

## EQUIPMENT LOAN AGREEMENT

This Equipment Loan Agreement (the “*Agreement*”) dated as of June \_\_, 2025, and entered into by and between the Arkansas Energy Office, part of the Arkansas Department of Energy & Environment (together with its successors, assigns and transferees, and as more particularly defined herein, “*Lender*”), the City of Texarkana, Arkansas, a municipal corporation existing under the laws of the State of Arkansas (“*Borrower*”), and the Arkansas Development Finance Authority (“*Servicer*”).

### WITNESSETH:

WHEREAS, Borrower desires to acquire certain Equipment described in the Equipment Schedule attached hereto as Exhibit A, from proceeds of a loan from Lender, subject to the terms and conditions of and for the purposes set forth herein; and

WHEREAS, the Equipment is part of an Energy Efficiency Project as referenced in Arkansas Const. Amend. 89 §4(a) and Ark. Code Ann. §14-164-803(4); and

WHEREAS, by authority of Ark. Const. Amend. 89 §4 and Ark. Code Ann. §14-164-801 *et. seq.*, Borrower is authorized to enter into this Agreement for the purposes set forth herein.

NOW, THEREFORE, for good and valuable consideration, receipt, and sufficiency of which are hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

### ARTICLE I

*Section 1.01. Definitions.* The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“*Acquisition Amount*” means \$1,665,425. The Acquisition Amount is the amount represented by Borrower to be sufficient, together with other funds of Borrower (if any) that are legally available for the purpose of acquiring and installing the Equipment.

“*Acquisition Period*” means the period ending June 30, 2026.

“*Agreement*” means this Equipment Loan Agreement, including the exhibits hereto, together with any amendments and modifications to this Agreement pursuant to Section 13.04.

“*American Recovery and Reinvestment Act*,” or “*ARRA*” means the American Recovery and Reinvestment Act of 2009, Public Law 111-5, adopted by the 111<sup>th</sup> U.S. Congress, as amended.

“*Borrower*” means the entity referred to as Borrower in the first paragraph of this Agreement.

“*Commencement Date*” means the date on which sufficient moneys to purchase the Equipment listed in the Loan are advanced to Borrower.

“*Disbursement Request*” means the disbursement request to the Servicer in the form attached to this Agreement as *Exhibit D* and made a part thereof.

“*Energy Efficiency Project*” or “*EEP*” shall have the same meaning as Ark. Code Ann. § 14-164-803(4).

*“Equipment”* means the equipment, fixtures and other goods and property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications, and improvements thereof or thereto made pursuant to Article V or Section 8.01. Whenever reference is made in this Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications, and improvements of or to such Equipment.

*“Equipment Costs”* means the total cost of the Equipment, including related soft costs such as freight, installation, and taxes and other capitalizable costs, and other costs incurred in connection with the acquisition, installation, and/or financing of the Equipment.

*“Equipment Schedule”* means the Equipment Schedule attached hereto as *Exhibit A* and made a part hereof.

*“Escrow Account”* means the account established and held by the Servicer pursuant to this Agreement.

*“Event of Default”* means an Event of Default described in Section 12.01.

*“Guaranteed Energy Cost Savings Contract”* or *“GECSC”* shall mean a contract for the implementation of one (1) or more energy efficiency projects and services provided by a qualified provider in which the energy and cost savings achieved by the installed energy efficiency project cover all energy efficiency project costs, including financing, over a specified contract term.

*“Interest Rate”* means the rate identified as such in the Payment Schedule attached hereto as Exhibit B.

*“Lender”* means the entity referred to as Lender in the first paragraph of this Agreement.

*“Loan”* means the loan transaction pursuant to and evidenced by this Agreement, and all other documents and certificates executed and delivered by the Borrower in connection therewith. The Loan shall constitute a *“Bond,”* as described in Ark. Const. Amend. 89 §4 and Ark. Code Ann. §14-164-801 *et seq.*

*“Loan Payment Date”* means each date on which Borrower is required to make a Loan Payment under this Agreement as specified in the Payment Schedule.

*“Loan Payments”* means the basic Loan Payments payable by Borrower on the Loan Payment Dates and in the amounts as specified in the Payment Schedule, consisting of a principal component and an interest component, and in all cases sufficient to repay such principal component and interest thereon at the Interest Rate.

*“Loan Term”* for the Loan means the Original Term and all Renewal Terms therein provided and for this Agreement means the period from the date hereof until this Agreement is terminated.

*“Material Adverse Change”* means any change in Borrower’s creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Borrower, or (ii) Borrower’s ability to perform its obligations under this Agreement.

*“Original Term”* means the period from the Commencement Date until the end of the fiscal year of Borrower in effect at such Commencement Date.

*“Outstanding Balance”* means the amount that is shown for each Loan Payment Date under the column titled “Outstanding Balance” on the Payment Schedule.

*“Payment Schedule”* means the Payment Schedule attached hereto as *Exhibit B* and made a part hereof.”

*“Prepayment Amount”* means the amount that is shown for each Loan Payment Date under the column titled “Prepayment Amount” on the Payment Schedule.

*“Principal Portion”* means the amount that is shown for each Loan Payment Date under the column titled “Principal Portion” on the Payment Schedule.

*“Related Documents”* means this Agreement and the other documents and certificates executed in connection with this Agreement, each as may be amended and supplemented.

*“Renewal Terms”* means the consecutive renewal terms of this Agreement, the first of which commences immediately after the end of the Original Term and each having a duration and a term coextensive with each successive fiscal year of Borrower; *provided* that the final such Renewal Term shall commence on the first day of the last such fiscal year and end on the first business day after the last scheduled Loan Payment Date.

*“Servicer”* means the Arkansas Development Finance Authority.

*“State”* means the State of Arkansas.

