

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. 2021-4

ADOPTION OF ORDINANCE NO. 2021-\_\_\_\_

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

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**CITY OF SANTA FE, NEW MEXICO**

**ORDINANCE NO. 2021-4**

**INTRODUCED BY:**

Mayor Alan Webber

**AN ORDINANCE**

**AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE, NEW MEXICO (THE “CITY”) AND STERLING NATIONAL BANK (THE “LESSOR”), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY AN AMOUNT OF UP TO \$20,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF ACQUIRING, INSTALLING, AND EQUIPPING ENERGY EFFICIENCY MEASURES THROUGHOUT THE CITY; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE AMOUNTS DUE UNDER THE LEASE-PURCHASE AGREEMENT SOLELY FROM THE UTILITY COST AND WATER CONSERVATION SAVINGS AND PAYMENTS RECEIVED BY THE CITY PURSUANT TO (1) THE ENERGY PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND YEAROUT ENERGY SERVICES COMPANY, LLC, AND (2) THE GLOBAL MANAGEMENT PERFORMANCE CONTRACT BY AND BETWEEN THE CITY AND DALKIA ENERGY SOLUTIONS, LLC; PROVIDING THAT CERTAIN TERMS OF THE LEASE-PURCHASE AGREEMENT WILL BE ESTABLISHED IN A PRICING CERTIFICATE TO BE**

1 **EXECUTED AND DELIVERED AS AUTHORIZED PURSUANT TO SECTION 6-14-10.2**  
2 **NMSA 1978; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL**  
3 **ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE**  
4 **TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND**  
5 **DELIVERY OF THE LEASE-PURCHASE AGREEMENT.**

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

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

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

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

24 **WHEREAS**, the Governing Body has determined and hereby determines that the Yearout  
25 Project Component and the Dalkia Project Component (each a “Project Component” and

1 collectively, the “Energy Savings Project”) may be financed by and completed by entering into the  
2 Lease-Purchase Agreement, a copy of which has been presented to the City Council in connection  
3 with its consideration of this Ordinance, and that it is in the best interest of the City and its residents  
4 that the Lease-Purchase Agreement be executed and delivered, and that the financing occur by  
5 executing and delivering the Lease-Purchase Agreement; and

6 **WHEREAS**, the energy cost savings and water conservation-related cost savings derived  
7 from each Project Component exceed the cost of implementing that Project Component, and  
8 collectively, the aggregate cost of the Energy Savings Project, and constitute the net revenues of  
9 the Energy Savings Project; and

10 **WHEREAS**, the Energy Savings Project is a “revenue producing project” within the  
11 meaning of the Act; and

12 **WHEREAS**, the City may pledge the energy cost savings and water conservation-related  
13 cost savings derived from the Energy Savings Project (the “Pledged Revenues”), which constitute  
14 a special fund; and

15 **WHEREAS**, the City may lawfully pledge the Pledged Revenues for the payment of  
16 amounts due pursuant to the Lease-Purchase Agreement; and

17 **WHEREAS**, the Pledged Revenues have not heretofore been pledged to secure the  
18 payment of any obligation which is currently outstanding; and

19 **WHEREAS**, the Lease-Purchase Agreement shall be a special, limited obligation of the  
20 City, payable solely from the Pledged Revenues and shall not constitute a general obligation of the  
21 City, or a debt or pledge of the full faith and credit of the City or the State; and

22 **WHEREAS**, the Lease-Purchase Agreement shall be executed and delivered pursuant to  
23 the Act, with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged  
24 Revenues; and

25 **WHEREAS**, the Governing Body intends by this Ordinance to authorize the execution and

1 delivery of the Lease-Purchase Agreement for the purposes set forth therein; and

2           **WHEREAS**, the Governing Body expects to receive an offer from the Lessor to enter into  
3 the Lease-Purchase Agreement, as approved pursuant to the terms of the Pricing Certificate; and

4           **WHEREAS**, the Governing Body hereby determines that the Energy Savings Project to  
5 be financed with the Lease-Purchase Agreement is to be used for governmental purposes of the  
6 City and will not be used for purposes which would cause the Lease-Purchase Agreement to be  
7 deemed a “private activity bond” as defined by the Internal Revenue Code of 1986, as amended;  
8 and

9           **WHEREAS**, all required authorizations, consents and approvals in connection with (i) the  
10 use and pledge of the Pledged Revenues to the Lessor (or its assigns) for the payment of amounts  
11 due under the Lease-Purchase Agreement, (ii) the financing of the Energy Savings Project pursuant  
12 to the Lease-Purchase Agreement and the Energy Savings Agreements, and (iii) the authorization,  
13 execution and delivery of the Lease-Purchase Agreement, the Energy Savings Agreements, and the  
14 Escrow Agreement (if determined in the Pricing Certificate to be necessary ), which are required  
15 to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected  
16 to be obtained.

