

**CAMANCHE CITY COUNCIL AGENDA**  
**6:00 P.M. – CAMANCHE CITY HALL 818-7<sup>th</sup> Avenue**  
**TO ATTEND BY PHONE: 1-717-275-8940 ACCESS CODE: 289 8487**  
**ATTEND VIA INTERNET: <https://hello.freeconference.com/conf/call/2898487>**  
**(PLACE YOUR PHONE ON MUTE UNTIL PUBLIC COMMENTS)**  
**JANUARY 2, 2024**

**Roll Call**  
**Moment of Silent Prayer**  
**Pledge of Allegiance**  
**Approval of Agenda**

**Visitor: Dan VanOverbeke, Mueller Systems**

**Public Comments on Agenda Topics-State Your Name and Address (3 Minute Limit)**

**Consent Agenda:**

- 1) Approve Minutes from Council meeting held on December 19, 2023
- 2) Approve bills and claims as submitted
- 3) Receive, accept and place on file minutes from the Library Board meeting on March 1, 2023
- 4) Approve reappointment of Casey Green to the Planning and Zoning Commission, term ending January 2029
- 5) Accept resignation from Juli Leonard, Historical Board, effective December 31, 2023
- 6) Accept resignation from Pam Stewart, Historical Board, effective December 31, 2023

**Unfinished Business:**

- 1) 1<sup>st</sup> reading of an Ordinance Amending Title 3 Chapter 3 Section 10: Changing State Speed Limits in Certain Zones in Order To Increase the Speed Limit on 9<sup>TH</sup> Street Between 19<sup>th</sup> Avenue and Highway 67 (Schmitz, Kida)
- 2) ABM Water Meter and Energy Question and Answer (Kida)

**New Business:**

- 1) Committee and Commission Appointments (Mayor Pruett)
- 2) Library Board (Bowman)
- 3) Budget Amendment to pay Library Insurance and Parking Lot invoices not approved by Library Board (Bowman)

**Communication from City Attorney**

**Communication from City Administrator**

**Communication from Mayor**

**Communication from City Council Members and Department Heads**

**Public Comments-State Your Name and Address (3 MINUTE LIMIT)**

**Council Members Requests for Placement of Matters on Future Agendas**

**Work Session: Budget FYE2025**

**Adjourn**

**Board Vacancies – 1-Library Board**

City of Camanche  
December 19, 2023

The City Council of the City of Camanche, Iowa met in regular session December 19, 2023, at 6:00 p.m. at Camanche City Hall. Present on roll call: Mayor Pruett presiding, and Council members Bowman, Varner and Weller. Absent: Councilman Schnoor. Also present were City Attorneys Randy Current, John Frey and Braydon Roberts, City Engineer Dan Solchenberger, City Administrator Andrew Kida, and Department Heads Pewe, Schmitz and Schneider.

A moment of silent prayer was observed. Mayor Pruett led the Pledge of Allegiance.

Moved by Councilman Bowman second by Councilman Varner to approve the Agenda. On roll call – all Ayes.

City Administrator Kida administered the Oath of Office to Mayor Austin Pruett who will remain in office for a second term to begin January 1, 2024.

Mayor Pruett administered the Oath of Office to Councilmembers Tom Klahn and Wesley Farrell who will take office on January 1, 2024.

Visitor Kristyl McDaniel, CPA, CGFM with Winkel, Parker & Foster, CPA PC presented the FY2023 audit report for the City.

Mayor Pruett called for public comments on Agenda topics; there were none.

Moved by Councilman Bowman, second by Councilman Varner to approve the Consent Agenda which covered the following: Approve minutes from the Council meeting held on December 5, 2023; approve Abstract No. 838 which includes the following:

AIR CONTROL INC	FURNACE REPAIRS-LIBRARY	380.22
CAMANCHE WATER WORKS	4TH QTR 2023 WATER/SEWER BILLS	596.46
CLINTON HERALD	LEGAL PUBLICATIONS	464.11
CITY OF CLINTON	28E SEWER CONTRACT	24,000.00
CLINTON NATIONAL BANK	FED/FICA TAX WITHHOLDING	13,131.62
CL CO AREA SOLID WASTE	YARD WASTE	77.44
CULLIGAN	WATER,DISP RENT- CITY HALL,LIBRARY	47.45
GWORKS	W-2S, 1099 FORMS,ENVELOPES	245.59
E C I A	MEMBERSHIP DUES FY24 2ND INST	1,690.90
EASTERN IA LIGHT & POWER	SECURITY LIGHT-ANAMOSA RD,9TH ST	119.31
EMER MEDICAL PRODUCTS INC	AMBULANCE SUPPLIES	416.70
HOME DEPOT CREDIT SERVICE	TAPE,CONCRETE,BATTERIES,TRAPS	155.13
IOWA LEAGUE OF CITIES	ROLSTON-VIRTUAL MLA REGISTRATIO	220.00
KWIK TRIP/KWIK STAR STORE	260.424G PD;31.389G FD;250.36G PW	1,956.25
	62.412 G AMB; 76.658 G CEMETERY	
LESLIE ELECTRIC	WELLHOUSE #5 UPGRADE TO 400 AMP	17,445.00
TOM MCMANUS BACKHOE	GRAVE-NIE	400.00
MEDIACOM	INTERNET	135.56
MERCY MEDICAL CENTER-CLIN	OCT/NOV 23 PHARMACEUTICALS	105.00
MIDAMERICAN ENERGY CO	STREET LIGHTING	2,530.94
ACCESS SYSTEMS	COPIES-POLICE DEPARTMENT	107.72
MUNICIPAL FIRE & POLICE	MUNICIPAL PENSION	13,289.19
GREG NELSON	NOV 23 AMBULANCE STIPEND	144.00
O'REILLY AUTOMOTIVE INC	SILICONE-9TH ST LIFT STATION	18.99
POSTMASTER	4TH QTR WATER/SEWER BILLS	786.09
PRESTO-X-COMPANY	PEST CTRL-CCTR,LIB,CHALL,HIST BLDG	204.34
QC ANALYTICAL SERVICES	SAMPLE ANALYSIS	233.00
QUILL CORPORATION	OFFICE SUPPLIES-CITY HALL	36.58
SECRETARY OF STATE	RENEW NOTARY-SCHMITZ	30.00
SHIVE-HATTERY ENGINEERS	ENGINEERING-3M DRINKING WATER	23,415.98
TEAM TWO INC	AMBULANCE BILLING-AUG/NOV 23	850.71

TREASURER STATE OF IOWA	NOV 23 SALES, WATER EXCISE TAX	320.90
HAWKINS INC	100 GAL AZONE-WATER DEPARTMENT	359.24
BRIAN WERNICK	NOV 23 AMBULANCE STIPEND	24.00
DARYL YODER	REIMB CDL LICENSE	64.00
JORDAN MOORE	NOV 23 AMBULANCE STIPEND	40.00
PREMIER PARTS INC	PARTS-SEWER DEPT CHECK VALVES	199.36
BWC EXCAVATING	VACUUM OUT 9TH ST LIFT STATION	2,771.00
CENTURYLINK	TELEPHONE EXPENSE	166.75
IOWA POLICE CHIEFS ASSOC	MEMBERSHIP-CHIEF RICH SCHMITZ	125.00
OVERDRIVE	E-BOOKS,AUDIO BOOKS	139.99
CLINTON ACE HARDWARE	SHIP WATER SAMPLES	13.24
ERIC DAU	NOV 23 PAID ON CALL	240.00
PLATINUM SMART INC.	DATA BACKUPS-DEC 23	400.00
AMAZON	LIBRARY BOOKS,DVDS,SUPPLIES	810.47
TROY ALDERMAN	CLOTHING ALLOWANCE	54.56
CASEY'S GENERAL STORES	62.18GA; FD; 37.96 GAL PD; 43.98 GAL AMB; 24.01 GAL BLDG INSP	595.55
FREY, HAUFE & CURRENT PLC	LEGAL SERVICES-NOV 2023	4,895.55
HSA ACCOUNTS	HSA- EMPLOYEES	1,550.00
PLATINUM INFORMATION SERV	ITSUPPORT,NETWORK MON,SPAMFLT	3,463.17
BRENT BRIGHTMAN	NOV 23 AMBULANCE STIPEND	20.00
DANNY WELLER	NOV 23 AMBULANCE STIPEND	180.00
COAST TO COAST COMPUTER	LIBRARY COLORING BOOKS	207.08
EASTERN IA COMM COLLEGE	ACLS/BLS INSTRUCTOR-SCHUTTE	18.00
GENESIS OCC HEALTH	MEDICAL DIRECTOR SERVICES	156.25
CLINTON COUNTY AUDITOR	2ND QTR FY24 PEANUT BUTTER	210.00
CORY SNODGRASS	NOV 23 AMBULANCE STIPEND	36.00
CHRISTIAN MARSH	NOV 23 PAID ON CALL	120.00
JENNIFER BIELEMA	NOV 23 AMBULANCE STIPEND	108.00
JEFFREY HACKNEY	NOV 23 AMBULANCE STIPEND	12.00
TODD POWERS	NOV 23 AMBULANCE STIPEND	12.00
MICHELLE SOWLE	NOV 23 AMBULANCE STIPEND	80.00
THOMAS FRANKLIN	NOV 23 AMBULANCE STIPEND	108.00
JOHN LUND	NOV 23 AMBULANCE STIPEND	50.00
MICHAEL BURMAHL	NOV 23 AMBULANCE STIPEND	36.00
TONY BLOMME	NOV 23 AMBULANCE STIPEND	264.00
PLATINUM LEASING SERVICES	LEASE 231-7 POWER EDGE SERVER	839.00
MIDWEST GROUP BENEFITS	WEEKLY CLAIMS	1,324.65
GREAT WESTERN SUPPLY CO	TISSUES-CITY HALL	111.89
JACOB VANZUIDEN	WELLNESS REIMBURSEMENT	89.50
ACCESS SYSTEMS LEASING	CITY HALL COPIER LEASE	472.86
SANTA HOUSE/HOLIDAY HOUSE	PARK AND REC ANNUAL DONATION	500.00
KYLE DEWITT	NOV 23 AMBULANCE STIPEND	24.00
RILEY SOWLE	NOV 23 AMBULANCE STIPEND	20.00
CINTAS	TOWELS,RUGS-PW,CH;UNIF-PEWE	103.31
TEMP ASSOCIATES-IOWA, INC	LIBRARY-SPRINGER/ZAMORA 12/10	2,417.78
HAROLD TEAGARDEN	REIMBURSE EMT TEST	134.00
AIRGAS USA, LLC.	CYLINDER RENTAL	9.75
GAYLON PEWE	WELLNESS REIMBURSEMENT	105.93
RIVER VALLEY COOPERATIVE	TANK RENT-COMM GENERATOR 911	150.00
SHUTTLEWORTH & INGERSOLL	PFAS ENVIRONMENTAL MATTERS	88.00
SHALAYA AUSTIN	NOV 23 AMBULANCE STIPEND	36.00
POSITIVE PROMOTIONS, INC	SHIELD STICKERS-POLICE DEPT	330.95
JEREMIAH JACOBSEN	NOV 23 AMBULANCE STIPEND	40.00
BOUND TREE MEDICAL, LLC	EMS OPERATING SUPPLIES	63.92
PAYROLL CHECKS	PAYROLL CHECKS ON 12/08/2023	54,038.83
	CLAIMS TOTAL	181,984.76
	GENERAL FUND	88,197.78
	LIBRARY FUND	7,656.60
	PARKS FUND	1,688.22

CEMETERY FUND	2,028.23
ROAD USE FUND	6,057.88
9TH STREET PROJECT FUND	3,554.00
PFAS FUND	35,729.59
WATER UTILITY FUND	6,643.21
SEWER UTILITY FUND	29,744.38
LANDFILL/GARBAGE FUND	684.87

Accept City Clerk/Treasurer's Report for November 2023 which includes receipts: General \$263,123.48, Library \$28,051.21, Parks \$8,162.50, Cemetery \$7,091.67, Road Use \$50,585.78, Employee Benefit \$11,634.80, Police & Fire Pension \$22,585.22, Cross – TIF \$2,130.69, Low/Moderate Housing-Cross \$1,305.91 P. C. & R. Howson Trust \$3.59, Debt Service \$47,058.66, Water Utility Fund \$4,594.40, Sewer Utility \$8,643.74, Landfill/Garbage \$2,950.56; Approve renewal of Class B Retail Alcohol License as submitted by Kwik Trip, Inc. dba Kwik Star #632 effective 02/08/2024; Accept Resignation from Janeen Reuter, Library Board, effective December 7, 2023; Receive, accept and place on file draft minutes from the Library Board meeting on December 6, 2023; Receive, accept and place on file draft minutes from the Park and Recreation Commission meeting on December 11, 2023; Accept and place on file the report of Library Board Liaison Bowman; Accept and place on file the Auditor's Report for Fiscal Year 2023; Approve TIF Payment RJ Edens Rental Property \$53,930.13; Approve TIF Payment Cross Roads Land Development, L.L. C. \$13,959.88. On roll call – all Ayes.