*“Energy Contract”* means the Performance Contract Agreement dated November 30, 2023, effective as of December 8, 2023 between the Texarkana Regional Airport Authority and Entegrity Energy Partners, LLC (“Entegrity”), as amended pursuant to the Performance Contract Agreement-First Amendment dated as of January 9, 2025, as assigned by Texarkana Regional Airport Authority to the City pursuant to an Assignment and Assumption of Investment Grade Audit Contract and Energy Savings Performance Contract dated as of November 4, 2024, and all supplements, amendments and modifications thereto entered into pursuant to the terms thereof and hereof. The Energy Contract shall constitute a GECSC as defined herein, and shall comply with the provisions of Ark. Code Ann. Section 14-164-807, as amended.

*“Vendor”* means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer, or supplier with whom Borrower arranged Borrower’s acquisition, installation, maintenance, and/or servicing of the Equipment, and includes without limitation, Entegrity.

*“Vendor Agreement”* means any contract entered into by Borrower and any Vendor for the acquisition, installation, maintenance, and/or servicing of the Equipment, and includes without limitation, the Energy Contract.

## **ARTICLE II**

*Section 2.01. Representations and Covenants of Borrower.* Borrower represents, covenants, and warrants for the benefit of Lender on the date hereof as follows:

(a) Borrower is a municipal corporation, duly organized and existing under the laws of the State and a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue

Code of 1986, as amended, duly organized and existing under the constitution and laws of the State, with full power and authority to enter into this Agreement and the Related Documents and the transactions contemplated thereby and to perform all of its obligations thereunder.

(b) Borrower has duly authorized the execution and delivery of this Agreement and the Related Documents by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Related Documents.

(c) 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 date hereof.

(d) Borrower will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a municipal corporation of the State.

(e) Borrower has complied with such procurement and public bidding requirements as may be applicable to the Related Documents and the acquisition and installation by Borrower of the Equipment.

(f) During the Loan Term, the Equipment will be used by Borrower only for the purpose of performing essential governmental or proprietary functions of Borrower consistent with the permissible scope of Borrower's authority. Borrower does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Loan Payment (including all Renewal Terms) scheduled to be paid hereunder. Borrower shall not dispose of the Equipment without the express, written consent of Lender.

(g) Borrower has kept, and throughout the Loan Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lender (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within two hundred seventy (270) days after the end of its fiscal year, (ii) such other financial statements and information as Lender may reasonably request, and (iii) upon Lender's request, its annual budget for any prior or current fiscal year or for the following fiscal year when approved but not later than thirty (30) days prior to the end of its current fiscal year. The financial statements described in this subsection (g)(i) shall be accompanied by an unqualified opinion of Borrower's independent auditor. Credit information relating to Borrower may be disseminated among Lender and any of its affiliates and any of their respective successors and assigns.

(h) Borrower has an immediate need for the Equipment and expects to make immediate use of the Equipment. Borrower's need for the Equipment is not temporary and Borrower does not expect the need for any item of the Equipment to diminish during the Loan Term.

(i) The payment of the Loan Payments or any portion thereof is not (under the terms of this Agreement or any underlying arrangement) directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Borrower) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any

person other than Borrower. Borrower has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Borrower's financial condition or impairs its ability to perform its obligations under the Related Documents. Borrower will, at its expense, maintain its legal existence and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lender may reasonably request in order to protect Lender's first priority security interest in the Equipment and the Escrow Account and Lender's rights and benefits under the Related Documents.

(k) Borrower represents and warrants to Lender that its execution and delivery of the Energy Contract and this Agreement is authorized pursuant to Ark. Code Ann. §14-164-801 *et. seq.* as amended (the "Local Government Energy Efficiency Project Bond Act" or "Bond Act"). Borrower represents and covenants that it has complied (and will comply throughout the Loan Term) with all the requirements of the Bond Act as applicable to the Energy Contract (any other Vendor Agreement) in connection with this Agreement and the Equipment. Entegrity is a "qualified provider" for purposes of the Bond Act and to the best of Borrower's knowledge, Entegrity has also complied with all the requirements of the Bond Act as applicable to the Energy Contract, this Agreement, and the Equipment.

(l) Borrower represents that the funds from this Agreement shall be used to fund an Energy Efficiency Project as defined under the Bond Act.

(m) Borrower represents that the Energy Contract is with a qualified provider within the meaning of the Bond Act. Borrower further represents that an appropriate review of the bids submitted in the solicitation of the Energy Contract was conducted in accordance with the requirements of the Bond Act.

*Section 2.02. Representations and Covenants of Lender.* Lender represents, covenants, and warrants for the benefit of Borrower on the date hereof as follows:

(a) Lender is an agency of the State of Arkansas, organized and existing under the laws of the State, with full power and authority to enter into this Agreement and the Related Documents and the transactions contemplated thereby and to perform all of its obligations thereunder.

(b) Lender acknowledges that it has reviewed the Energy Contract and determined that (i) the Energy Contract is with a qualified provider within the meaning of the Bond Act, and (ii) the Energy Contract constitutes a GECSC as defined herein.

### **ARTICLE III**

*Section 3.01. Loan.* Subject to the terms of this Agreement, Lender agrees to provide the funds specified in the Payment Schedule to be provided by it to acquire the Equipment, up to an amount equal to the Acquisition Amount. The Loan Term for the Loan may be continued, solely at the option of Borrower, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Loan Term set forth in the Loan. At the end of the Original Term and at the end of each Renewal Term until the maximum Loan Term has been completed, Borrower shall be deemed to have exercised its option to continue the Loan for the next Renewal Term unless Borrower shall have terminated the Loan pursuant to Section 8.02 or Section 10.01. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Loan Payments shall be as provided in the Loan.

*Section 3.02. Continuation of Loan Term.* Borrower intends, subject to Section 3.03 hereof, to continue the Loan Term through the Original Term and all scheduled Renewal Terms and to pay the Loan Payments due hereunder. Borrower affirms that sufficient funds are legally available to pay all Loan Payments when due during the current fiscal year, and Borrower reasonably believes that an amount sufficient to make all Loan Payments during the entire Loan Term can be obtained from legally available funds of Borrower. Borrower further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Loan Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds or to extend the Loan Term for any Renewal Term is within the sole discretion of the governing body of Borrower. Borrower hereby pledges both the savings resulting from the Energy Contract, and any payments that may be received thereunder resulting from the failure to meet projected savings under the Energy Contract, to repay the indebtedness herein.

