

AFTER RECORDING PLEASE RETURN TO:

Kutak Rock LLP
1801 California Street
Suite 3000
Denver, CO 80202
Attention: Mario T. Trimble, Esq.

**SECOND AMENDMENT TO
LEASE PURCHASE AGREEMENT
(2014 LED PROJECT)**

by and between

CITY OF PUEBLO, COLORADO MUNICIPAL BUILDING CORPORATION,
as Lessor

and

CITY OF PUEBLO, COLORADO,
as Lessee

Dated the _____ day of _____, 2022

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EXHIBIT A DESCRIPTION OF THE SITE LEASED PROPERTY

SECOND AMENDMENT TO LEASE PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE PURCHASE AGREEMENT (this “Second Lease Amendment”) is dated as of the _____ day of _____, 2022 and is entered into by and between **CITY OF PUEBLO, COLORADO MUNICIPAL BUILDING CORPORATION**, a Colorado nonprofit corporation (the “Corporation”), and **CITY OF PUEBLO, COLORADO** (the “City”).

WITNESSETH:

WHEREAS, the City is a duly and regularly created, organized and existing home rule municipality, existing as such under and by virtue of Article XX of the Constitution of the State and the Charter of the City; and

WHEREAS, the City Council of the City (the “City Council”) has the power, pursuant to Sections 1-3 and 3-9 of the Charter and Chapter 11 of Title I of the Pueblo Municipal Code, to enter into lease and lease purchase agreements in order to provide necessary land, buildings, equipment and other property for any governmental or proprietary purpose; and

WHEREAS, the City Council also has the power, pursuant to Sections 1-3 and 3-9 of the Charter and Chapter 11 of Title I of the Pueblo Municipal Code, to purchase real and personal property and to sell and convey real and personal property of the City upon such terms and conditions as the City Council may approve; and

WHEREAS, the Corporation (a) is a Colorado nonprofit corporation that is duly organized, validly existing and in good standing under the laws of the state, (b) is duly qualified to do business in the State, (c) is the lessee of the Site Leased Property (as defined herein) pursuant to the Site Lease dated as of November 12, 2014 (the “Site Lease”) between the City, as lessor, and the Corporation, as lessee, and (d) is authorized, under its articles of incorporation and bylaws, action of its board of directors and applicable law, to lease the Site Leased Property from the City, to lease the Leased Property to the City and to execute, deliver and perform its obligations under this Lease; and

WHEREAS, the City and the Corporation have previously entered into that certain Lease Purchase Agreement dated as of November 12, 2014 (the “2014 Lease”), between the City, as lessee, and the Corporation, as lessor, for the purpose of providing funding to finance the costs of replacing approximately 8,725 high pressure sodium streetlight fixtures with approximately 8,725 light emitting diode streetlight fixtures throughout the City (the “Project”); and

WHEREAS, pursuant to a Trust Indenture dated as of November 12, 2014 (the “Indenture”), between the Corporation and Wells Fargo Bank, National Association, in its capacity as trustee thereunder (the “Trustee”), the Corporation caused the execution and delivery of the Certificate of Participation, Series 2014, in the original aggregate principal amount of \$4,200,000 (the “Series 2014 Certificate”), evidencing interests in the right to receive revenues under the Lease, which Series 2014 Certificate is currently outstanding in the aggregate principal amount of \$1,362,802.78; and

WHEREAS, in connection with the execution and delivery of the Series 2014 Certificates, the Corporation has executed and delivered that certain Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated November 12, 2014 (the “Deed of Trust”), from the Corporation to the Public Trustee of Pueblo County, Colorado for the benefit of the Trustee; and

WHEREAS, the City and the Corporation have previously entered into that First Amendment to Lease Purchase Agreement dated as of September 23, 2021 (the First Lease Amendment” and, together with the 2014 Lease and this Second Lease Amendment, the “Lease”) for the purpose of amending the terms of the outstanding Series 2014 Certificate to effect a reduction in its interest rate; and

WHEREAS, the City and the Corporation desire for the Lease to be further amended by this Second Lease Amendment to provide for the release from the Leased Property of the property described as Parcel B in Exhibit A to the 2014 Lease; and

WHEREAS, Wells Fargo Bank, National Association is the Initial Purchaser and current Owner (as defined in the Indenture) of 100% of the Series 2014 Certificate; and

WHEREAS, the Trustee has notified the Owner of this Second Lease Amendment in accordance with the provisions of Section 9.05 of the Indenture, and the Owner has acknowledged, consented to, and approved the execution of this Second Lease Amendment; and

WHEREAS, this Second Lease Amendment is entered into for the purpose of providing for the release from the Leased Property of the property described as Parcel B in Exhibit A to the 2014 Lease;

NOW, THEREFORE, for and in consideration of the mutual covenants and the representations, covenants and warranties herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Capitalized terms used herein but not defined shall have the meanings, respectively, as provided in the Indenture or Article I of the Lease, as amended.

ARTICLE II

AMENDMENTS

Section 2.01. Amendment and Restatement of Section 8.05. Section 8.05 of the Lease is hereby amended to read as follows:

Section 8.05. Modification and Substitution of Leased Property; Release of Leased Property.

(a) The City, at its own expense, may remodel, or make substitutions, additions, modifications or improvements to, the Leased Property, provided that (a) such remodeling, substitutions, additions, modifications and additions (i) shall not in any way damage the Leased Property as it existed prior thereto and (ii) shall become part of the Leased Property; (b) the value of the Leased Property after such remodeling, substitutions, additions, modifications and additions shall be at least as great as the value of the Leased Property prior thereto; and (c) the Leased Property, after such remodeling, substitutions, additions, modifications and additions, shall continue to be used as provided in, and shall otherwise be subject to the terms of, this Lease.