Grow Clinton representatives Andy Sokolovich and Matt Parbs spoke to the Council regarding the Renewal of 28E Agreement Concerning Collaborative Lobbying Effort by and Between Governmental Entities in Clinton County, Iowa. They explained that Grow Clinton manages the agreement and said Eide Walton are our lobbyists. The agreement is between the City of Clinton \$7,400, Clinton County \$7,400, Camanche \$1,300, DeWitt \$1,300 and Grow Clinton \$2,600. One lobbyist is a Democrat and one lobbyist is a Republican. At the last Council meeting, there was discussion about the return on our investment and a feeling like we are not getting any help. Tom Determann spoke and said to let him know if there are any changes we would like to see; he is willing to take it to committee.

Moved by Councilman Bowman, second by Councilman Varner to Renew 28E Agreement Concerning Collaborative Lobbying Effort by and Between Government Entities and Cooperative Entities in Clinton County, Iowa. On roll call – Ayes – Councilmen Varner, Bowman and Rolston. Nay – Councilman Weller

ABM Representatives Dan Lawlor and Dan Choi gave a presentation. They reminded Council of the partnership that was approved by Council at the end of April to work on an energy and water meter project. They said no action is needed at this meeting. The cost of the project is \$3,696,189.00, which, if ABM financed it, would be 12 payments of \$484,130.00 or a total of \$5,809,560.00. They project savings over 20 years of \$2,245,261.00. The full power point presentation is in the Public Packet on the City website. They will be back on January 2<sup>nd</sup> and looking for overall approval on January 16<sup>th</sup>. Public Works Director Pewe asked if they had a price on the Water Package alone. Dan Lawlor said the pricing is for the whole package. Councilman Bowman said he thought we were going to be looking at these as three separate projects. Kida said this can be discussed on January 2<sup>nd</sup>.

Under New Business, Kida explained the Public Hearing Notice for rezoning land for the Solar Overlay was reissued due to the timing of the publication. It has also been reworded so it is a little clearer for the property owners within 200 feet. Mayor Pruett read the Resolution.

Moved by Councilman Bowman, second by Councilman Rolston to Adopt a Resolution calling for a Public Hearing to Re-Zone certain portions of land currently designated M-2/M-3 Heavy Industrial and Ab Agricultural Rural as M-RE Renewable Energy Overlay. On roll call – all Ayes.

City Engineer Dan Solchenberger informed Council that construction of Well #7 will require a temporary roadway, an extension of Edens Avenue with a planned bid opening of January 10<sup>th</sup> and an award date of January 16<sup>th</sup>. Opening of the bids for drilling of the well will be on January 26<sup>th</sup> with an award date of February 6<sup>th</sup>. A map was displayed to show where the

work will take place. The well will be south of 14<sup>th</sup> Avenue and will be 1300 feet deep. Councilman Bowman clarified this will all be paid for by 3M.

Moved by Councilman Bowman, second by Councilman Weller to Approve City Engineers Shive-Hattery to administer bid process for Gravel Sub-Base extension of Edens Avenue and Deep Well Construction on Parcel ID 1019552000. On roll call – all Ayes.

City Administrator Kida led a discussion about the City's existing policy, Resolution 20-37 Establishing a Policy for the Selling of Right of Way on Public Avenues where 100 foot Right of Way exists, which allows residents to purchase right-of-way on avenues but not streets. Instead of selling Street right-of-way, his proposal is to change the setback on 1<sup>st</sup> Street, along the river side, to allow property owners to build up to the property line. This would need to go through the Planning and Zoning Commission to amend the Zoning Ordinance. The requirements would be that the property must abut the river and it would need to be a 100' Street. The other option would be to change the Resolution, thus changing the policy and opening it up to 2<sup>nd</sup> and 3<sup>rd</sup> Streets. Councilmen Bowman and Varner don't see a problem with this. Councilman Weller thinks it is a feasible solution. Kida will put it on a P & Z agenda.

Chief Schmitz informed Council he has applied several times to CCDA for a grant to help with repairs to the back parking lot at the Police Station and the HVAC at the Station. The grant was denied again so he is requesting the ability to use \$31,000 that was originally budgeted for the shooting range to do this work, as we will not be doing the shooting range this year.

Moved by Councilman Bowman, second by Councilman Varner to authorize Chief Schmitz to use \$31,000 of his range budget for HVAC and the back parking lot. On roll call – all Ayes.

Moved by Councilman Bowman, second by Councilman Weller to Accept Resignation, effective December 16, 2023, from Officer Tyson, Camanche Police Department. On roll call – all Ayes.

Moved by Councilman Varner, second by Councilman Bowman to Authorize Chief Schmitz to fill the vacancy in the Police Department created by the December 16, 2023 resignation. On roll call – all Ayes.

Chief Schmitz presented the November 2023 Police Department Report.

City Administrator Kida presented Councilman Varner with a plaque commemorating his 16 years of service on the Council and as Mayor Pro Tem. Also, 9<sup>th</sup> Street has been cleaned up with the reinsertion of signs still to be done. Mayor Pruett thanked Councilmen Schnoor and Varner for their service on the Council. Councilman Varner said this was his 384<sup>th</sup> meeting, not counting all of the Library, Historical Board and Landfill meetings. He thanked his wife for always supporting him. Councilman Bowman thanked Varner and Schnoor and welcomed our new members. He reported that he went to the Legislative Coffee last week and the project in Clinton is supportive housing and not a homeless shelter. Also, as Liaison to the Library Board, would like a discussion about the Library Board on the next agenda, as well as a Budget Amendment to pay the insurance and parking lot expenses the Board voted to not pay, on the next Council Agenda. Councilman Weller thanked Varner and Schnoor and welcomed our new members. Chief Schmitz said the Civil Service List was exhausted with the extension of a conditional offer to the candidate on the list so we will be accepting applications and participating in a Job Fair on Monday. He would like to have the speed limit on 9<sup>th</sup> Street on the next agenda.

Mayor Pruett called for Public Comments. There were none.

A brief recess was taken at 7:22 p.m.

The meeting reconvened at 7:32 p.m. for a FY2025 Budget Workshop. Kida led the discussion which covered taxable property valuations, bonding capacity and the Capital Improvement Plan. He noted the CIP calls for the splash pad this year. The current levy is \$12.45 and projects the levy will be \$12.25 for FY2025.

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He listed challenges for FY2024 and for FY2025 as well as the goals of this budget. Councilman Bowman asked about the proposed Storm Water Utility. In-coming Councilman Klahn asked some questions about the splash pad maintenance and a budget for that.

In depth discussions followed. There will be further budget discussions at another workshop after the next Council meeting.

Mayor Pruett adjourned the meeting at 9:11 p.m.

Austin Pruett  
Mayor

Toni Schneider  
City Clerk/Treasurer

CLAIMS REPORT

VENDOR	REFERENCE	AMOUNT	CHECK #	CHECK DATE
AFLAC	AFLAC - PRETAX	465.00	10319811	12/22/2023
ALEXIS FIRE EQUIP CO INC	REPLACE SIREN-FIRE TRUCK	2,636.83	93005	12/29/2023
ALLIANT ENERGY	GAS SERVICE	1,925.26	93006	12/29/2023
BLUE CROSS BLUE SHIELD	HEALTH INSURANCE PREMIUMS	1,423.92	92996	12/22/2023
BLUE CROSS BLUE SHIELD	HEALTH INSURANCE PREMIUMS	19,903.79	93007	12/29/2023
CENTURYLINK	TELEPHONE EXPENSE	1,080.72	92998	12/20/2023
CENTURYLINK	TELEPHONE EXPENSE	115.92	93008	12/29/2023
CINTAS	UNIFORM DEDUCTION	44.01	92997	12/22/2023
CLINTON NATIONAL BANK	FED/FICA TAX WITHHOLDING	11,394.93	10319807	12/22/2023
CLINTON NATIONAL BANK	FED/FICA TAX WITHHOLDING	502.74	10319833	1/1/2024
CLINTON NATIONAL BANK	FED/FICA TAX WITHHOLDING	694.23	10319834	1/2/2024
CLINTON PRINTING COMPANY	DELINQUENT NOTICES-CH,PD PRINTING	370.00	93023	1/2/2024
CONTINUOUS TOUCH, LLC	SIP TRUNKING	150.53	93024	1/2/2024
CROSS ROADS LAND DEVELOPMENT	TIF PAYMENT-EAST RIVER COURT	13,959.88	92999	12/20/2023
ERIC MICHAEL DAU	NOV 20 AMB STIPEND-REISSUE	40.00	93004	12/20/2023
FBI-LEEDA	CHIEF RICHARD SCHMITZ JR DUES	50.00	93025	1/2/2024
GALE/CENGAGE	BOOKS/DVDS	180.74	93026	1/2/2024
IOWA GEMT PAYMENT PROGRAM	STATE SHARE-GEMT-JAN 2024	914.64	10319829	12/26/2023
HAWKINS, INC	140 GAL AZONE, 95 GAL LPC	3,269.16	93027	1/2/2024
HOME DEPOT CREDIT PLAN	TOOLS,TIES,TAPE MEASURE-PWORKS	83.29	10319832	1/2/2024
HSA ACCOUNTS	HSA- EMPLOYEES	2,850.00	10319812	12/22/2023
IPERS	IPERS	9,316.65	10319808	12/22/2023
J & C ENTERPRISES	NOV 23 COLLECTION	95.68	93028	1/2/2024
J.P. COOKE COMPANY	DOG, CAT TAGS	163.55	93009	12/29/2023
LECTRONICS INC	ALARM SERVICE-CITY HALL	30.00	93029	1/2/2024
PRINCIPAL LIFE INSURANCE CO.	LIFE INSURANCE PREMIUMS	260.53	92994	12/22/2023
PRINCIPAL LIFE INSURANCE CO.	LIFE INSURANCE PREMIUMS	978.41	93010	12/29/2023
MICHAEL FREDERICK	BOOKS 7 & 8 FIRE OF GRACE	50.00	93000	12/20/2023
MICROMARKETING LLC	CDS/DVDS	91.77	93030	1/2/2024
MID-AMERICAN RESEARCH CHEMICAL	WASP & HORNET KILLER-PUBLWORKS	172.31	93011	12/29/2023
MIDAMERICAN ENERGY CO	ELECTRIC SERVICE	3,858.81	93013	12/29/2023
MIDWEST GROUP BENEFITS	WEEKLY CLAIMS	82.75	10319830	12/28/2023
MIDWEST GROUP BENEFITS	WEEKLY CLAIMS	475.14	10319831	12/20/2023
MUELLER CO	ANNUAL MOBILE TRANSCEIVER MAINT	2,068.08	93001	12/20/2023
MUNICIPAL FIRE & POLICE	MUNICIPAL PENSION	11,394.78	10319809	12/22/2023
MUNICIPAL FIRE & POLICE	MUNICIPAL PENSION	1,785.46	10319835	1/2/2024
PARTS AUTHORITY LLC	ELEMENT-#33 AMBULANCE	128.81	93014	12/29/2023
PCC AMBULANCE BILLING SERVICE	NOV 23 AMB BILLING SERVICE	1,681.13	93015	12/29/2023
NAPA AUTO PARTS	HYDR HOSE,FITTINGS-BARSCREEN	510.64	93016	12/29/2023
QC ANALYTICAL SERVICES LLC	SAMPLE ANALYSIS	125.00	93017	12/29/2023
QUILL CORPORATION	PRINTER INK-PWORKS,OFF SUPPL-CH	241.92	93018	12/29/2023
REPUBLIC SERVICES	DEC 23 CITY COLLECTION,FALL LG ITEM	37,449.34	93019	12/29/2023
RJ EDENS RENTAL PROPERTIES LLC	TIF PMT-3RD ST,9TH TO 9TH,4TH ADD	53,930.13	93002	12/20/2023
RK AUTOGRAPHICS INC.	NO DUMPING SIGNS-DUNN RD SITE	590.00	93031	1/2/2024
SHIVE-HATTERY ENGINEERS	ENG-TEMP POWER OPTIONS-WELL 5	37,245.72	93032	1/2/2024