*Section 3.03. Non-appropriation.* Borrower is obligated only to pay such Loan Payments as may lawfully be made during Borrower's then current fiscal year from funds budgeted and appropriated for that purpose. Should Borrower fail to budget, appropriate or otherwise make available funds to pay Loan Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Borrower agrees to deliver notice to Lender of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section 3.03, Borrower agrees to cease use of the Equipment and peaceably remove and deliver to Lender, at Borrower's sole expense (from legally available funds), the Equipment to Lender at the location(s) to be specified by Lender.

*Section 3.04. Conditions to Lender's Performance; Conditions to Conversion.*

(a) As a prerequisite to the performance by Lender of any of its obligations under this Agreement, Borrower shall deliver to Lender, in form and substance satisfactory to Lender, the following:

(i) A certified copy of a resolution, ordinance, or other official action of Borrower's governing body, in the form and content satisfactory to Lender and Lender Counsel, authorizing the execution and delivery of this Agreement and performance by Borrower of its obligations under this Agreement. Such ordinance shall contain:

- a) The principal amount of the Loan;
- b) The purpose or purposes for which the Loan is to be made;
- c) A statement that the Loan is subject to the terms and conditions of the American Recovery and Reinvestment Act (Pub. Law No. 111-5);
- d) Finding of fact that all work contracted using Loan funds will be performed by a qualified provider in accordance with the Bond Act;
- e) Finding of fact that the energy cost savings and operating cost savings to be realized over the term of the guaranteed energy cost savings contract meet or exceed the costs of the energy efficiency project; and

f) A requirement that if the annual energy or operating cost savings fail to meet or exceed the annual costs of the energy efficiency project as required by the guaranteed energy cost savings contract, the qualified provider shall reimburse the Borrower for any shortfall of guaranteed energy cost savings over the term of the Energy Contract;

(ii) A Certificate completed and executed by the Clerk or Secretary or other comparable officer of Borrower, substantially in the form attached hereto as *Exhibit C*, completed to the satisfaction of Lender;

(iii) An opinion of counsel satisfactory to Lender;

(iv) Evidence of insurance as required by Section 7.02 hereof;

(v) All documents, including financing statements, affidavits, notices and similar instruments which Lender deems necessary or appropriate at that time pursuant to Section 6.02 hereof; provided that, at Lender's sole discretion, fixture filings for financing statements may be provided after the Commencement Date, provided however, that no "Disbursement Request" shall be authorized by Servicer until fixture filings for financing statements satisfying the conditions set forth in Section 6.02 have been prepared and filed to Lender's satisfaction with respect to the Equipment;

(vi) A waiver or waivers of interest in the Equipment from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located;

(vii) Evidence that Borrower and Entegritiy have complied with the requirements of the Bond Act required to be complied with prior to or on the Commencement Date with respect to the Energy Contract, this Agreement, and the Equipment;

(viii) Copies of invoices (and proofs of payment of such invoices, if Borrower seeks reimbursement) and bills of sale (if title to Equipment has passed to Borrower), to the extent required by Section 5.01(b) hereof;

(ix) Wire instructions for payments to be made to Vendors and Form W-9 from each such Vendor;

(x) Such other items reasonably required by Lender or Servicer.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lender of any of its obligations under the Related Documents shall be subject to: (i) no Material Adverse Change having occurred since the date of this Agreement, and (ii) no Event of Default having occurred and then be continuing.

(c) Subject to satisfaction of the foregoing, Lender will deposit the Acquisition Amount with the Servicer to be held and disbursed pursuant to this Agreement.

## ARTICLE IV

*Section 4.01. Loan Payments.* Subject to Section 3.03 of this Agreement, Borrower shall promptly pay Loan Payments, in lawful money of the United States of America, to Servicer for the Account of

Lender on the Loan Payment Dates and in such amounts as provided in the Payment Schedule. If any Loan Payment or other amount payable hereunder is not paid within ten (10) days of its due date, Borrower shall pay an administrative late charge of five percent (5%) of the amount not timely paid or the maximum amount permitted by law, whichever is less. Borrower shall not permit the Federal Government to guarantee any Loan Payments under this Agreement. Loan Payments consist of principal and interest components as more fully detailed on the Payment Schedule, the interest on which begins to accrue as of the Commencement Date.

*Section 4.02. Interest and Principal Components.* A portion of each Loan Payment is paid as, and represents payment of, interest, and the balance of each Loan Payment is paid as, and represents payment of, principal as more fully detailed on the Payment Schedule.

Commencing on the Commencement Date, Loan Payments shall initially be payable based on the Interest Rate as more fully detailed on the Payment Schedule.

*Section 4.03. Loan Payments to Constitute a Current Expense of Borrower.* Lender and Borrower understand and intend that the obligation of Borrower to pay Loan Payments shall constitute a current expense of Borrower payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Borrower in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Borrower, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Borrower.

*Section 4.04. Loan Payments to be Unconditional.* Except as provided in Section 3.03 of this Agreement, the obligations of Borrower to make Loan Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, disputes with the Lender or the Vendor of any Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, or failure of any Vendor to deliver any Equipment or otherwise perform any of its obligations for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to any Vendor.

## ARTICLE V

*Section 5.01. Acquisition, Delivery, Installation and Acceptance of Equipment.*

(a) Borrower shall order the Equipment to be acquired and financed hereunder, cause the Equipment to be delivered and installed at the location specified in this Agreement and pay any and all delivery and installation costs and other Equipment Costs in connection herewith. Borrower shall execute and deliver Disbursement Requests to the Servicer for the purpose of effecting disbursements to pay (or reimburse) Equipment Costs for the Equipment so acquired and installed pursuant to this Agreement. When the Equipment listed in this Agreement has been delivered and installed, Borrower shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lender and Servicer a Final Acceptance Certificate in the form attached hereto as *Exhibit E*.