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

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

23           “Act” means the general laws of the State, including the home-rule charter of the City,  
24 Sections 3-1-2 and 3-31-1 through 3-31-12 NMSA 1978, as amended, and enactments of the  
25 Governing Body relating to the Lease-Purchase Agreement, including this Ordinance.

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

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

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

9           “Closing Date” means the date of execution, delivery and funding of the Lease-Purchase  
10 Agreement.

11           “Code” means the Internal Revenue Code of 1986, as amended, and the applicable  
12 regulations thereunder.

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

15           “Costs of Issuance” means all costs relating to the execution and delivery of the of the  
16 Lease-Purchase Agreement and the Energy Savings Agreements, including, without limitation,  
17 costs of advertising and publication, costs of fees and expenses of the City’s municipal advisor,  
18 Bond Counsel, the Paying Agent, and other reasonable and necessary fees and costs, including  
19 applicable gross receipts taxes, related to the execution and delivery of the Lease-Purchase  
20 Agreement and the Energy Savings Agreements.

21           “Dalkia Agreement” means the Global Management Performance Contract by and between  
22 the City and Dalkia Energy Solutions, a Massachusetts limited liability company, for  
23 implementation of the Dalkia Project Component.

24           “Dalkia Project Component” means the installation, implementation, monitoring, and  
25 maintenance of upgrades to street light improvements leased to, and operated by, the City by Public

1 Service Company of New Mexico.

2 “Energy Savings Agreements” means, collectively, the Yearout Agreement and the Dalkia  
3 Agreement.

4 “Energy Savings Project” means, collectively, the Yearout Project Component and the  
5 Dalkia Project Component.

6 “Escrow Agreement” means, if required by the Lessor, the escrow agreement relating to  
7 the Energy Savings Project among the City, the Lessor and the Escrow Agent, into which the  
8 proceeds received by the City pursuant to the Lease-Purchase Agreement shall be deposited for  
9 payment of Energy Savings Project costs.

10 “Escrow Fund” means, if required by the Lessor, the “City of Santa Fe, New Mexico  
11 2021 Lease-Purchase Agreement Escrow Fund” created by Section 8 hereof.

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

14 “Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the  
15 entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which  
16 such word is used.

17 “Lease-Purchase Agreement” means the Lease-Purchase Agreement dated the Closing  
18 Date between the Lessor and the City which provides for the financing of the Energy Savings  
19 Project and requires payments by or on behalf of the City to the Lessor, and any amendments or  
20 supplements thereto, and including the exhibits attached to the Lease-Purchase Agreement.

21 “Lease-Purchase Transaction” means the financing of the Energy Savings Project through  
22 the execution and delivery of the Lease-Purchase Agreement and the Related Documents.

23 “Lessor” means Sterling National Bank in connection with the Lease-Purchase Agreement.

24 “NMSA 1978” means the New Mexico Statutes Annotated, 1978 compilation, as amended  
25 and supplemented.



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

2           “Paying Agent” means BOKF, NA, Albuquerque, New Mexico.

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

4           “Placement Agent Agreement” means the professional services agreement by and between  
5 the City and the Placement Agent for the placement of the Financing Transaction with the Lessor.

6           “Pledged Energy Cost Savings Revenues” or “Pledged Revenues” means amounts  
7 generated by Utility Cost Savings pursuant to the Energy Savings Agreements, which constitute  
8 net revenues of the Energy Savings Project, which shall be deposited monthly to the Pledged  
9 Revenue Fund as provided in Section 8 of this Ordinance.

10           “Pledged Energy Cost Savings Revenue Fund” or “Pledged Revenue Fund” means the fund  
11 created pursuant to Section 8 of this Ordinance.