SPARKLEAN	DEC CLEANING-CCENTER,LIB,CHALL,PW	985.00	93033	1/2/2024
TEMP ASSOCIATES-IOWA, INC	LIBRARY-SPRINGER/ZAMORA 12/17	1,135.51	93034	1/2/2024
TOM MCMANUS BACKHOE AND	EXCAV WATER MAIN-5TH ST/4TH AV	1,187.50	93035	1/2/2024
TREASURER STATE OF IOWA	STATE WITHHOLDING TAXES	5,223.41	10319810	12/22/2023
UMB BANK N.A.	SVC FEE-WASH BLVD,ANAMOSA,SEWER	750.00	93020	12/29/2023
US CELLULAR	PD CELL PHONES,MOBILE 311 DATA	613.10	93021	12/29/2023
VOYA INSTITUTIONAL TRUST CO	457 PLAN DEDUCT	1,814.00	92993	12/22/2023
WINDSTREAM CORPORATION	PHONE/LONG DISTANCE	306.20	93022	12/29/2023
XOP NETWORKS INC	FIRE BAR SERVICE 1/1-3/31/24	779.00	93003	12/20/2023
Total Paid On: 12/22/23	PAYROLL ON 12/22/23	48,145.10		
Total Paid On: 1/01/24	PAYROLL ON 01/01/24	6,180.16		
Total Paid On: 1/02/24	PAYROLL ON 01/02/24	2,893.06		
	***** REPORT TOTAL *****	294,794.24		

CHECK NO	DATE	EMP NO	PAY TO THE ORDER OF	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
1			CITIZEN'S FIRST BANK 073922762				
6651	12/22/2023	9500	HAROLD W TEAGARDEN	1423.37			
6652	12/22/2023	10400	GAYLON S PEWE	2040.78			
6653	12/22/2023	10900	JEFFREY J APLIN	75.13			
6654	12/22/2023	3900	MICHAEL G YACKSHAW	250.00			
6655	12/22/2023	3900	MICHAEL G YACKSHAW	1537.80			
6656	12/22/2023	4000	DARYL W YODER	2429.52			
6657	12/22/2023	7700	NATHAN P CAMPIE	125.00			
6658	12/22/2023	7700	NATHAN P CAMPIE	1890.66			
6659	12/22/2023	1800	WILLIAM J LODGE	425.00			
6660	12/22/2023	1800	WILLIAM J LODGE	333.00			
6661	12/22/2023	1800	WILLIAM J LODGE	1361.73			
6662	12/22/2023	2800	RICHARD E SCHMITZ	1514.38			
6663	12/22/2023	2800	RICHARD E SCHMITZ	1250.00			
6664	12/22/2023	3200	KELLI J ELLIOTT	1654.46			
6665	12/22/2023	3200	KELLI J ELLIOTT	378.01			
6666	12/22/2023	8600	CORY J SNODGRASS	1235.00			
6667	12/22/2023	8600	CORY J SNODGRASS	1108.01			
6668	12/22/2023	8700	ANDREW M WEINGART	2351.48			
6669	12/22/2023	9700	BRITTNEY R PARKS	2102.06			
6670	12/22/2023	10800	JOE W TYSON	1754.89			
6671	12/22/2023	1900	JEFFREY D MOORE	2677.82			
6672	12/22/2023	3000	DAVID C SCHUTTE	2673.20			
6673	12/22/2023	3300	JAMES F SOWLE	400.00			
6674	12/22/2023	3300	JAMES F SOWLE	1658.58			
6675	12/22/2023	9100	MITCHELL L JAHNS	2669.81			
6676	12/22/2023	9200	JACOB M VANZUIDEN	1100.00			
6677	12/22/2023	9200	JACOB M VANZUIDEN	600.00			
6678	12/22/2023	9200	JACOB M VANZUIDEN	392.97			
6679	12/22/2023	700	ANNA L EVANS	1543.00			
6680	12/22/2023	5100	NANCY J MCDUGALL	483.36			
6681	12/22/2023	10000	SHAINA J PAARMANN	464.32			
6682	12/22/2023	800	RUTH I EVANS	353.38			
6683	12/22/2023	9400	ROB J PUTMAN	213.81			
6684	12/22/2023	7000	ANDREW S KIDA	700.00			
6685	12/22/2023	7000	ANDREW S KIDA	1431.43			
6686	12/22/2023	7300	TONI L SCHNEIDER	55.00			
6687	12/22/2023	7300	TONI L SCHNEIDER	40.00			
6688	12/22/2023	7300	TONI L SCHNEIDER	185.00			
6689	12/22/2023	7300	TONI L SCHNEIDER	1392.94			
6690	12/22/2023	10700	SHAUNA E TEGELER	1069.04			
6691	12/22/2023	5000	CHRISTY J SCHUTTE	40.00			
6692	12/22/2023	5000	CHRISTY J SCHUTTE	150.00			
6693	12/22/2023	5000	CHRISTY J SCHUTTE	1228.86			
6694	12/22/2023	6600	TROY F ALDERMAN	1382.30			
			BANK TOTAL	48145.10			
			REPORT TOTAL	48145.10			

CHECK NO	DATE	EMP NO	PAY TO THE ORDER OF	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
1			CITIZEN'S FIRST BANK				
93036	1/01/2024	1800	WILLIAM J LODGE	433.47			
93037	1/01/2024	2800	RICHARD E SCHMITZ	443.47			
93038	1/01/2024	3200	KELLI J ELLIOTT	443.47			
93039	1/01/2024	8600	CORY J SNODGRASS	443.47			
93040	1/01/2024	8700	ANDREW M WEINGART	421.55			
93041	1/01/2024	9700	BRITTNEY R PARKS	421.55			
93042	1/01/2024	1900	JEFFREY D MOORE	403.47			
93043	1/01/2024	3000	DAVID C SCHUTTE	421.55			
93044	1/01/2024	3300	JAMES F SOWLE	438.09			
93045	1/01/2024	9100	MITCHELL L JAHNS	421.55			
93046	1/01/2024	9200	JACOB M VANZUIDEN	443.47			
93047	1/01/2024	7900	DANNY R WELLER	138.52			
93048	1/01/2024	8900	MARTIN A SCHNOOR	129.08			
93049	1/01/2024	9000	DAVID M BOWMAN	138.52			
93050	1/01/2024	10300	AUSTIN J PRUETT	761.89			
93051	1/01/2024	11300	JUSTEN E ROLSTON	138.52			
				-----			
				6041.64			
			ACH TRANSACTIONS				
6695	1/01/2024	3700	PAUL E VARNER	138.52			
				-----			
				138.52			
			BANK TOTAL	6180.16			
			REPORT TOTAL	6180.16			

PRUPDT00  
07.14.22

Fri Dec 29, 2023 1:01 PM  
PAID THROUGH 1/02/2024

City of Camanche IA  
CHECK REGISTER  
CALENDAR 1/2024, FISCAL 7/2024 DATES 1/02/2024 -- 1/02/2024

OPER: TS  
JRNL 3151  
BI-WKLY 1ST/MID CHK OF MO

CHECK NO	DATE	EMP NO	PAY TO THE ORDER OF	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
1 6696	1/02/2024	3000	CITIZEN'S FIRST BANK 073922762 DAVID C SCHUTTE	2893.06			
			BANK TOTAL	2893.06			
			REPORT TOTAL	2893.06			

**CLAIMS REPORT  
CLAIMS FUND SUMMARY**

FUND	NAME	AMOUNT
001	GENERAL	106,712.29
002	LIBRARY	7,317.78
003	PARKS	2,090.92
004	CEMETERY	1,229.57
110	ROAD USE	44,316.98
125	EDENS - TIF	53,930.13
126	CROSS TIF	13,959.88
200	DEBT SERVICE	750.00
333	PFAS	40,090.29
600	WATER UTILITY FUND	16,815.59
610	SEWER UTILITY FUND	6,088.21
670	LANDFILL/GARBAGE	1,492.60
-----		
	TOTAL FUNDS	294,794.24

March 1st, 2023

The March meeting of the Board of Trustees of the Camanche Public Library was called to order by President Shannon McManus. Roll call was held and members present were Griswold, Foster, Haines, and Reuter, along with Librarian Evans, and City Council liaison Dave Bowman.

A motion to the agenda was made by Trustee Griswold and a second was made by Trustee Foster. All trustees aye. A motion to approve the minutes from the February 1st, 2023 was made by Trustee Griswold and a second was made by Trustee Foster. All ayes by the trustees. Financials for February 2023 were discussed and discussion was held regarding group insurance and budget. Trustee Griswold made a motion to approve the February Financials and a second was made by Trustee Haines. Trustee Griswold made a motion to approve the claims of \$4930.47 (bills/book orders) with Trustee Foster seconded the motion. Unanimous consent of the board members was done through roll call.

Book orders in the amount of \$1000.90 were approved to order from Ingram.

New Bills for March 2023 approved for payment:

- Amazon (books/supplies) \$686.30
- MicroMarketing (books/audio/DVD) \$435.43
- MidAmerica \$239.20
- PlayAway (audio books) \$304.96
- Penworthy (children's books) \$500.00
- Alliant \$817.45
- Culligan \$10.00
- PrestoX \$38.50
- Sparklean \$125.00
- Hobby Lobby (supplies) \$91.77
- Oriental Trading (Summer Reading Program/Maker space) \$555.34
- New Life Computers \$50.00
- Library Store (book supplies) \$75.62

Total of bills including Ingram: \$4930.47

Grand Total of Bills: \$4930.47

Director's Report:

Financial: Librarian Evans introduced the topic of donations/memorials and making sure these donations are deposited in the correct funding line to reflect the intention of the donator. If the donations are given to the Friends of the Library, there is more control over what the donations are used for. Otherwise, the funds are added to our budget and will need a budget amendment. Librarian Evans will talk Toni, the city clerk, regarding this issue.

Personnel/Operational: Librarian Evans reported she has not heard from the city council regarding hiring another person and discussion was held over bringing this matter to the city council in March. Librarian Evans was directed to email the mayor to be placed on the agenda and request a budget

change to allow to hire this individual. A board trustee and Librarian Evans will then need to present to the council why it won't fit in the library's current budget and how much it will be (just over \$3000).

Programming: no report

Collection Development: no report given

Facilities: no report given

Summer Reading Program: no report

Miscellaneous: no report

#### Old Business:

Librarian Evans explained the library has received a letter from the Clinton County Health Department regarding the radon testing completed on the library. The levels in the basement were high, but the levels on the main level were at an acceptable level. Galen Pewe from the City of Camanche Street Department proposed running a pipe into the old chimney in the basement to vent the gas out of the basement. A motion was made by Trustee Griswold to obtain at least two quotes on addressing the radon levels in the basement as a basement walk through is completed weekly to monitor the basement conditions. A second was made by Trustee Foster and all trustees were aye.

Librarian Evans explained an annual evaluation regarding her performance needs to be completed and she handed out evaluation forms which need to be completed. The time period covered by this evaluation is 1/2022 to 12/2022. The evaluation can be discussed during a closed session of the Library Board meeting if Librarian Evans requests it.

Librarian Evans provided an example of the City Hall request for proposal packet for the board to review as the city and library will plan to seek the referendum for the renovation in 2025 and the fiscal year 2028 for the building. There will be a committee of 6 individuals comprised of 2 board trustees, Librarian Evans, a library employee, City Council member Bowman, City Administrator Kida, and the public. This will involve a great deal of commitment of time and information gathering by the committee.

#### New Business:

No new business

#### Liaisons Report:

Council member Bowman provided a brief report and was available for any questions by the board.

There were no public comments. President McManus adjourned the meeting.

The next meeting of the Camanche Public Library Board of Trustees will be held on April 5th, 2023 at 4:00 pm at the Camanche Public Library

Respectfully submitted,

Janeen Reuter, secretary



19 December, 2023

To Historical Board,

I Juli Leonard am resigning my board seat. I do not enjoy the work anymore. It is very stressful at times.

I will turn in my key at the end of this month, December 2023.

-Juli Leonard

A handwritten signature in cursive script that reads "Juli Leonard". The signature is written in black ink and is positioned below the typed name.

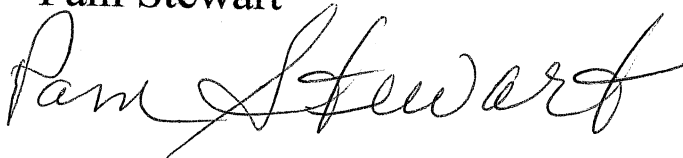
19, December 2023

Historical Board,

I am resigning my seat on the historical board, effective December 31, 2023.

With the health issues that myself and my husband are having, I do not have the energy or desire to continue with the board. I will turn in my key on December 31, 2023. I have to transfer the treasurer's papers and check books to MaDonna Obren and get the accounts over to her charge.

-Pam Stewart

A handwritten signature in cursive script that reads "Pam Stewart". The signature is written in black ink and is positioned below the typed name.