(b) Borrower shall deliver to Servicer together with each Disbursement Request invoices (and proof of payment of such invoices if Borrower seeks reimbursement for prior expenditures) and bills of sale or other evidence of title transfer to Borrower relating to each item of Equipment accepted by Borrower as evidenced by such Disbursement Request. Once approved, Servicer shall disburse funds to the appropriate Vendor.

*Section 5.02. Quiet Enjoyment of Equipment.* So long as no Event of Default exists under this Agreement, neither Lender nor any entity claiming by, through or under Lender, shall interfere with Borrower's quiet use and enjoyment of the Equipment during the Loan Term.

*Section 5.03. Location; Inspection.* Once installed, no item of the Equipment will be moved or relocated from the location specified for it in this Agreement without Lender's prior written consent, which consent shall not be unreasonably withheld. Lender shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

*Section 5.04. Use and Maintenance of the Equipment.* Borrower shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated, or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Borrower shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Borrower agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body, including, without limitation, all anti-money laundering laws and regulations; *provided* that Borrower 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 Lender, adversely affect the interest of Lender in and to the Equipment or its interest or rights under this Agreement.

Borrower agrees that it shall (a) maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer; (b) proceed promptly, at its expense, to protect its rights and exercise its remedies under any warranty then in effect with respect to the Equipment; and (c) replace or rebuild any component of the Equipment that becomes permanently unfit for normal use or inoperable during the Loan Term (herein, the "*Inoperable Component*") in order to keep the Equipment as a whole in good repair and working order during the Loan Term. Borrower shall promptly notify Lender in writing when any component of the Equipment is reasonably expected within forty-five (45) days to become an Inoperable Component. Borrower shall promptly replace or rebuild the Inoperable Component with a similar component of comparable or improved make and model that has at least the equivalent value and utility of the applicable Inoperable Component, a remaining useful life of no less than the remaining Loan Term and such replacement or rebuilt component shall be in good operating condition. Lender shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Borrower agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance.

Borrower shall not alter any item of Equipment or install any accessory, equipment, or device on an item of Equipment if that would impair any applicable warranty, the originally intended function, or the value of that Equipment. All repairs, parts, accessories, equipment, and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lender.

## ARTICLE VI

*Section 6.01. Title to the Equipment.* During the Loan Term, so long as Borrower is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment shall be vested in Borrower immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof. Borrower shall at all times protect and defend, at its own cost and expense, its title, and Lender's first priority security interest, in and to the Equipment (and Lender's other Collateral as defined in Section 6.02 hereof) from and against all claims, liens and legal processes of its creditors, and keep all Equipment

(and such other Collateral) free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, Borrower shall execute and deliver to Lender such documents as Lender may request to evidence the passage of legal title to Lender and the termination of Borrower's interest therein, and upon request by Lender shall deliver possession of the Equipment to Lender in accordance with Section 3.03 or 12.02 of this Agreement, as applicable. Upon payment of all amounts due and owing hereunder by Borrower in accordance with Section 10.01 hereof, Lender's security interest or other interest in the Equipment shall terminate, and Lender shall execute and deliver to Borrower such documents as Borrower may request to evidence the termination of Lender's security interest in the Equipment.

*Section 6.02. Security Interest.* As security for the payment and performance of all of Borrower's obligations hereunder, Borrower hereby grants to Lender a first priority security interest constituting a first lien on (a) the Equipment, (b) moneys and investments held from time to time in the Escrow Account and (c) any and all proceeds of all of the foregoing, including, without limitation, insurance proceeds (collectively, the "Collateral"). Borrower authorizes Lender to file (and Borrower agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lender, which Lender deems necessary or appropriate to establish and maintain Lender's security interest in the Collateral, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the Uniform Commercial Code in effect in the State and treating such Article 9 as applicable to entities such as Borrower.

*Section 6.03. Personal Property, No Encumbrances.* Borrower agrees that the Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Borrower 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 Lender; provided, that if Lender or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lender or its assigns in their respective discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* Borrower shall keep the Equipment free of all levies, liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Borrower and that the Equipment will therefore be exempt from all property taxes. If the sale, purchase, operation, use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Borrower shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Borrower shall pay all utility and other charges incurred in the operation, use and maintenance of the Equipment. Borrower shall pay such taxes, assessments or charges as the same may become due; *provided* that, with respect to any such taxes, assessments or charges that may lawfully be paid in installments over a period of years, Borrower shall be obligated to pay only such installments as accrue during the Loan Term. Lender will not claim ownership of the Equipment under this Agreement for the purposes of any tax credits, benefits or deductions with respect to such Equipment.

*Section 7.02. Insurance.* At its own expense Borrower shall cause property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Lender that adequate self-insurance

is provided with respect to the Equipment, sufficient to protect the Full Insurable Value (as hereinafter defined) of such Equipment. All insurance proceeds shall be payable as hereinafter provided in this Agreement. Borrower shall furnish to Lender certificates evidencing such coverage throughout the Loan Term for the Loan. Alternatively, Borrower may insure the Equipment under the Loan under a blanket insurance policy or policies, which cover not only the Equipment but also other properties. If Borrower shall insure similar properties by self-insurance, Borrower, will insure the Equipment in respect of the Loan by means of an adequate insurance fund.

The term "Full Insurable Value" as used herein shall mean the full replacement value of the Equipment in respect of the Loan, but in no event less than the Prepayment Amount.

Any insurance policy pursuant to this Section shall be so written or endorsed as to make losses, if any, payable to Borrower and Lender as their respective interests may appear, and shall designate Lender as a loss payee or additional insured, as appropriate. The net proceeds of such insurance shall be applied as provided in Article VIII hereof. Each insurance policy provided for in this Section shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of Lender without first giving written notice thereof to Lender at least ten (10) days in advance of such cancellation.

*Section 7.03. Risk of Loss.* Whether or not covered by insurance or self-insurance, Borrower hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Borrower of the obligation to make the Loan Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Borrower hereby agrees to reimburse Lender (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lender, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Borrower under or in connection with this Agreement or any material misrepresentation provided by Borrower under or in connection with this Agreement. The provisions of this Section 7.03 shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Loan Term for any reason.