12           “Pricing Certificate” means the certificate executed and delivered by the any of the Mayor,  
13 City Manager or Finance Director of the City subsequent to the date of this Ordinance which shall  
14 specify the exact principal amount of the Lease-Purchase Agreement, the rental payment dates, the  
15 amounts payable on each rental payment date, the interest rate, and the prepayment features  
16 applicable to the Lease-Purchase Agreement and which shall approve the final forms of the Lease-  
17 Purchase Agreement, the Escrow Agreement (if applicable), Energy Savings Agreements, and  
18 other documents and which may contain such other terms and provisions as set forth in the Pricing  
19 Certificate; provided that in no event shall the Pricing Certificate specify a principal amount of the  
20 Lease-Purchase Agreement in excess of \$20,000,000 or a net effective interest rate on the Lease-  
21 Purchase Agreement in excess of the statutory maximum of twelve percent (12%) per annum.

22           “Project Component” or “Project Components” means, as the context requires, each or all  
23 of the Yearout Project Component and the Dalkia Project Component.

24           “Related Documents” means, as applicable, the Escrow Agreement, account control  
25 agreement, closing documents, including, without limitation, a tax compliance certificate, and any

1 other document or agreement containing a representation, certification or obligation of the City as  
2 may be required by the Lessor or otherwise in connection with the Lease-Purchase Agreement  
3 pursuant to the Lease-Purchase Financing.

4 “Rental Payment Fund” means the “City of Santa Fe, New Mexico 2021 Lease-Purchase  
5 Agreement Rental Payment Fund” created by Section 8 hereof.

6 “State” means the State of New Mexico.

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

9 “Yearout Agreement” means the Energy Savings Performance Contract with Yearout  
10 Energy Services Company, LLC for implementation of the Yearout Project Component.

11 “Yearout Project Component” means the installation, implementation, monitoring and  
12 maintenance of energy savings measures and water conservation measures throughout City owned  
13 facilities.

14 **Section 2. Ratification of Prior Action.** All action heretofore taken (not  
15 inconsistent with the express provisions of this Ordinance) by the Governing Body and officers of  
16 the City directed toward the Energy Savings Agreements, the Energy Savings Project, the Lease-  
17 Purchase Agreement, including, without limitation, the publication of a notice of public meeting  
18 and intent to adopt this Ordinance authorizing the execution and delivery of the Lease-Purchase  
19 Agreement, and the engagement of D.A Davidson as Placement Agent pursuant to the Placement  
20 Agent Agreement, and the same hereby is ratified, approved and confirmed, notwithstanding any  
21 inconsistent prior action.

22 **Section 3. Authorization of the Lease-Purchase Transaction.** The Energy Savings  
23 Project and the financing of the Energy Savings Project through the Lease-Purchase Transaction  
24 are hereby approved, the final terms of which shall be as provided in the Pricing Certificate. The  
25 Lease-Purchase Agreement, in substantially the form presented to the Governing Body in

1 connection with this Ordinance, is hereby approved. The Mayor, or in the Mayor's absence, the  
2 Mayor *Pro Tem*, is hereby authorized to execute and deliver the Lease-Purchase Agreement, as  
3 modified by the Pricing Certificate. The Lease-Purchase Agreement shall be attested by the City  
4 Clerk or Deputy Clerk.

5 **Section 4. Findings; Parameters for Lease-Purchase Transaction.** The Governing  
6 Body hereby declares that it has considered all relevant information and data and hereby makes the  
7 following findings:

8 A. The Energy Savings Project is needed to meet the needs of the City and its  
9 residents and the execution and delivery of the Lease-Purchase Agreement and the Escrow  
10 Agreement (if determined to be required for the Lease-Purchase Transaction as set forth in the  
11 Pricing Certificate) is necessary and advisable.

12 B. Moneys available and on hand for the Energy Savings Project from all  
13 sources other than the Lease-Purchase Agreement are not sufficient to defray the cost of the Energy  
14 Savings Project.

15 C. The Pledged Revenues may lawfully be pledged to secure the payment of  
16 amounts due under the Lease-Purchase Agreement.

17 D. It is economically feasible to defray, in whole or in part, the costs of the  
18 Energy Savings Project by the execution and delivery of the Lease-Purchase Agreement.

19 E. The Energy Savings Project and the execution and delivery of the Lease-  
20 Purchase Agreement pursuant to the Act to provide funds for the financing of the Energy Savings  
21 Project are necessary and in the interest of the public health, safety, and welfare of the residents of  
22 the City and will result in energy and water conservation savings and other economies for the City.