ORDINANCE \_\_\_\_\_

**AN ORDINANCE AMENDING CITY OF CAMANCHE, IOWA CODE OF ORDINANCES TITLE 3 CHAPTER 3 SECTION 10: CHANGING STATE SPEED LIMITS IN CERTAIN ZONES IN ORDER TO INCREASE THE SPEED LIMIT ON 9<sup>TH</sup> STREET BETWEEN 19<sup>TH</sup> AVENUE AND HIGHWAY 67**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAMANCHE, IOWA:**

**Section 1. Purpose.** The purpose of this ordinance is to amend Title 3 Chapter 3 Subsection 10: Changing State Speed Limits in Certain Zones to increase the speed limit on 9<sup>th</sup> Street between 19<sup>th</sup> Avenue and Highway 67 in the City of Camanche

**Section 2. Facts Found.** The City Council hereby makes the following findings of fact:

- 1) The City of Camanche recently improved the infrastructure of 9<sup>th</sup> Street between 19<sup>th</sup> Avenue and Highway 67 by widening the street and installing curb and gutter within the region.
- 2) The Camanche Chief of Police has recommended an increase of the speed limit from 25 MPH to 30 MPH
- 3) The Camanche City Council has reviewed the request and finds it appropriate to increase the speed limit in said area

**Section 3. Amendment.** The Camanche, Iowa, Code of Ordinances 3-3-10 is hereby amended by adding Subsection 13 with the following language:

13. The speed limit on 9th Street between the intersection with US 67 to 19<sup>th</sup> Avenue eastward and westward is thirty (30) miles per hour.

**Section 4. Repealer.** All ordinances or parts of ordinances in conflict with any provision of this ordinance are hereby repealed.

**Section 5. Severability Clause.** If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of this ordinance as a whole, or any section, provision, or part thereof not adjudicated invalid or unconstitutional.

**Section 6. When Effective.** This ordinance shall be in full force and effect from and after its final approval, passage, and publication as provided by law.

Passed by the Camanche City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2024 and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Austin Pruett, Mayor

\_\_\_\_\_  
Attest: Toni L. Schneider, City Clerk

**Certification of Posting**

I, Toni L. Schneider, City Clerk do hereby certify that a copy of this ordinance was posted at Clinton National Bank, Camanche City Hall and the Camanche Public Library on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, as required by law.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Toni L. Schneider, City Clerk

<b>ABM Building Services, LLC</b>		<b>Planned Services Agreement</b>	
<b>Proposal Date</b>	<b>Proposal</b>	<b>Agreement Number</b>	<b>Page</b>
_____	_____	_____	1 of __
BY AND BETWEEN			
ABM _____ _____	AND	_____ _____	
Hereinafter: Contractor		Hereinafter: Customer	
<b>PROJECT DESCRIPTION AND LOCATION; TERMS OF AGREEMENT</b>			
<p>Professional services for energy efficiency improvements for Customer facilities, which improvements are individually listed on Attachment A – Scope of Work.</p> <p>Contractor will provide all professional services, engineering, design, procurement and acquisition of equipment; and installation of the infrastructure improvements, all as further described in in Attachment A – Scope of Work (the equipment, improvements and services, collectively, the “Work”), to deliver a complete installation. The parties agree the Work will be subject to the additional terms and conditions set forth on Exhibits A and B and Appendix A and B hereto.</p> <p>Customer shall pay the total service payments as detailed in Exhibit B. The contract price for the Work will be \$_____. The Work performed under this Agreement will be substantially complete and ready for Customer’s beneficial use within 18 months of Customer’s acceptance and Contractor’s approval of this Agreement.</p> <p>This proposal is proprietary property of Contractor and is provided for Customer’s use only, subject to the requirements of any applicable Open Records Acts. Customer shall notify Contractor of any request under applicable open records law and permit Contractor an opportunity to redact and/or respond. Contractor guarantees the price stated in this Agreement for thirty (30) days from proposal date above. The proposal will become a binding Agreement only after acceptance by Customer and approval by an officer of Contractor as evidenced by their signatures below. This Agreement, including all Exhibits and Attachments hereto, sets forth all the terms and conditions binding upon the parties hereto; and no person has authority to make any claim, representation, promise or condition on behalf of Contractor which is not expressed herein.</p>			
<b>ABM Building Services, LLC</b>		_____	
Signature (Authorized Representative)		Signature (Authorized Representative)	
<b>NAME TITLE</b>		<b>NAME TITLE</b>	
Date		Date	

## Exhibit A

### Terms and Conditions to Planned Services Agreement

The term "Contractor" shall mean and include [ABM ENTITY]

The term "Customer" shall mean and include [CLIENT]

The term "Agreement" shall mean the Planned Services Agreement these including all Exhibits and Attachments thereto..

The term "Project" shall mean the project described more fully in Attachment A hereto, which Attachment is expressly made a part hereof.

The term "Work" shall mean all the equipment, improvements and services to be provided by Contractor in connection with the Project.

1. Contractor warrants that the materials and workmanship provided by the Contractor under this Agreement will be free from defects for a period of 12 months after Customer's acceptance or beneficial use of the systems or any portion thereof, whichever is earlier, provided that the Contractor is given prompt written notice of the defect. In addition, if any replacement part or item of equipment proves defective, Contractor will extend to Customer the benefits of any warranty Contractor has received from the manufacturer. Contractor agrees to act on behalf of the Customer for purposes of processing any warranty claims against applicable manufacturers. Such obligation includes only administrative processing and not enforcement. Contractor agrees to respond to emergency warranty claims of Customer within 24 hours of call from Customer. Customer shall permit only Contractor's personnel or manufacturer's agent to perform the warranty work unless expressly authorized herein. If Contractor responds to a warranty call made at Customer's request and inspection indicates a condition which is not covered under this Agreement, Contractor may charge Customer at the hourly rate for such services. EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED HEREIN, NO OTHER WARRANTIES, EXPRESS OR IMPLIED UNDER LAW, ARE PROVIDED, INCLUDING NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED. Customer expressly assumes the risk of, and agrees to hold Contractor harmless from, damage or liability that results from Customer's selection of lighting equipment, whether lights, bulbs, ballasts, or otherwise, that are incompatible with the system installed under this Agreement.

2. Equipment that is to be replaced shall maintain a high standard of quality. The Customer shall review all product and manufacturer cut sheets on new equipment that is to be installed. The following shall be a minimum standard of equipment:

AS REQUIRED

3. [IF REQUIRED BY CUSTOMER] Contractor shall provide a Performance Bond and Payment Bond in the full amount of the contract price which is \$\_\_\_\_\_. The costs for said bonds shall be included in the contract price. The costs for said bonds shall be included in the contract price. The Payment and performance Bonds shall be issued by a surety company authorized to do business in the State of [CLIENT STATE], having a financial strength rating by A.M. Best Company of "A -" or better and shall be

delivered to Customer prior to Contractor ordering any materials or requesting any payment under the terms of this contract. Contractor shall cause the surety company to add any third party designated by Contractor as co-obligee on each Surety Bond and shall deliver a certified copy of each Surety Bond to such third party.

4. Customer shall permit Contractor free and timely access to areas and equipment and allow Contractor to start and stop the equipment as necessary to perform the Work. All Work under this Agreement will be performed during the Contractor's normal working hours; except that no Work will interfere with Customer's normal business activities. [FOR SCHOOL PROJECTS AS REQUIRED BY CUSTOMER; OTHERWISE DELETE] Contractor shall perform background checks on all employees and sub-contractors who will be working on school property. Contractor agrees to comply with any request from Customer to remove any employee or sub-contractor from school property to the extent permitted by applicable law or collective bargaining agreements.
5. Contractor and Customer agree that all Work required for the Project, including that of all other contractors and subcontractors for the Customer, if applicable, shall be performed in accordance with a schedule of construction activities prepared by Contractor in advance of their commencement. Contractor shall provide a detailed schedule of its activities, their relationship to other activities, and their access requirements and durations, and Contractor agrees to perform such activities with as little disruption to Customer's normal operation as possible. The schedule shall be based upon commencement and completion dates stated in this Agreement. Contractor shall be entitled to an extension of contract time in the event the Work or any part thereof is delayed by any cause beyond Contractor's reasonable control. Such causes include but are not limited to: acts of God or public enemy; compliance with any order, decree, or request of any government authority; acts of declared or undeclared war; sabotage; fire; floods; adverse weather conditions; explosions; accidents; riots; strikes; labor disputes; inability to obtain necessary materials or equipment from normal sources of supply; or any other cause not within the reasonable control of the Contractor ("Excusable Delay"). To the extent Contractor incurs additional cost or expense because of an Excusable Delay caused by the Customer, Contractor shall be entitled to an equitable adjustment in its compensation which shall be documented and paid in accordance with Paragraph 5.
6. Any alteration to, or deviation from, this Agreement involving extra work, cost of materials, or labor will become an extra charge (fixed price amount to be negotiated, or on a time-and-material basis at Contractor's rates then in effect) over the sum stated in this Agreement; and must be approved in advance and in writing by both parties through a duly executed Change Order. Any increased compensation to be paid to Contractor pursuant to this Agreement, including but not limited to any Change Order or provision in this Agreement for adjustment of compensation to Contractor, including without limitation, costs related to an Excusable Delay, such as increased costs for the Work or the need to make payments to a buyer of the contract payments due to the delay ("Increased Compensation"), shall be as agreed by Contractor and the Customer pursuant to a Change Order or as otherwise determined in accordance with this Agreement. Unless otherwise agreed by Contractor and the Customer in a Change Order, such compensation shall be payable monthly pursuant to invoice by Contractor. Each such invoice shall be due and payable thirty (30) days after receipt.
7. Customer shall permit Contractor timely access to the defined construction area and equipment furnished under this Agreement and allow Contractor to start and stop the equipment as reasonably

necessary to perform the Work. All Work under this Agreement will be performed during the Contractor's normal working hours; except that no Work will interfere with Customer's normal business and educational activities. Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the defined construction area.

8. Contractor will not be required to move, replace, or alter any part of the building structure in the performance of this Agreement except as specifically provided for herein.
9. The Contractor shall be entitled to additional compensation or time to complete the Work for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems.
10. This Agreement does not include responsibility for repair or replacement necessitated by freezing weather, electric power failure, low voltage, burned-out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s), requirements of governmental, regulatory or insurance agencies, or other causes beyond control of Contractor.
11. Customer shall make available to Contractor's personnel all pertinent Safety Data Sheets (SDS) pursuant to OSHA's Hazard Communication Standard Regulations.
12. The date of the commencement of the Work shall be fixed in a notice to proceed. No Work shall be commenced until Customer issues such notices to proceed, which may be done in stages authorizing the commencement of certain Work at various times.
13. The Contractor undertakes performance of the Work as an independent contractor. Nothing herein shall create a relationship of employer and employee, joint venture, or partnership between the Customer and the Contractor, its agents, representatives, employees, consultants, the Customer or any subcontractor, for any purpose whatsoever. Nothing herein shall create a relationship of principal and agent between the Customer and the Contractor, its agents, employees, representatives, consultants, Customer, or subcontractor. Neither party shall have the authority to bind or obligate the other as a result of the relationship created hereby. As an independent contractor, the Contractor: (a) shall provide supervision of the Contractor's agents, employees, and consultants; and (b) agrees to perform all of the Contractor's obligations under this Agreement in accordance with the Contractor's own methods subject to compliance with this Contract. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portion of the Work under the Contract. Any direction or instruction by the Customer or any of the Customer's authorized representatives shall be considered to have been given exclusively as evidence of the Customer's desire to obtain certain results from the Work and shall in no way affect the Contractor's status as an independent contractor.
14. Asbestos Containing-Materials and Other Hazardous Materials: Contractor's obligation under this Agreement does not include the identification, abatement or removal of any asbestos products or



other hazardous substances. In the event such products or substances are encountered, Contractor's sole obligation will be to notify the Customer of the existence of such products and materials. Contractor shall have the right thereafter to suspend its Work until such products and materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.

Environmental Indemnity: Notwithstanding any other provision of the Contract, and to the fullest extent permitted by law, Customer shall indemnify and hold harmless Contractor and Contractor's subcontractors, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from the Customer's use, or the storage, release, discharge, handling or presence of asbestos-containing materials, mold (actual or alleged and regardless of the cause of such condition) or hazardous materials not provided by Contractor on, under or about the facility, or the noncompliance with this section titled, "Asbestos Containing-Materials and Other Hazardous Materials."