*Section 7.04. Advances.* In the event Borrower shall fail to keep the Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lender may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lender shall be added to the Principal Portion of the Loan and Borrower covenants and agrees to pay such amounts so advanced by Lender with interest thereon from the due date until paid at a rate equal to the Interest Rate *plus* five percent (5%) per annum or the maximum amount permitted by law, whichever is less.

## ARTICLE VIII

*Section 8.01. Damage, Destruction and Condemnation.* If, prior to the termination of the Loan Term, (a) the Equipment 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 Equipment or any part thereof shall be taken

under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Borrower and Lender will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment or such part thereof and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Borrower or (ii) Borrower shall exercise its option to prepay the obligations hereunder in accordance with Section 10.01(a)(ii) hereof.

If Borrower elects to replace any item of the Equipment (the “*Replaced Equipment*”) pursuant to this Section 8.01, the replacement equipment (the “*Replacement Equipment*”) shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Borrower shall grant to Lender a first priority security interest in any such Replacement Equipment. Borrower shall represent, warrant and covenant to Lender that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lender, and shall provide to Lender any and all documents as Lender may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lender evidencing Lender’s security interest in the Replacement Equipment. Lender and Borrower hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute “Equipment” for purposes of this Agreement. Borrower shall complete the documentation of Replacement Equipment on or before the next Loan Payment Date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to the damaged Equipment in accordance with Section 10.01(a)(ii) hereof.

For purposes of this Article VIII, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys’ fees, incurred in the collection thereof.

*Section 8.02. 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 8.01, Borrower shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lender the amount of the then applicable Prepayment Amount *plus* all other amounts then owing hereunder, and, upon such payment, the Loan Term shall terminate and Lender’s security interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds remaining, if any, after completing such repair, restoration, modification, or improvement or after paying such Prepayment Amount *plus* all other amounts then owing hereunder shall be retained by Borrower. If Borrower shall make any payments pursuant to this Section 8.02, Borrower shall not be entitled to any reimbursement therefor from Lender nor shall Borrower be entitled to any diminution of the amounts payable under Article IV.

## ARTICLE IX

*Section 9.01. Disclaimer of Warranties.* Lender makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of any of the Equipment, or any other warranty or representation, express or implied, with respect thereto and, as to Lender, Borrower’s acquisition of the Equipment shall be on an “as is” basis. In no event shall Lender be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Equipment or the existence, furnishing, functioning or Borrower’s use of any item, product or service provided for in this Agreement.

*Section 9.02. Vendor Agreements; Warranties.* Borrower covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lender. Borrower's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendor of the Equipment, and not against Lender. Any such matter shall not have any effect whatsoever on the rights and obligations of Lender under this Agreement, including the right to receive full and timely Loan Payments and other payments hereunder. Borrower expressly acknowledges that Lender makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to any of the Equipment.

## ARTICLE X

### *Section 10.01. Prepayment; Payment in Full.*

(a) *Prepayment.* Borrower shall have the option to prepay or satisfy all, but not less than all, of its obligations hereunder, at the following times and upon the following terms:

(i) *Optional Prepayment.* From and after the date specified (if any) in the Payment Schedule (the "Prepayment Option Commencement Date"), on the Loan Payment Dates specified in the Payment Schedule, upon not less than thirty (30) days prior written notice, and upon payment in full of the sum of all Loan Payments then due *plus* the then applicable Prepayment Amount, which shall include a prepayment premium, if any, on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* all other amounts then owing hereunder; or

(ii) *Casualty or Condemnation Prepayment.* In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day specified in Borrower's notice to Lender of its exercise of the prepayment option (which shall be the earlier of the next Loan Payment Date or sixty (60) days after the casualty event) upon payment in full to Lender of (A) in the event such prepayment occurs on a Loan Payment Date, the sum of (i) all Loan Payments then due *plus* (ii) the then applicable Prepayment Amount *plus* (iii) all other amounts then owing hereunder OR, (B) in the event such prepayment occurs on a date other than a Loan Payment Date, the sum of (i) the applicable Prepayment Amount shown on the Payment Schedule for the Loan Payment Date immediately preceding the applicable date of such prepayment (or if the date of such prepayment occurs prior to the first Loan Payment Date, the earliest Prepayment Amount shown on the Payment Schedule) *plus* (ii) accrued interest at the Interest Rate on the Outstanding Balance as of the Loan Payment Date immediately preceding the applicable date of such prepayment from such Loan Payment Date (or if the date of such prepayment occurs prior to the first Loan Payment Date, the Commencement Date) to the date of such prepayment *plus* (iii) all other amounts then owing hereunder.

(b) *Payment in Full.* Upon the expiration of the Loan Term, upon payment in full of all Loan Payments then due and all other amounts then owing hereunder to Lender.

(c) Lender's security interests in and to the Equipment will be terminated and Borrower will own such Equipment free and clear of Lender's security interest in such Equipment after either (i) payment of the applicable Prepayment Amount and all other amounts then owing hereunder in accordance with either Section 10.01(a)(i) or Section 10.01(a)(ii) of this Agreement or (ii) upon the expiration of the Loan Term and payment in full of all Loan Payments then due and all other amounts then owing hereunder in accordance with Section 10.01(b) of this Agreement.

## ARTICLE XI

*Section 11.01. Assignment by Lender.* Lender's right, title and interest in and to this Agreement, the Loan Payments and any other amounts payable by Borrower hereunder, its security interest in the Collateral (collectively, the "Assigned Rights"), may be assigned and reassigned by Lender at any time, in whole or in part, to one or more assignees or sub-assignees without the necessity of obtaining the consent of Borrower; Lender and Borrower hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 11.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein).

*Section 11.02. Assignment and Subleasing by Borrower.* None of Borrower's right, title, and interest in, to and under this Agreement or any portion of the Equipment or the Escrow Account or the other Collateral may be assigned, encumbered or subleased by Borrower for any reason, and any purported assignment, encumbrance or sublease without Lender's prior written consent shall be null and void.