(b) So long as no Event of Default or Event of Nonappropriation shall have occurred and is continuing and when the principal component of Base Rentals paid by the City, plus the principal amount of any Certificates redeemed through optional redemption, or the total principal amount of Certificates paid or deemed to be paid pursuant to Section 10.01 of the Indenture, equals the fair value of any portion of the Leased Property set forth in Exhibit A hereto (or of any property substituted for such portion of the Leased Property pursuant to any provision of this Lease), the corresponding portion of the Leased Property set forth in Exhibit A hereto (or of any property substituted for such portion of the Leased Property pursuant to any provision of this Lease) shall be deemed to have been fully amortized and the Corporation and the Trustee shall release such portion of the Leased Property (or any property substituted for such portion of the Leased Property pursuant to any provision of this Lease); provided, however, that (i) the fair value of the remaining Leased Property must be at least equal to 100% of the aggregate principal amount of the Certificates then Outstanding, as certified by the City Representative, (ii) the City Representative shall provide written notice of such release to the Trustee, (iii) the Trustee shall receive an opinion of Bond Counsel that such release shall not have a materially adverse effect on the tax-exempt status of the Certificates; (iv) prior to such release of Leased Property, the Trustee shall receive evidence that the existing title insurance policy for the Leased Property which is not to be substituted is not affected; and (v) after any release of Leased Property under this Section, the remaining Leased Property shall comply with the requirements of Section 29-1-103(3)(e), C.R.S. The Corporation and the Trustee shall execute and deliver to the City all documents necessary or appropriate to convey such portion of the Leased Property to the City, free of all restrictions and encumbrances imposed or created by this Lease or the Indenture, in substantially the manner provided in Section 9.02 hereof. After such release and conveyance, the property so released and conveyed shall no longer be a part of the Leased Property for any purpose of this Lease or the Indenture. The Corporation and the Trustee shall fully cooperate with the City in executing, delivering and recording such documents as may be necessary to effectuate the provisions of this Section.

Section 2.02. Amendment of Exhibit A. The description of the Site Leased Property contained in Exhibit A to the 2014 Lease is hereby amended and restated to read as set forth in Exhibit A hereto.

ARTICLE III

MISCELLANEOUS

Section 3.01. Sovereign Powers of City. Nothing in this Second Lease Amendment shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers of the City. Nothing in this Second Lease Amendment shall be construed to require the City to occupy and operate the Leased Property other than as lessee, or to require the City to exercise its right to purchase the Leased Property as provided in Article IX of the Lease.

Section 3.02. Binding Effect. This Second Lease Amendment shall inure to the benefit of and shall be binding upon the Corporation and the City and their respective successors and assigns, subject, however, to the limitations set forth in Article XIII of the Lease.

Section 3.03. Confirmation of Lease. As supplemented by the First Lease Amendment and this Second Lease Amendment, the Lease is in all respects ratified and confirmed. This Second Lease Amendment amends and supersedes all inconsistent provisions of the Lease. This Second Lease Amendment shall be read, taken and construed as one and the same instrument with the Lease so that all rights, remedies, terms, conditions, covenants and agreements of the Lease shall apply and remain in full force and effect with respect to this Second Lease Amendment, the Project and the Leased Property.

Section 3.04. Acknowledgement of Second Supplemental Indenture. The City has received copies of, and acknowledges the terms of, the Second Supplemental Indenture .

Section 3.05. Severability. In the event that any provision of the Lease, other than the obligation of the City to pay Base Rentals or Additional Rentals and the Purchase Option Price hereunder and the obligation of the Corporation to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the City pursuant to Article IX hereof, 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 3.06. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Second Lease Amendment .

Section 3.07. Applicable Law. The laws of the State of Colorado shall be applied in the interpretation, execution and enforcement of this Second Lease Amendment .

Section 3.08. Execution in Counterparts. This Second Lease Amendment 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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Corporation and the City have executed this Second Lease Amendment as of the date first above written.

[SEAL]

CITY OF PUEBLO, COLORADO
MUNICIPAL BUILDING CORPORATION

By _____
President

CITY OF PUEBLO, COLORADO

By _____
Mayor

Attest:

By _____
City Clerk

[Signature Page to Second Lease Amendment]

EXHIBIT A

DESCRIPTION OF THE SITE LEASED PROPERTY

PARCEL A:

LOTS 9, 10, 11 AND 12 IN BLOCK 31 IN COUNTY ADDITION TO THE CITY OF PUEBLO, ACCORDING TO THE AMENDED PLAT OF SAID ADDITION FILED FOR RECORD NOVEMBER 20, 1879 IN PLAT BOOK C AT PAGE 154, COUNTY OF PUEBLO, STATE OF COLORADO.

PARCEL B:

[Parcel B deleted pursuant to Second Lease Amendment]

PARCEL C:

LOT 1 IN BLOCK 1 IN EAGLERIDGE FIRE STATION SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 8, 1998 UNDER RECEPTION NO. 1199836, COUNTY OF PUEBLO, STATE OF COLORADO.

PARCEL D:

LOTS 17, 18, 19 AND THE SOUTH 1/2 OF LOT 20 IN BLOCK 23 IN HILLSIDE, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 20, 1890 IN PLAT BOOK H AT PAGE 21, COUNTY OF PUEBLO, STATE OF COLORADO.

PARCEL E:

LOTS 42 AND 43 IN BLOCK 151 IN FLETCHER HILL SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 31, 1890 IN PLAT BOOK F AT PAGE 16, COUNTY OF PUEBLO, STATE OF COLORADO.