15. **Insurance.** Contractor shall maintain the following insurance: 1) Commercial General Liability insurance with limits for bodily injury and property damage of not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate; 2 ) Commercial Automobile Liability insurance with limits of liability for bodily injury and property damage of not less than \$5,000,000 combined single limit; 3) Workers' Compensation insurance with statutory limits and with an employer's liability limit of at least \$1,000,000 and 4) Excess liability limits of \$5,000,000 on above coverages. Contractor has the right to be self-insured where permitted by state law or to provide such coverage subject to a deductible or self-insured retention. Commercial General Liability and Automobile Liability policies shall apply on a primary and noncontributory basis and Customer shall be included as an additional insured under the General Liability and Automobile Liability policies, but only to the extent Customer is indemnified herein. Contractor, Customer and their insurers shall waive all rights of subrogation against one another for property damage claims. Upon request, Contractor will provide Customer with a certificate of insurance describing the coverage provided in accordance with these provisions and 30-day advance notice of cancellation/non-renewal will be provided. **Customer will carry a policy of builder's risk insurance on each building while then subject to the Work, including extended coverage, with limits equal to the replacement value of such building, including equipment installed thereon under this Agreement. Customer shall cause Contractor and its subcontractors to be included as additional insureds under such policy.**
16. Contractor agrees to indemnify, defend, and hold harmless Customer from and against any and all third-party claims, losses, or liabilities for personal injuries or property damages, as well as costs and expenses incurred in the defense thereof (including reasonable attorney's fees), to the extent caused by Contractor's negligence, willful misconduct or other fault of Contractor in the performance of the Work under this Agreement.
17. Customer agrees, to the extent permitted by law, to indemnify, defend, and hold harmless Contractor from and against any and all third party claims, losses, or liabilities for personal injuries or property damages, as well as costs and expenses incurred in the defense thereof (including reasonable attorney's fees), to the extent caused by Customer's negligence, willful misconduct, or other fault; provided,

however, that no language, agreements or covenants contained herein shall be deemed to waive any available defenses of official immunity or sovereign immunity of the customer, its agents, elected and appointed officials, employees, together with their heirs and assigns which are specifically preserved.

18. **LIMITATION OF LIABILITY.** EXCEPT TO THE EXTENT OF A PARTY'S INDEMNITY OBLIGATIONS FOR THIRD PARTY CLAIMS AND PAYMENT DISPUTES, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY OR LOSS OF PROSPECTIVE REVENUE, ARISING OUT OF THIS AGREEMENT OR ANY WORK PERFORMED OR TO BE PERFORMED HEREUNDER.
19. Contractor shall not be liable for any delay, loss, damage or detention caused by acts of God or public enemy; compliance with any order, decree, or request of any government authority; acts of declared or undeclared war; sabotage; fire; floods; adverse weather conditions; explosions; accidents; riots; strikes; labor disputes; inability to obtain necessary materials or equipment from normal sources of supply to the extent such liability is unforeseeable; or any other cause not within the reasonable control of the Contractor.
20. Contractor expressly disclaims any and all responsibility and liability for the indoor air quality of Customer's facility, including without limitation injury or illness to occupants of the facility or third parties, except to the extent of Contractor's adjudicated negligent acts or omissions or willful misconduct. However, nothing contained in the previous sentence shall be construed to affect any specific representation or responsibility of the Contractor in regard to the indoor air quality or improvement thereto regarding any facility of the Customer as specifically set forth in this agreement and any attachments or exhibits hereto.
21. When the Work is completed and acceptable under the Agreement and the Agreement has been fully performed, the Contractor will promptly issue a final invoice stating that to the best of the Contractor's knowledge, information and belief, the Work has been completed in accordance with terms and conditions of the Agreement and that the entire balance of the contract price found to be due the Contractor.
22. Contractor shall have the right to terminate this Agreement upon 1) a material breach by Customer which remains uncured following thirty (30) days written notice or 2) if Customer's facility or the Equipment is condemned or destroyed, in whole or in part and not promptly repaired or replaced in full. Upon such a termination, all obligations of Contractor and the Customer (other than the obligation to make payments already due and payable under this Agreement) will immediately cease.
23. **Dispute Resolution:** Any controversy, claim, counterclaim, or dispute between the parties (or their affiliates) arising out of or relating to this Agreement or the subject matter hereof (including, without limitation, any questions concerning the scope and applicability of this paragraph) shall be attempted to be resolved by mediation. If the mediation fails to resolve the controversy, it shall be finally settled by arbitration held in [COUNTY, STATE] with one arbitrator in accordance with Commercial Arbitration Rules of the American Arbitration Association (or any successor to the functions thereof). The arbitrator shall apply the substantive laws of the state of [STATE]. Any decision or award of the arbitrator shall be final,

binding and conclusive on the parties to this Agreement. The parties agree that any action to compel arbitration pursuant to this Agreement, to confirm any decision or award of the arbitrator, or to enforce any other remedies which may be necessary to effectuate such decision or award, may be brought in the courts for the county of (or judicial districts for) [COUNTY, STATE] and in connection with such action to compel the laws of that state (or, as applicable, the Federal Arbitration Act) shall control. The parties hereto hereby consent to the jurisdiction of the arbitrator and of such courts and waive any objection to the jurisdiction or venue of such arbitrator and courts.

24. If applicable, any tax benefits, rebates or deductibles such as, but not limited to, those under section 179D of the Internal Revenue Code regarding the Energy Policy Act of 2005 are assigned to Contractor as part of this Agreement. Customer will use commercially reasonable efforts to assist with executing any necessary documents for Contractor to obtain such benefits.

25. **Customer Payment.** Payments shall be made by Customer in accordance with Exhibit B.

26. Progress Payments.

- (a) From time to time Contractor may provide to Customer a Request to Draw Funds ("Progress Payment Request") in connection with Contractor's obtaining progress payments ("Progress Payments") for the Work from financing arranged by Contractor through the sale by Contractor to a financial institution of payments listed in Exhibit B, Appendix 1 and certain other payment and other rights owed by Customer to Contractor pursuant to this Agreement.
- (b) Each Progress Payment shall be the sum of Contractor's costs and fees inclusive of margin for the Work provided by Contractor to the date specified in the Progress Payment Request, less the amount requested by Contractor in prior Progress Payment Requests; provided, however, that the aggregate amount of Progress Payments shall not exceed the total price of the Work which is \$XXXXXXXXXX (the "Total Work Price"), as may be adjusted from time to time. At any time, the costs and fees of Work provided by Contractor shall include, but shall not be limited to, the sum of:
  - (i) costs for engineering, design and development of the Work, including but not limited to costs incurred prior to the date of this Agreement,
  - (ii) mobilization fees,
  - (iii) staging costs,
  - (iv) the cost of materials and services ordered but not yet received by Contractor under binding agreement, and
  - (v) the cost of engineering, design, labor and materials relating to wholly and partially completed Work and portions of the Work.
- (c) Unless Customer shall reasonably determine that the extent of Work provided by Contractor as noted in the Progress Payment Request is not accurate, Customer shall approve such Progress Payment Request by executing and returning the same to Contractor within ten (10) days of receipt. If Customer fails so to execute and return the Progress Payment Request, Customer shall by the end of such ten (10) day period provide to Contractor a written statement specifying in reasonable detail the bases for Customer's determination that the extent of Work

as noted in the Progress Payment Request is not accurate (a "Progress Payment Objection Statement"). Thereafter, Customer and Contractor shall work in good faith to resolve such matters as so identified by Customer as quickly as reasonably practicable. Contractor may modify any Progress Payment Request as needed to make it acceptable to Customer and again seek Customer execution and approval as provided above. Any failure by Customer to provide either such execution and return of a Progress Payment Request or a Progress Payment Objection Statement within ten (10) days after receipt of the Progress Payment Request shall be deemed an approval of the Progress Payment Request as provided by Contractor and authorization of Contractor to execute the Progress Payment Request on behalf of Customer.

The Customer acknowledges that Contractor may submit Progress Payment Requests as approved or deemed approved by Customer to a third-party financial institution so that Contractor may collect Progress Payments in respect of performance of the Work.

27. **Confidentiality.** (a) As used herein, "Confidential Information" means all information, including this Agreement, that is furnished by a discloser, its affiliates or subsidiaries, including, but not limited to: business agreements, business secrets, business information, business plans, financial and pricing information, business practices, financial statements and reports, project specifications, projections, schematics and drawings, trade secrets, processes, materials, customer lists, supplier lists, sales volume, territories, markets, current, future or potential acquisitions, technical, production, operational, marketing or sales information or any and all other financial, business, organizational and technological information related to the discloser's business and/or organization, whether or not such information is specifically marked "Confidential" or other similar legend. "Confidential Information" shall include all writings, notes, memoranda, media made by the discloser or its employees, agents or servants with respect to such Confidential Information. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or its Representatives (as defined below), or (b) information that becomes available on a non-confidential basis from a source other than a party to this Agreement and if recipient has no reason to believe such source was subject to any prohibition against transmitting such information.

(b) Recipient shall use the Confidential Information solely in connection with the Agreement and the recipient shall not disclose the Confidential Information to any person other than directors, officers, employees, lenders, counsel, representatives or affiliates of recipient, if any (collectively, "Representatives"), who need to know the Confidential Information in connection with the Agreement. It is understood that (i) such Representatives shall be informed by the recipient of the confidential nature of the Confidential Information and the requirement that it not be used other than for the purposes described above, (ii) such Representatives shall be required to agree to and be bound by the terms of this Agreement with respect to the confidentiality of such Confidential Information as a condition of receiving the Confidential Information and (iii) in any event, the recipient shall be responsible for any breach of this Agreement by any of its Representatives. The Confidential Information shall be safeguarded from unauthorized disclosure and shall not be used in any manner by any party except as may be necessary for the purposes set forth herein. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company, partnership, individual or other entity.

(c) If the recipient or its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the recipient will promptly notify discloser of such request or requirement so that discloser may seek an appropriate protective order or waiver in compliance with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the recipient or its Representatives are, in the written opinion of counsel, compelled to disclose the Confidential Information or else stand liable for contempt or suffer other censure or significant penalty, the recipient may disclose only such of the Confidential Information to the party compelling disclosure as is required by law.

(d) The obligations under this Section will survive any termination or expiration of this Agreement indefinitely.

28. **No Partnership.** Nothing in this Agreement shall (i) be deemed to constitute a partnership in law between the parties, (ii) constitute any party the agent of the other for any purpose or (iii) entitle any party to commit or bind the other (or any member of its respective group) in any manner.
29. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
30. **Entire Agreement and Disclaimer of Reliance.** This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter in this agreement terminated and canceled in their entirety and are of no further force or effect. The parties represent that they have not relied on any promise, representation, or warranty, express or implied, not contained in this Agreement, and any such reliance is hereby disclaimed.
31. **No Third-Party Rights.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.
32. **Legal Capacity.** Each of the parties and signatories to this Agreement has the full right, power, legal capacity and authority to enter into and perform the party's respective obligations under this Agreement, and no approvals or consents of any other person are necessary in connection with that authority.
33. **Successors and Assigns.** All of the terms and provisions contained in this Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, legal representatives, successors and assigns. No party may assign, transfer, or novate any of its rights and obligations either in whole or in part to any other person or entity without the written consent of the other.
34. **Further Assurances.** Each of the parties to this Agreement shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably

necessary in connection with the performance of their obligations under this Agreement to carry out the intent of the parties to this Agreement.

35. **Attorney's Fees.** Should any party engage an attorney or institute any action or proceeding at law or in equity, or in connection with an arbitration, to enforce any provision of this Agreement, including an action for declaratory relief, or for damages by reason of an alleged breach of any provision of this Agreement, or otherwise in connection with this Agreement, or any provision of this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable and necessary attorney fees and costs for services rendered to the prevailing party in that action or proceeding.
36. **Independent Counsel.** All of the parties warrant and represent that they have been advised that they should be represented by counsel of their own choosing in the preparation and analysis of this Agreement; that they have been represented by independent counsel or have had the opportunity to be represented by independent counsel; and that they have read this Agreement with care and believe that they are fully aware of and understand its contents and its legal effect.

## **Attachment A Scope of Work**

### **Energy Conservation Project for [Client]**

Appendix A is hereby incorporated into this Attachment A by reference.

**[END OF ENTIRE SCOPE]**

## General Notes to Attachment A

Customer's Initials \_\_\_\_\_





## **Exhibit B Payment Agreement**

Payment Terms for Enclosed Scope of Work

## Press Release Authorization

Consent Form



### Consent to Use Name, Logo &/or Quote

ABM requests permission to use \_\_\_\_\_'s logo/photo and potentially a quote, as part of ABM's marketing communications plan.

Your Company consents to ABM's use of your name, logo/photo, and/or customer quote:

(Please check those instances where you are granting your Company's consent.)

In a press release, case study, and/or client profile

In a listing of representative customers on ABM's web site.