23 F. The Energy Savings Project is a revenue-producing project within the  
24 meaning of the Act. Implementation of the Energy Savings Project pursuant to the Energy Savings  
25 Agreements will generate utility cost savings equal to or greater than the costs of the Energy

1 Savings Project, including the financing of those costs pursuant to the Lease-Purchase Transaction,  
2 and constitute net revenues of the Energy Savings Project within the meaning of the Act. The  
3 Conservation Measures are reasonably related to and constitute a substantial part of the Energy  
4 Savings Project.

5 G. The average economic life of the Project Components comprising the  
6 Energy Savings Project will be at least 20 years.

7 H. The Lease-Purchase Agreement shall be within the following parameters:

8 (i) the net effective interest rate on the Lease-Purchase Agreement  
9 shall not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State  
10 law.

11 (ii) The maximum term of the Lease-Purchase Agreement shall not  
12 exceed 25 years.

13 (iii) The maximum principal amount of the Lease-Purchase  
14 Agreement shall not exceed \$20,000,000.

15 **Section 5. Authorization of the Lease-Purchase Transaction.**

16 A. Authorization. This Ordinance has been adopted by the affirmative vote  
17 of a three-fourths (3/4) majority of all of the members of the Governing Body. For the purpose of  
18 protecting the public health, conserving the property, protecting the general welfare and prosperity  
19 of the residents of the City and completing the Energy Savings Project, it is hereby declared  
20 necessary that the City, pursuant to the Act, execute and deliver the Lease-Purchase Agreement,  
21 evidencing a special, limited obligation of the City to pay an amount of up to \$20,000,000, plus  
22 interest, and the execution and delivery of the Lease-Purchase Agreement is hereby authorized.  
23 The City shall use the proceeds of the Lease-Purchase Agreement to finance the Energy Savings  
24 Project and pay Costs of Issuance.

25 B. Detail. The Lease-Purchase Agreement shall be in form consistent with

1 this Ordinance, as supplemented by the Pricing Certificate. The Lease-Purchase Agreement shall  
2 be in an aggregate principal amount of up to \$20,000,000, shall be payable in installments or rent  
3 and interest due on the dates set forth in the Pricing Certificate.

4 **Section 6. Approval of the Lease-Purchase Agreement; Execution and Delivery.**

5 The Mayor or, in the absence of the Mayor, the Mayor *pro tem*, is authorized to execute and delivery  
6 the Lease-Purchase Agreement, which shall be attested by the City Clerk or a deputy City Clerk,  
7 in substantially the form presented to the Governing Body in its consideration of this Ordinance,  
8 with such modifications or revisions as the Mayor, in consultation with the City's municipal advisor  
9 and Bond Counsel, determines are necessary or convenient to implement the Energy Savings  
10 Project, and the execution and delivery of the Lease-Purchase Agreement by the Mayor, or in the  
11 absence of the Mayor, the Mayor *pro tem*, shall be conclusive evidence of the City's approval  
12 thereof, as may be modified or revised.

13 **Section 7. Special Limited Obligations.** The Lease-Purchase Agreement and the

14 Energy Savings Agreements shall be secured by the pledge of the Pledged Energy Cost Savings  
15 Revenues as set forth in the Lease-Purchase Agreement and the Energy Savings Agreements,  
16 respectively, and shall be payable solely from the Pledged Energy Cost Savings Revenues. The  
17 Lease-Purchase Agreement, together with interest thereon and other obligations of the City  
18 thereunder, and the Energy Savings Agreements, shall be special, limited obligations of the City,  
19 payable solely from the Pledged Energy Cost Savings Revenues as provided in this Ordinance, the  
20 Lease-Purchase Agreement and the Energy Savings Agreements and shall not constitute a general  
21 obligation of the City or the State, and the holders of the Lease-Purchase Agreement or the Energy  
22 Savings Agreements may not look to any general or other fund of the City for payment of the  
23 obligations thereunder. Nothing contained in this Ordinance or in the Lease-Purchase Agreement,  
24 the Energy Savings Agreements, or any other instruments, shall be construed as obligating the City  
25 (except with respect to the application of the Pledged Energy Cost Savings Revenues), as incurring

