessee under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") direct all matters relating to such Insolvency Proceeding, including without

limitation, (A) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a "Claim"), (B) the direction of any appeal of any order relating to any Claim, (C) the posting of any surety, supersedeas or performance bond pending any such appeal, and (D) the right to vote to accept or reject any plan of adjustment. In addition, Lessor delegates and assigns to the Insurer, to the fullest extent permitted by law, its rights in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.

(g) The Insurer shall have the right to direct the appointment of a collateral agent to hold any of the Personal Property following an Event of Default.

(h) The scheduled Rental Payments shall not be accelerated without the prior written consent of the Insurer and in the event the scheduled Rental Payments are accelerated, the Insurer may elect, in its sole discretion, to pay the accelerated principal portion of the unpaid Rental Payments, plus interest accrued thereon to the date of payment (to the extent unpaid by Lessee), and Lessor shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Insurer's obligations under the Insurance Policy with respect to such Rental Payments shall be fully discharged.

(i) No grace period for a covenant default shall exceed 30 days or be extended for more than 60 days, without the prior written consent of the Insurer.

(j) The rights granted to the Insurer under this Agreement or any other Related Document to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of Lessor and such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of Lessor or any other person is required in addition to the consent of the Insurer.

(k) In connection with a prepayment of the Rental Payments, Lessor or Lessee shall cause to be delivered to the Insurer a certificate of payment and satisfaction executed by an authorized officer of Lessor and addressed to the Insurer and Lessee.

(l) Amounts paid by the Insurer under the Insurance Policy shall not be deemed a payment for purposes of this Agreement and the Rental Payments relating to such payments shall remain outstanding and continue to be due and owing until paid by Lessee in accordance with this Agreement. This Agreement shall not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.

(m) If, on the day prior to any Rental Payment Date, Lessee has not deposited to the Payment Fund an amount sufficient to pay the Rental Payment due on such Rental Payment Date, Lessee and/or Lessor shall notify the Insurer of such deficiency, and Lessor shall follow the procedures for making a claim under and accordance with the terms of the Insurance Policy.

(n) In the event that any of the Rental Payments, or portion thereof, shall be paid by the Insurer pursuant to the Insurance Policy, the Rental Payments shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by Lessor, and all covenants, agreements, pledges and other obligations of Lessor to Lessee shall continue to exist and shall run to the benefit of the Insurer, and the Insurer shall be subrogated to the rights of Lessor. Each obligation of Lessor or Lessee to the Insurer under this Agreement and any other Related Document shall survive discharge or termination of such Related Documents.

(o) Lessor and Lessee shall designate all or any portion of any Rental Payment paid by the Insurer on its books as a reduction in the amount of such Rental Payment payable to Lessor, and shall register such Rental Payment in the name of the Insurer, in an amount equal to the amount so paid by the Insurer; provided that Lessor or Lessee's failure to so designate any Rental Payment shall have no effect on the amount of Rental Payments payable by Lessee or the subrogation rights of the Insurer.

(p) Lessor shall keep a complete and accurate record of all funds paid by the Insurer and the allocation of such funds to the payment of the interest component and the principal component of the Rental Payments. The Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to Lessor.

(q) To the extent permitted by law, Lessee agrees that it will pay or reimburse the Insurer on demand any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Insurer may pay or incur, including, but not limited to, fees and expenses of the Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Agreement or the other Related Documents ("Administrative Costs"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Insurer spent in connection with the actions described in the preceding sentence. Lessee agrees that failure to pay any Administrative Costs on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate (defined below), compounded semi-annually, from the date that payment is first due to the Insurer until the date the Insurer is paid in full.

(r) Notwithstanding anything in this Agreement to the contrary, Lessee agrees to pay to the Insurer (i) a sum equal to the total of all amounts paid by the Insurer under the Insurance Policy (the "Insurer Advances"); and (ii) interest on such Insurer Advances from the date paid by the Insurer until payment thereof in full, payable to the Insurer at the Late Payment Rate per annum (collectively, "Insurer Reimbursement Amounts") compounded semi-annually. Notwithstanding anything to the contrary, Insurer Reimbursement Amounts shall be, and Lessee hereby covenants and agrees that the Insurer Reimbursement Amounts are, payable from and secured by a lien on and pledge of the same revenues and other collateral pledged to the Rental Payments on a parity with the Rental Payments. "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, N.A., at its principal office in the City of New York, New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank, N.A.) plus 3%, and (ii) the then applicable highest rate of interest set forth in **Exhibit B** hereto and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. In the event JPMorgan Chase Bank, N.A., ceases to announce its Prime Rate, the Prime Rate shall be the prime or base lending rate of such other bank, banking association or trust company as the Insurer, in its sole and absolute discretion, shall designate. Interest at the Late Payment Rate on any amount owing to the Insurer shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(s) Lessee will provide the Insurer with all notices and other information it is obligated to provide (i) under its continuing disclosure agreement relating to Lessee's outstanding obligations, even if such obligations are no longer outstanding and (ii) to Lessor under this Agreement or any of the other Related Documents. The Insurer shall have the right to receive such additional information as it may reasonably request.