In a listing of representative customers in ABM's sales brochure.

In a listing of representative customers in ABM's employee recruiting materials.

In a listing of representative customers in ABM's responses to Requests for Information, Requests for Quotations or Requests for Proposal.

In the ABM Annual Report, Description of Business in the following context: "ABM provides janitorial services for businesses, such as . . ."

This consent is valid until from \_\_\_\_\_ to \_\_\_\_\_.

ABM thanks you for your consideration and assistance in this important request.

**ABM**

\_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

ABM  
800.874.0780  
abm.com

## EXHIBIT B - PAYMENT AGREEMENT

This **PAYMENT AGREEMENT** (the “Agreement”), is dated as of [Dated Date], between [NAME OF ABM ENTITY], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] (together with its successors and assigns, the “Payee”), and [NAME OF CUSTOMER], a [TYPE OF MUNICIPALITY] organized and existing under the laws of the State of [STATE OF CUSTOMER] (the “State”) (“Customer” or “Obligor”).

### BACKGROUND

1. ABM Building Services, LLC and Customer have entered into that certain Bundled Energy Solutions Project Agreement [of even date herewith] (the “Project Agreement”).

2. Customer desires to purchase the services and energy saving improvements described under the Project Agreement (as further described herein, the “Equipment”) and is authorized under the laws of the State to enter into agreements to purchase the Equipment, and Payee agrees to sell the Equipment on the terms set forth herein.

### AGREEMENT

The parties hereby agree as follows:

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

“Agreement” means this Payment Agreement, together any other schedule or exhibit hereto, together with any amendments to this Agreement.

“Commencement Date” is the date when the term of this Agreement and Obligor’s obligation to pay commences, which date will be the date on which sufficient moneys to purchase the Equipment are deposited by the Payee’s assignee for that purpose with an escrow agent.

“Equipment” means the services and energy saving improvements described in Exhibit A, and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.

“Event of Default” means an Event of Default described in **Section 27**.

“Maximum Term” means the Original Term and all Renewal Terms through the Renewal Term including the last Payment Date.

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

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

“Payee” has the meaning set forth above.

“Obligor” has the meaning set forth above.

“Payment Dates” means the dates on which Payments are due.

“Payments” means the payments payable by Obligor pursuant to **Section 8**.

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

“Project Agreement” has the meaning set forth above.

“Purchase Price” means the amount set forth on the Payment Schedule that Obligor may, at its option, pay to Payee to purchase the Equipment.

“Renewal Terms” means the optional renewal terms of this Agreement, each having a duration of one year and a term co-extensive with Obligor’s fiscal year.

“State” has the meaning set forth above.

“Term” means the Original Term and all Renewal Terms, but ending on the occurrence of the earliest event specified in **Section 5**.

“Vendor” means ABM Building Services, LLC, as well as the agents or dealers thereof from whom Payee purchased or is purchasing the Equipment, as listed on Exhibit A.

**Section 2. Representations and Covenants of Obligor.** Obligor represents, warrants and covenants for the benefit of Payee as follows: (a) Obligor is a political subdivision duly organized and existing under the constitution and laws of the State and will do or cause to be done all things to preserve and keep in full force and effect its existence as a political subdivision; (b) Obligor is authorized under the constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder; (c) Obligor has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body; (d) this Agreement constitutes the legal, valid and binding obligation of Obligor enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally; (e) no event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the Commencement Date; (f) Obligor has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes; (g) Obligor has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition of the Equipment hereunder and under the Project Agreement; (h) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Obligor, nor to the best knowledge of Obligor is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Obligor; (i) all authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Obligor of this Agreement or in connection with the carrying out by Obligor of its obligations hereunder have been obtained; (j) the entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Obligor is or is to be a party will not violate any judgment, order, law or regulation applicable to Obligor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Obligor or the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Obligor is a party or by which it or its assets may be bound, except as herein provided; (k) the Equipment described in this Agreement is essential to the function of Obligor or to the services Obligor provides to its citizens, and Obligor has an immediate need for, and expects to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future; (l) the Equipment will be used by Obligor only for the purpose of performing one or more of Obligor’s governmental or proprietary functions consistent with the permissible scope of Obligor’s authority; (m) Obligor has never failed to pay payments coming due under any bond issue, lease purchase agreement or other indebtedness obligation of Obligor; (n) the application, statements and credit or financial information submitted by Obligor to Payee are true and correct and made to induce Payee to enter into this Agreement and Obligor has experienced no material change in its financial condition since the date(s) of such information; and (o) Obligor will pay the excess (if any) of the actual costs of acquiring the Equipment over the amount deposited by Payee’s assignee in the escrow fund, if any, established under any related escrow agreement and interest earnings thereon.

**Section 3. Purchase of Equipment.** Payee hereby sells the Equipment to Obligor, and Obligor hereby purchases the Equipment from Payee, on the terms set forth in this Agreement, including but not limited to the provisions of **Section 4** and **Section 5** hereof relating to the Term of this Agreement.

**Section 4. Term.** The Original Term of this Agreement will commence on the Commencement Date and will terminate on the last day of Obligor’s current fiscal year. The Term may be continued, solely at the option of Obligor, at the end of the Original Term or any Renewal Term for an additional Renewal Term up to the Maximum Term. At the end of the Original Term and at the end of each Renewal Term until the Maximum Term has been completed, Obligor will be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Obligor has terminated this Agreement pursuant to **Section 5** or **Section 24**. The terms and conditions during any Renewal Term will be the same as the terms and conditions during the Original Term, except that the Payments will be as provided in the Payment Schedule.

**Section 5. Termination of Term.** The Term will terminate upon the earliest of any of the following events:

- (a) the exercise by Obligor of the option to purchase the Equipment under the provisions of **Section 24** and payment of the Purchase Price and all amounts payable in connection therewith;
- (b) a default by Obligor and Payee's election to terminate this Agreement under **Section 28**; or
- (c) the payment by Obligor of all Payments authorized or required to be paid by Obligor hereunder during the Maximum Term.

**Section 6. Continuation of Term.** Obligor currently intends, subject to the provisions of **Section 7**, to continue the Term for the Maximum Term and to pay the Payments hereunder. Obligor reasonably believes that legally available funds in an amount sufficient to make all Payments during the Original Term and each of the Renewal Terms can be obtained. The responsible financial officer of Obligor will do all things lawfully within his or her power to obtain and maintain funds from which the Payments may be made, including making provision for such Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Obligor and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Agreement for any Renewal Term is solely within the discretion of the then current governing body of Obligor.

**Section 7. Reserved.**

**Section 8. Payments.** Obligor will pay Payee the Payments, exclusively from legally available funds, in lawful money of the United States of America, in the amounts and on the dates set forth on the Payment Schedule. Payments will be in consideration for Obligor's receipt of services rendered in connection with the Equipment and for use of the Equipment during the fiscal year in which such payments are due. Any Payment not received on or before its due date will bear interest at the rate of 10% per annum or the maximum amount permitted by State law, whichever is less, from its due date.

**Section 9. Payments To Be Unconditional; Risk of Loss.** EXCEPT AS PROVIDED IN SECTION 7, THE OBLIGATIONS OF OBLIGOR TO MAKE PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION ANY FAILURE OF THE EQUIPMENT TO BE DELIVERED OR INSTALLED, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE EQUIPMENT OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. OBLIGOR ASSUMES, FROM AND INCLUDING THE COMMENCEMENT DATE, ALL RISK OF LOSS OF OR DAMAGE TO THE EQUIPMENT FROM ANY CAUSE WHATSOEVER. NO SUCH LOSS OF OR DAMAGE TO THE EQUIPMENT NOR DEFECT THEREIN NOR UNFITNESS OR OBSOLESCENCE THEREOF WILL RELIEVE OBLIGOR OF THE OBLIGATION TO MAKE PAYMENTS OR TO PERFORM ANY OTHER OBLIGATION UNDER THIS AGREEMENT.

**Section 10. Delivery, Installation and Acceptance of the Equipment.** Obligor has ordered the Equipment from Vendor and will cause the Equipment to be delivered and installed at the locations specified on Exhibit A and pay any and all delivery and installation costs in connection therewith. When the Equipment has been delivered and installed, Obligor will immediately accept the Equipment and evidence said acceptance by executing and delivering to Payee an acceptance certificate in form and substance acceptable to Payee. After it has been installed, the Equipment will not be moved from the locations specified on Exhibit A without Payee's consent, which consent will not be unreasonably withheld.

**Section 11. Enjoyment of Equipment; Right of Inspection.** Payee hereby covenants to provide Obligor with quiet use and enjoyment of the Equipment during the Term, and Obligor will peaceably and quietly have and hold and enjoy the Equipment during the Term, without suit, trouble or hindrance from Payee, except as otherwise expressly set forth in this Agreement. Notwithstanding the foregoing, Payee will have the right at all reasonable times during regular business hours to enter into and upon the property of Obligor for the purpose of inspecting the Equipment.

**Section 12. Use of the Equipment.** Obligor will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Obligor will obtain all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Obligor agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided, however, that Obligor 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 Payee, adversely affect the interest of Payee in and to the Equipment or its interest or rights under this Agreement.

**Section 13. Maintenance of Equipment.** Obligor agrees that it will, at Obligor's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, ordinary wear and tear excepted. Payee will have no responsibility to maintain, or repair or to make improvements or additions to the Equipment.

**Section 14. Title to the Equipment.** During the Term, title to the Equipment and any and all additions, repairs, replacements or modifications will vest in Obligor, subject to the rights of Payee under this Agreement; provided that title will thereafter immediately and without any action by Obligor vest in Payee, and Obligor will immediately surrender possession of the Equipment to Payee, upon (a) any termination of this Agreement other than termination pursuant to **Section 24** or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Payee pursuant to this Section will occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Obligor will, nevertheless, execute and deliver any such instruments as Payee may request to evidence such transfer. Notwithstanding the foregoing, if State law requires title to the Equipment be held by the Payee, title shall be in the Payee, subject to the Obligor's interests under this Agreement.

**Section 15. Security Interest.** To secure the payment of all of Obligor's obligations under this Agreement and to the extent permitted by law, Payee retains a security interest constituting a first lien on the Equipment and on all additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom. Obligor agrees to execute such additional documents in form satisfactory to Payee, that Payee deems necessary or appropriate to establish and maintain its security interest. Obligor agrees that financing statements may be filed with respect to the security interest in the Equipment.

**Section 16. Personal Property.** Payee and Obligor agree that the Equipment is and will remain personal property. The Equipment 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 such real estate or any building thereon. Upon the request of Payee, Obligor will, at Obligor's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

**Section 17. Liens, Taxes, Other Governmental Charges and Utility Charges.** Obligor will keep the Equipment free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Obligor and, therefore, that the Equipment will be exempt from all property taxes and other similar charges. If the use, possession or acquisition of the Equipment is found to be subject to taxation in any form, Obligor will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Obligor will pay all utility and other charges incurred in the use and maintenance of the Equipment. Obligor will pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Obligor will be obligated to pay only such installments that accrue during the Term.

**Section 18. Insurance.** At its own expense, Obligor will maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Payee in an amount at least equal to the then applicable Purchase Price of the Equipment, (b) liability insurance that protects Payee from liability in all events in form and amount satisfactory to Payee, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Payee's prior written consent, Obligor may self-insure against the risks described in clauses (a) and (b). Obligor shall also provide to Payee a payment and performance bond naming Payee as a dual obligee and issued by a surety company rated "A" or better by AM Best. All insurance proceeds from casualty losses will be payable as hereinafter provided. Obligor will furnish to Payee certificates evidencing such coverage throughout the Term upon request. All such casualty and liability insurance will be with insurers that are acceptable to Payee, will name Payee as a loss payee and an additional insured and will contain a provision to the effect that such insurance will not be cancelled or modified materially without first giving written notice thereof to Payee at least ten days in advance of such cancellation or modification. All such casualty insurance will contain a provision making any losses payable to Obligor and Payee, as their respective interests may appear.

**Section 19. Advances.** In the event Obligor fails to maintain the insurance required by this Agreement, pay taxes or charges required to be paid by it under this Agreement or fails to keep the Equipment in good repair and operating condition, Payee may (but will be under no obligation to) purchase the required policies of insurance and pay the cost of the premiums on the thereof, pay such taxes and charges and make such Equipment repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Payee will become additional amounts due for the then current Original Term or Renewal Term. Obligor agrees to pay such amounts with interest thereon from the date paid at the rate of 10% per annum or the maximum permitted by State law, whichever is less.

**Section 20. Financial Information.** Within 180 days after the end of each fiscal year, Obligor will provide Payee with current financial statements, budgets and such other financial information relating to the ability of Obligor to continue this Agreement as may be requested by Payee.

