

1 AN ABSTRACT OF PROCEEDINGS

2 STATE OF NEW MEXICO)

3 COUNTY OF SANTA FE) ss.

4 CITY OF SANTA FE)

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

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

12	PRESENT:	Mayor:	_____
13		Councilor:	_____
14		Councilor:	_____
15		Councilor:	_____
16		Councilor:	_____
17		Councilor:	_____
18		Councilor:	_____
19		Councilor:	_____
20		Councilor:	_____

21 ABSENT:
22 _____

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

24 PUBLIC HEARINGS

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CONSIDERATION OF BILL NO. 2021-2

ADOPTION OF ORDINANCE NO. 2021-____

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

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CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2021-2

INTRODUCED BY:

Mayor Alan Webber

AN ORDINANCE

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

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

WHEREAS, the City of Santa Fe, New Mexico (the “City”) is a legally created,

1 established, organized and existing incorporated charter municipality with home-rule powers under
2 the constitution and laws of the State of New Mexico; and

3 **WHEREAS**, Dalkia Energy Solutions, LLC, a Massachusetts limited liability company
4 (“Contractor”) has agreed to perform Street Light LED Upgrade and Maintenance (the “Project”)
5 for the City per the pricing structure and the contractual terms of the Global Management
6 Performance Contract by and between Citelum US, Inc. and the City of Albuquerque, New Mexico
7 dated September 28, 2017, as agreed to by the letter submitted by the Contractor to the City dated
8 September 10, 2019; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “Costs of Issuance” means all costs relating to the execution and delivery of the Agreement
25 and the Financing Transaction, including, without limitation, costs of advertising and publication,

1 costs of fees and expenses of the financial advisor, Bond Counsel, the Paying Agent, and other
2 reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the
3 execution and delivery of the Agreement and the Financing Transaction.

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

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

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

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

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

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

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

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

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

- 25 (1) LED Streetlight conversion:

1 The Contractor will upgrade all City owned lights that are not currently LED to LED. The
2 estimated type and amount of lights to be converted will be confirmed by the Contractor in
3 the field through the course of installation.

4 (2) Routine Street light Maintenance:

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

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

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

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

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

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

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

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

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

24 **Section 2. Ratification of Prior Action.** All action heretofore taken (not
25 inconsistent with the express provisions of this Ordinance) by the Governing Body and officers of

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

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

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

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

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

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

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

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

25 the Mayor, the Mayor pro tempore, is authorized to execute and delivery the Agreement, which

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

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

16 **Section 7. Period of Project’s Usefulness.** It is hereby determined and recited that
17 the average useful life of the Project is not less than [redacted] years.

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

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

24 B. Delegated Authority and Execution of Documents. The officers, agents, and
25 employees of the City are authorized, empowered and directed to take all action required by this

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

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

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

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

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

20 (Form of Summary of Ordinance for Publication)

21 CITY OF SANTA FE, NEW MEXICO

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

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

2 The title of the ordinance is:

3 **AN ORDINANCE**

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

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

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

1 CITY OF SANTA FE

2

3 (SEAL)

KRISTINE MIHELICIC, CITY CLERK

5

(End of Form of Ordinance for Publication)

6

PASSED, APPROVED, and ADOPTED this ___ day of _____, 2021.

7

GOVERNING BODY OF THE CITY OF SANTA FE

8

9 (SEAL)

ALAN WEBBER, MAYOR

10

11 ATTEST:

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14

KRISTINE MIHELICIC, CITY CLERK

15


APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

16

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

17

18

By: 
[Peter Franklin \(Jan 29, 2021 15:50 MST\)](#)

19

Peter Franklin

20

After discussion, Councilor _____ moved for approval, with Councilor _____

21

seconding the motion. Bill No. 2021-2 passed upon the following roll call vote:

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Those voting AYE:

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Councilor: _____

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Councilor: _____

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Councilor: _____

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Councilor: _____
Councilor: _____
Councilor: _____
Councilor: _____
Councilor: _____

Those voting NAY: _____
Those not present: _____

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

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

GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO

(SEAL)

ALAN WEBBER, MAYOR

ATTEST:

KRISTINE MIHELIC, CITY CLERK