## ARTICLE XII

*Section 12.01. Events of Default Defined.* Any of the following events shall constitute an "Event of Default" under this Agreement:

- (a) Failure by Borrower to (i) pay any Loan Payment or other payment required to be paid under this Agreement within ten (10) days of the date when due as specified herein, (ii) maintain insurance as required herein, or (iii) observe and perform any covenant, condition or agreement on its part to be observed or performed under Section 6.01 or 6.02 hereof;
- (b) Failure by Borrower to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed, other than as referred to in subsection (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Borrower by Lender, unless Lender shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, Lender will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Borrower within the applicable period and diligently pursued until the default is corrected;
- (c) Any statement, representation or warranty made by Borrower in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;
- (d) Any default occurs under any other agreement for borrowing money, lease or loan financing of property or otherwise receiving credit under which Borrower is an obligor, if such default (i) arises under any other agreement for borrowing money, lease or loan financing of property or provision of credit provided by Lender or any affiliate of Lender, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$100,000.00;
- (e) Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Borrower, or of all or a substantial part of the assets of Borrower, (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 Borrower in any bankruptcy, reorganization, moratorium or insolvency proceeding; or

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

*Section 12.02. Remedies on Default.* Whenever any Event of Default exists, Lender shall 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 Borrower, Lender may declare all Loan Payments payable by Borrower and other amounts payable by Borrower hereunder to the end of the then current Original Term or Renewal Term to be immediately due and payable;

(b) With or without terminating the Loan Term, Lender may enter the premises where the Equipment is located and retake possession of such Equipment or require Borrower at Borrower's expense to promptly return any or all of such Equipment to the possession of Lender at such place within the United States as Lender shall specify, and sell or lease such Equipment or, for the account of Borrower, sublease such Equipment, continuing to hold Borrower liable, but solely from legally available funds, for the difference between (i) the Loan Payments payable by Borrower and other amounts hereunder that are payable by Borrower to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lender in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03 of this Agreement. The exercise of any such remedies respecting any such Event of Default shall not relieve Borrower of any other liabilities hereunder or with respect to the Equipment.

*Section 12.03. No Remedy Exclusive.* No remedy herein conferred upon or reserved to Lender is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lender to exercise any remedy reserved to it in this Article XII it shall not be necessary to give any notice other than such notice as may be required in this Article XII.

## **ARTICLE XIII**

*Section 13.01. Notices.* All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Borrower.

*Section 13.02. Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon Lender and Borrower and their respective successors and assigns.

*Section 13.03. Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 13.04. Amendments, Changes and Modifications.* This Agreement may only be amended by Lender and Borrower in writing.

*Section 13.05. Execution in Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided*, that only Counterpart No. 1 of this Agreement shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

*Section 13.06. Applicable Law; Venue; Waiver of Jury Trial.* This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas. The parties hereto consent and submit to the jurisdiction of the State and venue in the Circuit Court of Pulaski County, Arkansas for any suit, action or other proceeding arising in connection with this Agreement, and each party expressly waives any objections that it may have to the venue of such courts. The parties hereto expressly waive any right to trial by jury in any action brought on or with respect to this Agreement.

*Section 13.07. 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 13.08. No Advisory or Fiduciary Relationship.* In connection with all aspects of each transaction contemplated by this Agreement (including in connection with any amendment, waiver or other modification hereof or of any other related document), the Borrower acknowledges and agrees that: (a) (i) the transactions regarding this Agreement provided by the Lender and any affiliate thereof are arm's-length commercial transactions between the Borrower, on the one hand, and the Lender and its affiliates, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and by the other related documents; (b) (i) the Lender and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower, or any other person and (ii) neither the Lender nor any of its affiliates has any obligation to the Borrower with respect to the transactions contemplated by this Agreement except those obligations expressly set forth herein and in the other related documents; and (c) the Lender and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, and neither the Lender nor any of its affiliates has any obligation to disclose any of such interests to the Borrower. To the fullest extent permitted by law, the Borrower, hereby waives and releases any claims that it may have against the Lender or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated by this Agreement.

*Section 13.09. Entire Agreement.* The parties agree that this Agreement constitutes the final and entire agreement between the parties superseding all conflicting terms or provisions of any prior proposals, term sheets, solicitation documents, requests for proposals, award notices, approval letters or any other agreements or understandings between the parties.

*Section 13.10. Compliance.* Borrower shall comply with current local, state, and federal construction and environmental codes, rules, and regulations in accordance with the Bond Act.

## ARTICLE XIV

*Section 14.01. American Recovery and Reinvestment Act (ARRA).* All or a portion of the Loan will be from ARRA sources. Borrower agrees and understands that Borrower is subject to all conditions of ARRA and relevant federal law. The Energy Contract is also subject to all conditions of ARRA. Any violation of ARRA and the specific terms, governing terms, and specified terms concerning ARRA herein shall be a material breach of this Agreement. This includes reporting requirements. Any violation of ARRA by Borrower, Vendor or its subcontractors may result in the withholding or suspension, in whole or in part, funds awarded under this agreement, and/or recovery of misspent funds following an audit. This provision is in addition to all other remedies for recovery of misspent funds available to Lender under all applicable state and federal laws. Capitalized terms used in this Article, but not defined herein, shall have the meanings ascribed to such terms in ARRA.

*Section 14.02. ARRA Signage.* The EEP shall, throughout the construction phase, display signage that features the primary ARRA emblem. The signage should be displayed in a prominent location on site. Some exclusions may apply. The emblem should not be displayed at a size less than 6 inches in diameter.

*Section 14.03. Reserved.*

*Section 14.04. Buy American.* Borrower shall ensure that the EEP complies with the Buy American provisions of section 1605 of ARRA. Section 1605 of ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects be produced in the United States. Borrower shall require its EEP contractor and any subcontractors to agree to abide by Section 1605. Borrower shall secure from its EEP contractor documentation that purchases meet the requirements of Section 1605, and shall maintain records of such purchases for inspections by authorized agents of the State of Arkansas and federal agencies. Written exceptions to this requirement are limited and must be obtained from Lender.