**Section 21. Release and Indemnification.** To the extent permitted by law, Obligor will indemnify, protect and hold harmless Payee from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement, (b) the ownership of any item of the Equipment, (c) the manufacturing, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) 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 or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph will continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Term for any reason.

**Section 22. Damage, Destruction, Condemnation; Use of Proceeds.** If (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 or the interest of Obligor or Payee in the Equipment or any part thereof will be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Obligor and Payee will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment, unless Obligor has exercised its option to purchase the Equipment pursuant to **Section 24**. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Obligor. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement, Obligor will either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Payee's interest in the Equipment pursuant to **Section 24**. If Obligor makes any payments pursuant to this Section, Obligor will not be entitled to any reimbursement therefor from Payee nor will Obligor be entitled to any diminution of the amounts payable under **Section 8**.

**Section 23. Disclaimer of Warranties; Vendor Warranties.** PAYEE MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE EQUIPMENT OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL PAYEE BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR OBLIGOR'S USE OR MAINTENANCE OF ANY EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT. Obligor may have rights under the Project Agreement and Obligor is advised to contact the Vendor for a description of any such rights. Obligor hereby assigns to Payee during the Term all warranties running from Vendor to Obligor. Payee hereby irrevocably appoints Obligor its agent and attorney-in-fact during the Term, so long as Obligor will not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Equipment that Payee may have against the Vendor. Obligor's sole remedy for the breach of any such warranty, indemnification or representation will be against the Vendor, and not against Payee. Any such matter will not have any effect whatsoever on the rights and obligations of Payee with respect to this Agreement, including the right to receive full and timely payments hereunder. Obligor expressly acknowledges that Payee makes, and has made, no representations or warranties whatsoever as to the existence or availability of such warranties by the Vendor.

**Section 24. Purchase Option.** Obligor will have the option to purchase the Equipment, upon giving written notice to Payee at least 30 days before the date of purchase, at the following times and upon the following terms: (a) on any Payment Date [beginning \_\_\_\_\_, 20\_\_], upon payment in full of the Payment then due hereunder plus all other amounts due hereunder plus the then-applicable Purchase Price to Payee; or (b) in the event of substantial damage to or destruction or condemnation (other than by Obligor or any entity controlled by or otherwise affiliated with Obligor) of substantially all of the Equipment, on the day Obligor specifies as the purchase date in Obligor's notice to Payee of its exercise of the purchase option, upon payment in full of the Payment and all other amounts then due hereunder plus (i) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Payment Date or the Purchase Price for the immediately preceding Payment Date if such purchase date is not a Payment Date. Upon the exercise of the option to purchase set forth in this Section, this Agreement will terminate and title to the Equipment will be vested in or transferred to Obligor, free and clear of any claim by or through Payee. Obligor and Payee hereby agree and determine that the Payments hereunder during the Original Term and each Renewal Term represent the fair value of the use of the Equipment and that the amount required to exercise Obligor's option to purchase the Equipment pursuant to this Section represents, as of the end of the Original Term or any Renewal Term, the fair purchase price of the Equipment. Obligor hereby determines that the Payments do not exceed a reasonable amount so as to place Obligor under a practical economic compulsion to renew this Agreement or to exercise its option to purchase the Equipment hereunder.

**Section 25. Assignment by Payee.** Payee's interest in, to and under this Agreement and the Equipment may be assigned and reassigned in whole or in part to one or more assignees by Payee without the necessity of obtaining the consent of Obligor, provided



that any assignment will not be effective against Obligor until (a) Obligor has received written notice of the name and address of the assignee, and (b) in the event that such assignment is made to a bank or trust company for holders of certificates representing interests in this Agreement, such bank or trust company agrees to maintain, or cause to be maintained, a register by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Obligor, to furnish such information to Obligor. Obligor will retain all such notices as a register of all assignees and will make all payments to the assignee or assignees designated in such register. Obligor agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Payee or any assignee to protect its interest in the Equipment and in this Agreement and agrees to the filing of financing statements with respect to the Equipment and this Agreement. Obligor will not have the right to and will not assert against any assignee any claim, counterclaim, defense, set-off or other right Obligor may have against Payee.

**Section 26. Assignment and Subleasing by Obligor.** None of Obligor's right, title and interest in, to and under this Agreement and the Equipment may be assigned or encumbered by Obligor for any reason.

**Section 27. Events of Default.** Subject to the provisions of **Section 7**, any of the following will be "Events of Default" under this Agreement: (a) failure by Obligor to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in **Section 27(a)**, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Obligor by Payee, unless Payee will agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Payee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Obligor within the applicable period and diligently pursued until the default is corrected; (b) any statement, representation or warranty made by Obligor in or pursuant to this Agreement or its execution, delivery or performance will prove to have been false, incorrect, misleading or breached in any material respect on the date when made; (c) any provision of this Agreement will at any time for any reason cease to be valid and binding on Obligor, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Obligor or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Payee, or Obligor will deny that it has any further liability or obligation under this Agreement; (d) Obligor will (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Obligor, or of all or a substantial part of the assets of Obligor, (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 Obligor in any bankruptcy, reorganization or insolvency proceeding; or (e) an order, judgment or decree will be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Obligor or of all or a substantial part of the assets of Obligor, in each case without its application, approval or consent, and such order, judgment or decree will continue unstayed and in effect for any period of 30 consecutive days.

**Section 28. Remedies on Default.** Whenever any Event of Default exists, Payee will have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Obligor, Payee may declare all principal portions of Payments and all other amounts payable by Obligor hereunder to the end of the then current Original Term or Renewal Term and interest portions of Payments accrued to the actual payment date to be due;

(b) With or without terminating this Agreement, Payee may enter the premises where the Equipment is located and retake possession of the Equipment or require Obligor at Obligor's expense to promptly return any or all of the Equipment to the possession of Payee at a place specified by Payee, and sell or lease the Equipment or, for the account of Obligor, sublease the Equipment, holding Obligor liable for the difference between (i) the Payments and other amounts payable by Obligor hereunder to the end of the Term, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Payee in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Obligor's liability under this subparagraph (b) shall not exceed the Payments and other amounts otherwise due hereunder plus the remaining Payments and other amounts payable by Obligor to the end of the then current Original Term or Renewal Term; and

(c) Payee may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment under this Agreement.

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

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

**Section 29. Notices.** All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto will designate in writing to the other for notices to such party), to any assignee at its address as it appears on the register maintained by Obligor.

**Section 30. Binding Effect.** This Agreement will inure to the benefit of and will be binding upon Payee and Obligor and their respective successors and assigns.

**Section 31. Severability.** In the event any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

**Section 32. Entire Agreement.** This Agreement constitutes the entire agreement between Payee and Obligor.

**Section 33. Amendments.** This Agreement may be amended, changed or modified in any manner by written agreement of Payee and Obligor. Any waiver of any provision of this Agreement or any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

**Section 34. Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

**Section 35. 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 36. Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the State.

**Section 37. Electronic Transactions.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 38. Role of Payee.** Payee has not acted and will not act as a fiduciary for Obligor or as Obligor's agent or municipal advisor. Payee has not and will not provide financial, legal, tax, accounting or other advice to Obligor or to any financial advisor or placement agent engaged by Obligor with respect to this Agreement. Obligor, its financial advisor, placement agent or municipal advisor, if any, shall each seek and obtain its own financial, legal, tax, accounting and other advice with respect to this Agreement from its own advisors (including as it relates to structure, timing, terms and similar matters).

[SIGNATURE PAGE TO PAYMENT AGREEMENT FOLLOWS]

[SIGNATURE PAGE TO PAYMENT AGREEMENT]

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

[NAME OF ABM ENTITY]

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

[NAME OF OBLIGOR]

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

ATTEST:

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

CERTIFICATION

I, the undersigned, do hereby certify that the officer of Obligor who executed the foregoing Agreement on behalf of Obligor and whose genuine signature appears thereon, is the duly qualified and acting officer of Obligor as stated beneath his or her signature and has been authorized to execute the foregoing Agreement on behalf of Obligor.

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

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

OPINION OF COUNSEL

As legal counsel of Obligor, I have examined the Agreement, which, among other things provides for the sale to and purchase by the Obligor of the Equipment; an executed counterpart of the ordinance, resolution or other official action of Obligor which, among other things, authorizes Obligor to execute the Agreement; and such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. Based on the foregoing, I am of the following opinions: (1) Obligor is a public body corporate and politic, duly organized and existing under the laws of the State; (2) Obligor has the requisite power and authority to purchase the Equipment and to execute and deliver the Agreement and to perform its obligations under the Agreement; (3) the Agreement has been duly authorized, approved and executed by and on behalf of Obligor, and the Agreement is a valid and binding obligation of Obligor enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditor's rights generally; (4) the authorization, approval and execution of the Agreement and all other instruments, certificates and agreements of Obligor relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state and federal laws; and (5) there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement. All capitalized terms herein shall have the same meanings as in the Agreement. Payee is entitled to rely on this opinion.

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

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

**EXHIBIT A TO PAYMENT AGREEMENT**

The Equipment consists of the services and energy saving improvements described in Attachment A – Scope of Work – to the Project Agreement, together with any and all replacement parts, additions, repairs, modifications, attachments and accessories thereto, any and all substitutions, replacements or exchanges therefor, and any and all insurance and/or proceeds thereof.

[Attach copies of Attachment A to the Project Agreement.]

The Equipment will be located at the following locations:

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DRAFT

**EXHIBIT B TO PAYMENT AGREEMENT**

**PAYMENT SCHEDULE**

Commencement Date: [Dated Date]

Payments will be made in accordance with **Section 8** and this Payment Schedule.

<u>Payment Date</u>	<u>Total Payment</u>	<u>Purchase Price*</u>
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DRAFT

[NAME OF OBLIGOR]

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

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

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

\* After payment of Payment due on such date.

NOTICE OF ASSIGNMENT TO CUSTOMER

[Date]

Notice is hereby given to you, pursuant to that certain Payment Agreement dated as of [\_\_\_\_\_] between you and [NAME OF ABM ENTITY] (the "Initial Payee") (the "*Payment Agreement*"), that all rights, title and interest of the Initial Payee in and to the Payment Agreement, including the equipment described therein and the right to receive payments due thereunder, have been assigned by Initial Payee to Prime Capital, Inc. (the "Initial Assignee") and by the Initial Assignee to [\_\_\_\_\_] (the "Lender"), all as permitted under the Payment Agreement.

You are hereby further informed that the Lender or the Initial Assignee, as agent for the Lender, will service the Payment Agreement, and that all payments and notices in connection with the Payment Agreement are to be sent to the Lender at:

[INSERT ADDRESS OF ASSIGNEE]

ABM Building Services, LLC will continue to perform all its performance obligations with respect to the services and equipment purchased pursuant to the Payment Agreement under the Bundled Energy Solutions Project Agreement dated [\_\_\_\_\_]. Neither the Initial Assignee nor the Lender will be responsible to perform any such obligations.

## IOWA 2019

Current with Legislation from the 2018 Reg. Sess., subject to changes made by Iowa Code Editor for Code 2019, Westlaw<sup>i</sup>

### Counties

Counties qualify as tax-exempt issuers for purposes of federal income tax law due to their tax,<sup>1</sup> eminent domain<sup>2</sup> and police powers.<sup>3</sup>

Counties “may enter into leases or lease-purchase contracts for real or personal property.”<sup>4</sup> Such leases must comply with the following terms and procedures:

a. A county shall lease or lease-purchase property only for a term which does not exceed the economic life of the property, as determined by the board.

b. A lease or lease-purchase contract entered into by a county may contain provisions similar to those sometimes found in leases between private parties, including, but not limited to, the obligation of the lessee to pay any of the costs of operation or ownership of the leased property and the right to purchase the leased property.

c. A provision of a lease or lease-purchase contract which stipulates that a portion of the rent payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A county enterprise is a separate entity under this subsection, whether it is governed by the board or another governing body.

d. The board must follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a lease or a lease-purchase contract made payable from the debt service fund.

e. The board may authorize a lease or lease-purchase contract which is payable from the general fund if the contract would not cause the total of lease and lease-purchase payments due from the general fund of the county in any single future fiscal year for all lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed 10 percent of the last certified general fund budget amount in accordance with the following procedures:

(1) (a) The board must follow substantially the authorization procedures of section 331.443 to authorize a lease or lease-purchase contract for personal property which is payable from the general fund. The board must follow substantially the authorization procedures of section 331.443 to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease-purchase contract does not exceed the following limits:

(i) Four hundred thousand dollars in a county having a population of twenty-five thousand or less.

(ii) Five hundred thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(iii) Six hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.