(t) The notice address of the Insurer is: Build America Mutual Assurance Company, 200 Liberty Street, 27th Floor, New York, NY 10281, Attention: Surveillance, Re: Policy No. \_\_\_\_\_, Telephone: (212) 235-2500, Telecopier: (212) 235-1542, Email: notices@buildamerica.com. In each case in which a notice or other communication refers to an Event of Default or a claim on the Insurance Policy, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214 and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

(u) While the Insurance Policy is in effect, Lessor shall furnish to the Insurer:

- (i) Notice of any failure of Lessee to provide notices, certificates and other information under this Agreement;
- (ii) Prior notice of the prepayment of the Rental Payments, including the principal amount being prepaid;
- (iii) full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Related Documents; and
- (iv) All reports, notices and correspondence to be delivered to Lessor under the terms of the Related Documents.

(v) The Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce the provisions of this Agreement and the other Related Documents as if it were a party hereto and thereto.

(w) Any amounts remaining in the acquisition fund established under the related escrow agreement must be used to prepay the principal portion of the Rental Payments in the manner set forth in **Section 31(b)** herein. The escrow agent established under such escrow agreement may not be removed or replaced without the Insurer's prior written consent, and any successor or replacement escrow agent shall be subject to the Insurer's prior written consent. Unless the Insurer otherwise directs, upon the occurrence and continuance of an Event of Default or an event which with notice or lapse of time would constitute an Event of Default under this Agreement, amounts on deposit in such acquisition fund shall not be disbursed, but shall instead be applied to the payment of Rental Payments or to prepay the principal portion of the Rental Payments in the manner set forth in **Section 31(b)** herein.

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

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

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

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

**Section 48. Notice of Final Agreement.** THIS WRITTEN AGREEMENT AND ANY OTHER DOCUMENTS EXECUTED IN CONNECTION HERewith REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NOT UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

**Section 49. Role of Lessor.** Lessor is acting solely for its own loan account and not as a fiduciary for Lessee or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor or fiduciary. Lessor has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of Lessee (including to any financial advisor or any placement agent engaged by Lessee) with respect to the structuring, issuance, sale or delivery of this Agreement. Lessor has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to Lessee with respect to the transactions relating to the structuring, issuance, sale or delivery of this Agreement and the discussions, undertakings and procedures leading thereto. Each of Lessee and, if applicable, its financial advisor and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters and compliance with legal requirements applicable to such parties) with respect to this Agreement from its own financial, legal, tax and other advisors (and not from the undersigned or its affiliates) to the extent that Lessee and, if applicable, its financial advisor or its placement agent desires, should or needs to obtain such advice. The undersigned expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to Lessee's financial advisor or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to Lessee's financial advisor or placement agent, with respect to any such matters. The transactions between Lessee and Lessor are arm's length, commercial transactions in which Lessor is acting and has acted solely as a principal and for its own interest and Lessor has not made recommendations to Lessee with respect to the transactions relating to this Agreement.

**Section 50. Lessee's Notice Filings Related to this Agreement for SEC Rule 15c2-12.** In connection with Lessee's compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Agreement") entered into by Lessee on and after February 27, 2019, pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), Lessor acknowledges that Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its

successor (“EMMA”), notice that Lessee has incurred obligations under this Agreement and notice of certain subsequent events reflecting financial difficulties in connection with this Agreement. Lessee agrees that it shall not file or submit, or permit to be filed or submitted, with EMMA any documentation that includes the following unredacted sensitive or confidential information about Lessor or its affiliates: address and account information of Lessor or its affiliate, e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of Lessor or its affiliates, or any account information for any related escrow agreement, unless otherwise required for compliance with the Rule or otherwise required by law. Lessee acknowledges that Lessor is not responsible for Lessee’s compliance or noncompliance with the Rule or any Continuing Disclosure Agreement.

[Signature page follows.]



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

**PERFORMANCE SERVICES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Mailing Address: 4670 Haven Point Blvd., Suite 200  
Indianapolis, IN 46280

**CITY OF MISSION, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Mailing Address: 1201 E. 8th Street  
Mission, TX 78572

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**CERTIFICATION**

I, the undersigned, do hereby certify (i) that the officer of Lessee who executed the foregoing Agreement on behalf of Lessee and whose genuine signature appears thereon, is the duly qualified and acting officer of Lessee as stated beneath his or her signature and has been authorized to execute the foregoing Agreement on behalf of Lessee, and (ii) that the fiscal year of Lessee is from October 1 through September 30.