1 a pecuniary liability or a charge upon the general credit of the City or against its taxing power, nor  
2 shall a breach of any agreement contained in this Ordinance, the Lease-Purchase Agreement, the  
3 Energy Savings Agreements or any other instrument impose any pecuniary liability upon the City  
4 or any charge upon its general credit or against its taxing power. The Lease-Purchase Agreement  
5 and the Energy Savings Agreements shall never constitute an indebtedness of the City within the  
6 meaning of any State constitutional provision or statutory limitation and shall never constitute or  
7 give rise to a pecuniary liability of the City or a charge against its general credit or taxing power.  
8 Nothing herein shall prevent the City from applying other funds of the City legally available  
9 therefor to payments required by the Lease-Purchase Agreement or the Energy Savings  
10 Agreements, in its sole and absolute discretion.

11 **Section 8. Creation of Funds and Accounts; Disposition of Proceeds:**  
12 **Completion of the Energy Savings Project.**

13 A. **Rental Payment Fund, Escrow Fund and Pledged Revenue Fund.** The City  
14 hereby consents to creation of: (i) the special fund known as the Rental Payment Fund to be held  
15 and maintained by the City, (ii) if applicable, the Escrow Fund to be held and maintained by the  
16 Escrow Agent pursuant to the Escrow Agreement and (iii) the Pledged Revenue Fund to be held  
17 and maintained by the City, each in connection with the Lease-Purchase Agreement.

18 B. **Disposition of Proceeds of Lease-Purchase Agreement.** The proceeds  
19 derived from the execution and delivery of the Lease-Purchase Agreement shall be deposited  
20 promptly upon the receipt thereof in the Escrow Fund, as provided in the Escrow Agreement.

21 C. **Completion of Energy Savings Project.** The City will cause the  
22 installation of the Project Components with all due diligence, and in any event within three years  
23 after the date of execution and delivery of the Lease-Purchase Agreement.

24 **Section 9. Deposit of Pledged Energy Cost Savings Revenues and Flow of Funds.**

25 A. **Pledged Revenue Fund.** So long as payments are due under the Lease-

1 Purchase Agreement, the City shall credit all Pledged Energy Cost Savings Revenues to the Pledged  
2 Revenue Fund. As a first charge on the Revenue Fund, amounts due under the Lease-Purchase  
3 Agreement shall be withdrawn from the Pledged Revenue Fund and shall be credited to the Rental  
4 Payment Fund on the dates and in the amounts set forth in the Lease-Purchase Agreement.

5 B. Credit. In making the deposits required to be made into the Rental  
6 Payment Fund, if there are any amounts then on deposit in the rental Payment Fund available for  
7 the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to  
8 paragraph (A) above shall be reduced by the amount available in such fund for such purpose.

9 C. Transfer of Money out of Rental Payment Fund. Each payment due on the  
10 Lease-Purchase Agreement shall be transferred from the Rental Payment Fund to the Lessor on the  
11 due date of such payment.

12 D. Termination Upon Deposits to Maturity. No payment shall be made into  
13 the Rental Payment Fund if the moneys in such fund totals a sum at least equal to the entire  
14 aggregate amount due on the Lease-Purchase Agreement, in which case moneys in said fund in an  
15 amount at least equal to such payment requirements shall be used solely to pay such obligations as  
16 the same become due, and any moneys in excess thereof in said funds and any other moneys derived  
17 from the Pledged Energy Cost Savings Revenues may be used in any lawful manner determined by  
18 the City.

19 E. Defraying Delinquencies in the Rental Payment Fund. If, on any payment  
20 date, the amount on deposit in the Rental Payment Fund is insufficient to make the payments due  
21 on the Lease-Purchase Agreement, then an amount shall be paid into the Rental Payment Fund  
22 from the first Pledged Energy Cost Savings Revenues thereafter received that are not required to  
23 be deposited in the Rental Payment Fund as set forth in Paragraph C of this Section.

24 F. Payment from Other Sources. Notwithstanding any other provisions of  
25 this Ordinance, the City may, in its sole discretion, choose to apply other legally available funds to

1 the payment of the Lease-Purchase Agreement.

2 G. Surplus Revenues. After making all the payments hereinabove required  
3 to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other  
4 lawful purpose, as the City may from time to time determine.