*Section 14.05. Prevailing Wage Requirement.* Borrower shall ensure that the EEP funded with the Loan proceeds comply with the prevailing wage requirements of section 1606 of ARRA which includes, by reference, 29 C.F.R. 5.5 and its incorporated federal regulations. Borrower shall ensure that the Energy Contract and Vendor Agreements contain all applicable provisions of section 1606 and that Vendor and each contractor complies with the same.

*Section 14.06. Whistleblower Protection.* Borrower shall ensure that insofar as its activities and the activities of Vendor relate to the project involve ARRA funds, that Borrower and Vendor and their subcontractors shall comply with Section 1553 of ARRA. Section 1553 of ARRA provides protection to State, Federal and contract employees. Specifically, the Recovery Act provides that an employee of any non-Federal employer receiving ARRA funds, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of: 1) Gross mismanagement of an agency contract or grant relating to covered funds; 2) A gross waste of covered funds 3) A substantial and specific danger to public health or safety related to the implementation or use of covered funds; 4) An abuse of authority related to the implementation or use of covered funds; or 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds. Borrower, Vendor, and their subcontractors who

receive ARRA funds shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, [www.Recovery.gov](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.).

*Section 14.07. Compliance with Anti-discrimination laws.* Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, Recovery Act funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds. Borrower shall comply with these laws, rules and regulations and shall ensure that all contracts including the Energy Contract and any Vendor Agreement utilizing Loan funds contain provisions mandating compliance.

*Section 14.08. Inspection of Records and Record Retention.* Borrower, Vendor and their subcontractors shall maintain records of Loan fund expenditures and all other required records for a period of three (3) years after the completion of the EEP. These records may be examined at any time by Lender, its auditors and the federal government's auditors. The U.S. Comptroller General and his representatives, in accordance with ARRA section 902, shall have the authority to: (1) examine any records of Borrower, its contractors, or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract (including but not limited to the Energy Contract and any other Vendor Agreement); and (2) interview any officer or employee of borrower, its contractors or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions. Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General. Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working under ARRA-funded activities. Borrower is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of Borrower's contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General

*Section 14.09. Use of ARRA Funds for Travel.* Lender, Vendor and their subcontractors are specifically prohibited from using ARRA funds for travel outside the service area or county in which the project is located. The exceptions are for travel specifically mandated by ARRA or approved by the senior management of the State Energy Office.

*Section 14.10. Certification of Prudent Spending.* Borrower hereby certifies that, in accordance with ARRA Section 1604, no loan funds will be used on a casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

*Section 14.11. Flow Down to Contractors and Subcontractors.* Borrower shall mandate that all contracts that utilize Loan funds contain provisions requiring compliance with ARRA in a manner similar to this agreement.

*Section 14.12. Compliance.* Borrower, Vendor, contractors, and subcontractors shall comply with all relevant ARRA provisions as provided by federal law and any and all applicable Department of Energy guidance, terms and conditions as defined in federal regulations and policy.

## ARTICLE XV

*Section 15.01. State Energy Program (SEP).* All or a portion of the loan funds may be from SEP sources which may or may not include ARRA funds. Borrower agrees and understands that Borrower is subject to all terms and conditions of SEP and relevant federal law.

*Section 15.02. ARRA Related Requirements.* Whenever ARRA funds are used in entirety or in part, these funds maintain their federal character and requirements flow down to any program that uses any of these funds. Thus, Borrower, Vendor, contractor, and subcontractor must comply with all applicable requirements in Article XIV when SEP funds include ARRA funds.

*Section 15.03. Administrative Requirements.* SEP funding sources may or may not include ARRA funds and when ARRA funds are not included Borrower, Vendor, contractor, and subcontractor shall comply with all applicable requirements. Administrative requirements are provided in 2 CFR Part 200, as amended by 2 CFR Part 910 and 10 CFR Part 420. The requirements include but are not limited to the following:

- a. Borrower shall have a unique entity identifier as provided by 2 C.F.R. Part 25, Subpart C.
- b. Borrower shall comply with all applicable reporting requirements for subawards and executive compensation as provided in 2 C.F.R. Part 170 and monitoring and reporting program performance as required by 2 C.F.R. Part 200.239.

*Section 15.04. National Policy Requirements.* Borrower, contractor, and subcontractor shall comply with all applicable national policy assurances as provided by DOE's Office of Management.

*Section 15.05. National Environmental Policy Act (NEPA).* Borrower, Vendor, contractor, and subcontractor shall ensure that a NEPA review and determination has been made for project before any activity is undertaken. If special conditions are placed on project as a result of a NEPA review, these special requirements must be included in Borrower's contractor agreements.

*Section 15.06. National Historic Preservation Act (NHPA)- Section 106.* Borrower shall ensure that the EEP funded by the Loan proceeds undergoes a review for compliance with NHPA. If any special conditions are placed on the project as a result of the NHPA review, these special requirements must be included in Borrower's contracts and Vendor Agreements.

*Section 15.07. Historically Underutilized Businesses.* Borrower shall ask questions in bid documents or requests for proposals to identify historically underutilized businesses.

*Section 15.08. Federal Funding Accountability and Transparency Act (FFATA).* Unless an exception applies, the funds used to fund this loan may be subject to FFATA.

*Section 15.09. Applicable Contract Provisions.* Pursuant to 10 C.F.R. Part 600, this agreement incorporates by reference the applicable provisions of 10 C.F.R. 600.236(i) for State or Local Government, and if applicable, 10 C.F.R. 600.148 and 10 C.F.R. 600.331(c).