**DATED:** March 20, 2021.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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## EXHIBIT A TO PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT

### PERSONAL PROPERTY SCHEDULE

#### **Description of the Personal Property:**

The Personal Property consists of all personal property acquired and installed in connection with the water meter replacement energy savings improvements as set forth in the Installation Contract dated as of \_\_\_\_\_, 2021, between Lessee and Performance Services, Inc., in its capacity as vendor, as described therein and located throughout the City of Mission, Texas, together with any and all replacement parts, additions, repairs, modifications, attachments and accessories thereto, any and all substitutions, replacements or exchanges therefor, and any and all insurance and/or proceeds thereof. See also "Description of the Improvements" attached hereto. *[Description of Improvements from Installation Contract to be attached.]*

#### **Vendor:**

Performance Services, Inc., 4670 Haven Point Blvd., Suite 200, Indianapolis, IN 46280.

This description of the Personal Property shall be deemed to be supplemented and amended by the descriptions of the Personal Property included in the Payment Request and Acceptance Certificates submitted to Lessor for approval pursuant to the Escrow Agreement dated as of March 20, 2021, among Lessor, Lessee and Bank OZK, as escrow agent, which descriptions shall be deemed to be incorporated herein.

**EXHIBIT B TO PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT**

**PAYMENT SCHEDULE**

Principal Amount: \$17,253,982.44

Interest Rate: 2.799%

Rental Payments will be made in accordance with **Section 9** and this Payment Schedule.

| <u>Rental<br/>Payment Date</u> | <u>Total<br/>Rental Payment</u> | <u>Principal<br/>Portion</u> | <u>Interest<br/>Portion</u> | <u>Purchase<br/>Price *</u> |
|--------------------------------|---------------------------------|------------------------------|-----------------------------|-----------------------------|
| 04/01/2022**                   | \$ 497,695.44                   | \$ 0.00                      | \$497,695.44                | N/A                         |
| 04/01/2023                     | 1,424,376.13                    | 941,437.16                   | 482,938.97                  | N/A                         |
| 04/01/2024                     | 1,424,376.13                    | 967,787.99                   | 456,588.14                  | N/A                         |
| 04/01/2025                     | 1,424,376.13                    | 994,876.37                   | 429,499.76                  | N/A                         |
| 04/01/2026                     | 1,424,376.13                    | 1,022,722.96                 | 401,653.17                  | N/A                         |
| 04/01/2027                     | 1,424,376.13                    | 1,051,348.98                 | 373,027.15                  | N/A                         |
| 04/01/2028                     | 1,424,376.13                    | 1,080,776.24                 | 343,599.89                  | \$11,418,933.39             |
| 04/01/2029                     | 1,424,376.13                    | 1,111,027.16                 | 313,348.97                  | 10,285,685.69               |
| 04/01/2030                     | 1,424,376.13                    | 1,142,124.81                 | 282,251.32                  | 9,120,718.39                |
| 04/01/2031                     | 1,424,376.13                    | 1,174,092.89                 | 250,283.24                  | 7,923,143.64                |
| 04/01/2032                     | 1,424,376.13                    | 1,206,955.75                 | 217,420.38                  | 6,692,048.77                |
| 04/01/2033                     | 1,424,376.13                    | 1,240,738.44                 | 183,637.69                  | 5,373,294.63                |
| 04/01/2034                     | 1,424,376.13                    | 1,275,466.71                 | 148,909.42                  | 4,085,073.25                |
| 04/01/2035                     | 1,424,376.13                    | 1,311,167.02                 | 113,209.11                  | 2,760,794.56                |
| 04/01/2036                     | 1,424,376.13                    | 1,347,866.59                 | 76,509.54                   | 1,399,449.30                |
| 04/01/2037                     | <u>1,424,376.13</u>             | <u>1,385,593.37</u>          | <u>38,782.76</u>            | 0.00                        |
| Totals                         | <u>\$21,863,337.39</u>          | <u>\$17,253,982.44</u>       | <u>\$4,609,354.95</u>       |                             |

\* Lessee’s option to purchase is subject to the provisions of Section 31 of the Agreement.

\*\* The Total Rental Payment due on this Rental Payment Date will be paid as it becomes due by the Escrow Agent from moneys on deposit in the Acquisition Fund pursuant to the authorization set forth in the Escrow Agreement dated as of March 20, 2021, among Lessor, Lessee and Bank OZK, as escrow agent.

**CITY OF MISSION, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_