5 **Section 10. Lien on Pledged Energy Cost Savings Revenues.** Pursuant to this  
6 Ordinance and the Lease-Purchase Agreement, the Pledged Energy Cost Savings Revenues are  
7 hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest  
8 therein for, the payment of the rent, interest, and any other amounts due under the Lease-Purchase  
9 Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance.  
10 The Lease-Purchase Agreement constitutes an irrevocable and first lien on the Pledged Energy Cost  
11 Savings Revenues.

12 **Section 11. Authorized Officers.** Authorized Officers are hereby individually  
13 authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits  
14 and other documents and to do and cause to be done any and all acts and things necessary or proper  
15 for carrying out this Ordinance, the Lease-Purchase Agreement and the Related Documents, and  
16 all other transactions contemplated hereby and thereby. Authorized Officers are hereby  
17 individually authorized to do all acts and things required of them by this Ordinance, the Lease-  
18 Purchase Agreement and the Related Documents for the full, punctual and complete performance  
19 of all the terms, covenants and agreements contained in this Ordinance, the Lease-Purchase  
20 Agreement and the Related Documents, the execution and delivery of closing documents in  
21 connection with the execution and delivery of the Lease-Purchase Agreement, the Escrow  
22 Agreement (if applicable), and the publication of the summary of this Ordinance set out in Section  
23 18 of this Ordinance (with such changes, additions and deletions as may be necessary).

24 **Section 12. Amendment of Ordinance.** Prior to the Closing Date, the provisions of  
25 this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body



1 with respect to any changes which are not inconsistent with the substantive provisions of this  
2 Ordinance. Following the Closing Date, this Ordinance may be amended by ordinance of  
3 Governing Body without receipt by the City of any additional consideration, but only with the prior  
4 written consent of the Lessor.

5 **Section 13. Ordinance Irrepealable.** After the Lease-Purchase Agreement has been  
6 executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due  
7 under the Lease-Purchase Agreement shall be fully paid, canceled and discharged, as provided  
8 therein.

9 **Section 14. Severability Clause.** If any section, paragraph, clause or provision of this  
10 Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or  
11 unenforceability of such section, paragraph, clause or provision shall not affect any of the  
12 remaining provisions of this Ordinance.

13 **Section 15. Repealer Clause.** All bylaws, orders, resolutions and ordinances, or parts  
14 thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This  
15 repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof,  
16 heretofore repealed.

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

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

1 (Form of Summary of Ordinance for Publication)

2 CITY OF SANTA FE, NEW MEXICO

3 NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter  
4 contained in an ordinance duly adopted and approved by the Governing Body of the City of Santa  
5 Fe on February \_\_, 2021. A complete copy of the ordinance is available for public inspection  
6 during the normal and regular business hours of the City Clerk in the office of the City Clerk, City  
7 Hall, 200 Lincoln Avenue, Santa Fe, New Mexico and is available online at [santafe.primegov.com](http://santafe.primegov.com).

8 The title of the ordinance is:

9 **AN ORDINANCE**

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



1 ATTEST:

2

3 \_\_\_\_\_

4 KRISTINE MIHELICIC, CITY CLERK

5 APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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

7

8 By:  \_\_\_\_\_  
Peter Franklin (Jan 29, 2021 15:50 MST)

9 Peter Franklin

10 After discussion, Councilor \_\_\_\_\_ moved for approval, with Councilor \_\_\_\_\_

11 seconding the motion. Bill No. 2021-4 passed upon the following roll call vote:

12 Those voting AYE:

13 Councilor: \_\_\_\_\_

14 Councilor: \_\_\_\_\_

15 Councilor: \_\_\_\_\_

16 Councilor: \_\_\_\_\_

17 Councilor: \_\_\_\_\_

18 Councilor: \_\_\_\_\_

19 Councilor: \_\_\_\_\_

20 Councilor: \_\_\_\_\_

21 Those voting NAY: \_\_\_\_\_

22 Those not present: \_\_\_\_\_

23 The presiding officer thereupon declared that at least three-fourths of all the members of  
24 the Governing Body having voted in favor of adoption of Bill No. 2021-4 the motion was carried  
25 and Ordinance No. 2021-\_\_\_ was duly passed and adopted.

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

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5

GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO

6

7 (SEAL)

8

\_\_\_\_\_

9

ALAN WEBBER, MAYOR

10 ATTEST:

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12

\_\_\_\_\_

13 KRISTINE MIHELICIC, CITY CLERK

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25 *Legislation/2021/Bills/Energy Efficiency Lease Purchase Agreement*