[Signature Page Follows]

IN WITNESS WHEREOF, Lender and Borrower have caused this Equipment Loan Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LENDER:

**Arkansas Energy Office**

5301 Northshore Drive  
North Little Rock, Arkansas 72218-5317  
Attention: Jason Willey  
Tel. No.: (501) 682-0962

BORROWER:

**The City of Texarkana, Arkansas**

216 Walnut Street  
Texarkana, Arkansas 71854  
Attention: Mayor  
Tel. No.: (870) 779-4991

By: \_\_\_\_\_  
Name: Mitchell Simpson  
Title: Director

By: \_\_\_\_\_  
Name: Allen Brown  
Title: Mayor

ATTEST:

By: \_\_\_\_\_  
Heather Soyars, City Clerk

SERVICER:

**Arkansas Development Finance Authority**

One Commerce Way, Suite 602  
Little Rock, Arkansas 72202  
Attention: Charles Cathey  
Tel. No.: (501) 682-5906

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

List of Exhibits

Exhibit A	Equipment Schedule
Exhibit B	Payment Schedule
Exhibit C	Form of Incumbency and Authorization Certificate
Exhibit D	Form of Disbursement Request
Exhibit E	Form of Final Acceptance Certificate

**EXHIBIT A**

**EQUIPMENT SCHEDULE**

Location of Equipment: See Attached

Equipment Description (Scope of Work): See Attached

**EXHIBIT B****PAYMENT SCHEDULE**

Loan Payment Date	Loan Payment Amount	Principal Portion	Interest Portion	Outstanding Balance	Prepayment Amount
6/1/2026					
6/1/2027					
6/1/2028					
6/1/2029					
6/1/2030					
6/1/2031					
6/1/2032					
6/1/2033					
6/1/2034					
6/1/2035					
6/1/2036					
6/1/2037					
6/1/2038					
6/1/2039					
6/1/2040				-0-	-0-
Totals		\$1,665,425			

*Interest Rate.* The Interest Rate is 0.40% per annum.

*Prepayment Option Commencement Date.* For purposes of Section 10.01 of the Agreement, the Prepayment Option Commencement Date is June \_\_, 2025.

[Signature page follows]

Dated as of June \_\_, 2025.

LENDER:  
**Arkansas Energy Office**

By: \_\_\_\_\_  
Name: Mitchell Simpson  
Title: Director

BORROWER:  
**The City of Texarkana, Arkansas**

By: \_\_\_\_\_  
Name: Allen Brown  
Title: Mayor

## **EXHIBIT C**

### **FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE**

#### **INCUMBENCY AND AUTHORIZATION CERTIFICATE**

The undersigned, a duly elected or appointed and acting City Clerk of the City of Texarkana, Arkansas ("Borrower") certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Borrower (the "*Officials*") in the capacity set forth opposite their respective names below and the facsimile signatures below are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Borrower, to negotiate, execute and deliver the Equipment Loan Agreement dated as of June \_\_, 2025 by and between Borrower and the Arkansas Energy Office ("Lender"), all documents related thereto and delivered in connection therewith, and any future modification(s) or amendments thereof (collectively, the "*Operative Agreements*"), and the Operative Agreements each are the binding and authorized agreements of Borrower, enforceable in all respects in accordance with their respective terms.

Name of Official	Title	Signature
Allen Brown	Mayor	_____
Heather Soyars	City Clerk	_____

Dated: June \_\_, 2025

By: \_\_\_\_\_  
Name: Heather Soyars, City Clerk

**EXHIBIT D**

**FORM OF DISBURSEMENT REQUEST**

Re: Equipment Loan Agreement dated as of June \_\_, 2025 by and between the Arkansas Energy Office, as Lender, the City of Texarkana, Arkansas, as Borrower, and the Arkansas Development Finance Authority, as Servicer (the "Loan Agreement"). (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement)

In accordance with the terms of the Loan Agreement, the undersigned hereby requests the Servicer reimburse the Borrower for the following persons the following amounts for the following purposes detailed in the attached Exhibit.

Borrower hereby represents, covenants, and warrants for the benefit of Lender and Servicer on the date hereof as follows:

(i) Each obligation specified in the table herein titled as "Disbursement Amounts" (a) has been incurred by Borrower in the stated amount, (b) the same is a proper charge for Equipment Costs relating to the Equipment identified above, has been paid by Borrower, and Borrower requests reimbursement thereof.

(ii) Each item of Equipment relating to an obligation specified in the table herein titled as "Disbursement Amounts" has been delivered, installed, and accepted by Borrower. Attached hereto is the original invoice and certification from Vendor as to title transfer and release by Vendor of any security interest with respect to such obligation and the related AIA forms.

(iii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Borrower is, at the date hereof, entitled to retain.

(v) The Equipment is insured in accordance with the Loan Agreement.

(vi) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Loan Agreement has occurred and is continuing at the date hereof.

(vii) The disbursement shall occur during the Acquisition Period.

(viii) The representations, warranties and covenants of Borrower set forth in the Loan Agreement are true and correct as of the date hereof.

(ix) No Material Adverse Change has occurred since the date of the execution and delivery of the Loan Agreement.

Dated: \_\_\_\_\_

**The City of Texarkana, Arkansas, as  
Borrower**

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

Disbursement of funds from the Escrow  
Account in accordance with the foregoing  
Disbursement Request hereby is authorized

**Arkansas Energy Office,**  
as Lender

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

## **EXHIBIT E**

### **FORM OF FINAL ACCEPTANCE CERTIFICATE**

Arkansas Energy Office  
900 W. Capitol, Suite 400

Attn: Contract Administration

Re: Equipment Loan Agreement, dated as of June \_\_, 2025, by and between the Arkansas Energy Office, as Lender, the City of Texarkana, Arkansas, as Borrower, and the Arkansas Development Finance Authority, as Servicer

Ladies and Gentlemen:

In accordance with the above-referenced Equipment Loan Agreement (the “*Agreement*”), the undersigned Borrower hereby certifies and represents to, and agrees with Lender as follows:

1. All of the Equipment has been delivered, installed, and accepted on the date hereof.
2. Borrower has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Borrower is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.
4. Borrower hereby reaffirms that the representations, warranties, and covenants contained in the Agreement are true and correct as of the date hereof.
5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default exists at the date hereof.
6. No Material Adverse Change has occurred since the date of the execution and delivery of the Agreement.

Capitalized terms used, but not defined, in this Final Acceptance Certificate shall have the same meanings as when such terms are used in the Agreement.

Date: \_\_\_\_\_

#### **City of Texarkana, Arkansas**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_