(iv) Eight hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

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<sup>1</sup>Iowa Code § 331.422. Counties have home rule powers. Iowa Const. art. III, § 39A.

<sup>2</sup>Iowa Code § 6A.4.

<sup>3</sup>*Id.* § 331.301.1.

<sup>4</sup>*Id.* § 331.301.10.

(v) One million dollars in a county having a population of more than two hundred thousand.

(b) However, if the principal amount of a lease or lease-purchase contract pursuant to this subparagraph (1) is less than twenty-five thousand dollars, the board may authorize the lease or lease-purchase contract without following the authorization procedures of section 331.443.

(2) The board must follow the following procedures to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease or lease-purchase contract exceeds the limits set forth in subparagraph (1):

(a) The board must institute proceedings for entering into a lease or lease-purchase contract payable from the general fund by causing a notice of the meeting to discuss entering into the lease or lease-purchase contract, including a statement of the principal amount and purpose of the lease or lease-purchase and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the board hold a meeting at which it is proposed to take action to enter into the lease or lease-purchase contract.

(b) (i) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the lease or lease-purchase contract, a petition is filed with the auditor in the manner provided by section 331.306, asking that the question of entering into the lease or lease-purchase contract be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to enter into the lease or lease-purchase contract to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the lease or lease-purchase contract. However, for purposes of this subparagraph (2), the petition shall not require signatures in excess of one thousand persons.

(ii) The question to be placed on the ballot shall be stated affirmatively in substantially the following manner:

Shall the county of .... enter into a lease or lease-purchase contract in an amount of \$ .... for the purpose of ....?

(iii) Notice of the election and its conduct shall be in the manner provided in section 331.442, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into a lease or lease-purchase contract is approved at the election, the board may proceed and enter into the lease or lease-purchase contract.

f. The governing body may authorize a lease or lease-purchase contract payable from the net revenues of a county enterprise or combined county enterprise by following the authorization procedures of section 331.464.

g. A lease or lease-purchase contract to which a county is a party or in which a county has a participatory interest is an obligation of a political subdivision of this state for the purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, savings associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

h. Property that is lease-purchased by a county is exempt under section 427.1, subsection 2.

i. A contract for construction by a private party of property to be lease-purchased by a county is a contract for a public improvement and is subject to section 331.341, subsection 1.<sup>5</sup>

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<sup>5</sup>*Id.* Chapter 74A relates to interest rates applicable to counties. *See, infra*, note 58 and accompanying text. Chapter 75 relates to the public sale of bonds. Section 331.443 sets forth the procedures for issuance of “Essential County Purpose Bonds,” which do not include voter approval. Chapter 502 contains the Iowa blue sky provisions. Chapter 636 relates to permitted



Counties may dispose of interests in real property by sale or exchange or by lease, subject to numerous restrictions. A county “shall not lease, purchase, or construct a facility or building before considering the leasing of a vacant facility or building which is located in the county and owned by a public school corporation.”<sup>6</sup>

A county may “[l]ease for a period not to exceed fifteen years all or part of a county enterprise . . . , if the lease will not reduce the net revenues to be produced by the county enterprise.”<sup>7</sup> A county enterprise includes airports, sanitary sewage systems, swimming pools, golf courses, hospital facilities, waterworks and housing facilities for elderly and disabled persons.<sup>8</sup>

### *Energy Performance Contracting*

Subject to numerous provisions, counties may enter into financing agreements with the state or with another entity, if costs are lower, for cost-effective energy management improvements to facilities.<sup>9</sup>

### **Municipalities**

Municipalities<sup>10</sup> qualify as tax-exempt issuers for purposes of federal income tax law due to their tax,<sup>11</sup> eminent domain<sup>12</sup> and police powers.<sup>13</sup>

A municipality may “exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the city or of its residents.”<sup>14</sup> A municipality may “acquire, hold, and dispose of property outside the [municipality] in the same manner as within”<sup>15</sup> and may enter into leases or lease-purchase contracts for real and personal property in accordance with the following terms and procedures:

- a. A city shall lease or lease-purchase property only for a term which does not exceed the economic life of the property, as determined by the governing body.
- b. A lease or lease-purchase contract entered into by a city may contain provisions similar to those sometimes found in leases between private parties, including, but not limited to, the obligation of the lessee to pay any of the costs of operation or ownership of the leased property and the right to purchase the leased property.
- c. A provision of a lease or lease-purchase contract which stipulates that a portion of the rent payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A city utility or city enterprise is a separate entity under this subsection whether it is governed by the governing body of the city or another governing body.
- d. The governing body must follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a lease or a lease-purchase contract made payable from the debt service fund.
- e. The governing body may authorize a lease or lease-purchase contract which is payable from the general fund if the contract would not cause the total of lease and lease-purchase payments due from

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investments for funds held by a fiduciary. Section 427.1, subsection 2 is the property tax provision.

<sup>6</sup>Iowa Code § 331.361.7.

<sup>7</sup>*Id.* § 331.465.2.c.

<sup>8</sup>*Id.* § 331.461.2.

<sup>9</sup>*Id.* §§ 473.20, 473.20A.

<sup>10</sup>Municipalities for purposes of this discussion are cities. Municipalities may be home rule. Iowa Const. art. III, § 38A.

<sup>11</sup>Iowa Code § 384.1.

<sup>12</sup>*Id.* § 6A.4.

<sup>13</sup>*Id.* § 364.1.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.* § 364.4.1 (a). A public hearing is required for any disposal of real property by gift, any lease for more than three years and any sale of property. *Id.* § 364.7.

the general fund of the county in any single future fiscal year for all lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed 10 percent of the last certified general fund budget amount in accordance with the following procedures:

(1) The governing body must follow substantially the authorization procedures of section 384.25 to authorize a lease or lease-purchase contract for personal property which is payable from the general fund. The governing body must follow substantially the authorization procedures of section 384.25 to authorize the lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease-purchase contract does not exceed the following limits:

(a) Four hundred thousand dollars in a city having a population of 5,000 or less.

(b) Seven hundred thousand dollars in a city having a population of more than 5,000 but not more than 75,000.

(c) One million dollars in a city having a population of more than 75,000.

(2) The governing body must follow the following procedures to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease or lease-purchase contract exceeds the limits set forth in subparagraph (1):

(a) The governing body must institute proceedings to enter into a lease or lease-purchase contract payable from the general fund by causing a notice of the meeting to discuss entering into the lease or lease-purchase contract, including a statement of the principal amount and purpose of the lease or lease-purchase contract and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the governing body hold a meeting at which it is proposed to take action to enter into the lease or lease-purchase contract.

(b) (i) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the lease or lease-purchase contract, a petition is filed with the clerk of the city in the manner provided by section 362.4, asking that the question of entering into the lease or lease-purchase contract be submitted to the registered voters of the city, the governing body shall either by resolution declare the proposal to enter into the lease or lease-purchase contract to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the lease or lease-purchase contract. However, for purposes of this subparagraph, the petition shall not require signatures in excess of one thousand persons.

(ii) The question to be placed on the ballot shall be stated affirmatively in substantially the following manner:

Shall the city of ..... enter into a lease or lease-purchase contract in amount of \$.... for the purpose of .....

(iii) Notice of the election and its conduct shall be in the manner provided in section 384.26, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into the lease or lease-purchase contract is approved at an election, the governing body may proceed and enter into the lease or lease-purchase contract.

f. The governing body may authorize a lease or lease-purchase contract payable from the net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise by following the authorization procedures of section 384.83.

g. A lease or lease-purchase contract to which a city is a party or in which a city has a participatory interest is an obligation of a political subdivision of this state for the purposes of chapters 502 and 682, and is a lawful investment for banks, trust companies, savings associations, investment companies,

insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

h. Property that is lease-purchased by a city is exempt under section 427.1, subsection 2.

i. Property that is lease-purchased by a city is exempt under section 427.1, subsection 2. A contract for construction by a private party of property to be lease-purchased by a city is a contract for a public improvement under section 26.2, subsection 3. If the estimated cost of the property to be lease-purchased that is renovated, repaired, or involves new construction exceeds the competitive bid threshold set in section 26.3, the city shall comply with the competitive bidding requirements of section 26.3.<sup>16</sup>

“A city shall not lease, purchase, or construct a building before considering the leasing of a vacant facility or building owned by a local public school corporation.”<sup>17</sup>

### *Energy Performance Contracting*

Subject to numerous provisions, municipalities may enter into financing agreements with the state or with another entity, if costs are lower, for cost-effective energy management improvements to facilities.<sup>18</sup>

### **School Districts**

School districts qualify as tax-exempt issuers for purposes of federal income tax law due to their tax<sup>19</sup> and eminent domain powers.<sup>20</sup> School districts may “hold property.”<sup>21</sup> School districts have the authority to sell, lease or dispose of property, subject to numerous restrictions.<sup>22</sup>

School districts may enter into “lease arrangements” if a “physical plant and equipment levy” has been voter approved, for a period not exceeding ten years or the period authorized by the levy.<sup>23</sup> Levy revenue may be expended for the purposes enumerated in section 298.3, which include financing agreements for “energy management improvements,” the lease purchase of equipment or technology exceeding five hundred dollars in value and lease option agreements for school buildings.<sup>24</sup> School districts have the authority to enter into a lease-purchase option agreement, when the board determines that it is advisable to construct buildings on real estate owned by the school district.<sup>25</sup> The agreement is subject to the approval of sixty percent of the voters at a regular or special election.<sup>26</sup> The lease-purchase agreement is awarded to the lowest responsible bidder, and if the estimated cost of the property to be lease-purchased that is renovated, repaired, or involves new construction exceeds the competitive bid threshold in section 26.3, the board shall comply with competitive bidding requirements.<sup>27</sup>

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<sup>16</sup>*Id.* § 364.4.4. *See, supra*, note 5. Section 384.25 sets forth the procedures for issuance of general obligation bonds, which do not include voter approval.

<sup>17</sup>Iowa Code § 364.21.

<sup>18</sup>*Id.* §§ 473.20, 473.20A.

<sup>19</sup>*Id.* § 298.1.

<sup>20</sup>*Id.* § 297.6.

<sup>21</sup>*Id.* § 274.1.

<sup>22</sup>*Id.* § 297.22.

<sup>23</sup>*Id.* § 279.26.

<sup>24</sup>*Id.* § 298.3. (Competitive bidding statutes apply in some circumstances.)

<sup>25</sup>*Id.* § 278.1(2).

<sup>26</sup>*Id.*

<sup>27</sup>*Id.*

The board is also authorized to enter into a loan agreement and issue a note to pay for equipment.<sup>28</sup> The note must mature within 5 years, or the useful life of the equipment, whichever is less.<sup>29</sup> The loan agreement is also subject to other restrictions.<sup>30</sup>

The board may purchase school buses and enter into contracts to pay for them over a 5-year period. Several limitations apply.<sup>31</sup>

### *Energy Performance Contracting*

Subject to numerous provisions, school districts may enter into financing agreements with the state or with another entity, if costs are lower, for cost-effective energy management improvements to facilities.<sup>32</sup>

### **Fire Districts**

Fire districts qualify as tax-exempt issuers for purposes of federal income tax law due to their power to tax.<sup>33</sup> The board of trustees of a fire district “may purchase, own, rent, or maintain fire apparatus or equipment . . . .”<sup>34</sup>

### **Hospital Districts**

There appears to be no general statutory framework for hospital districts.

### **State Entities**

State agency lease-purchasing of real and personal property is centralized in the state treasurer as provided in section 12.28, subsection 2, set out below:

1. As used in this section, unless the context otherwise requires:
  - a. “*Financing agreement*” means any lease, lease-purchase agreement, or installment acquisition contract in which the lessee may purchase the leased property at a price which is less than the fair market value of the property at the end of the lease term, or any lease, agreement, or transaction which would be considered under criteria established by the internal revenue service to be a conditional sale agreement for tax purposes.
  - b. “*State agency*” means a board, commission, bureau, division, office, department, or branch of state government. However, state agency does not mean the state board of regents, institutions governed by the board of regents, or authorities created under chapter 16 [Iowa Finance Authority], 257C [Advance Funding Authority], or 261A [Higher Education Facilities Program].
2. The treasurer of state shall have sole authority to enter into financing agreements on behalf of state agencies. The treasurer of state may enter into financing agreements, including master lease-purchase agreements, for the purpose of funding state agency requests for the financing of real or personal property, wherever located within the state, including equipment, buildings, facilities, and structures, or additions or improvements to existing buildings, facilities, and structures. Subject to the selection procedures of section 12.30, the treasurer may employ financial consultants, banks, trustees, insurers, underwriters, accountants, attorneys, and other advisors or consultants as necessary to implement the provisions of this section. The

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<sup>28</sup>*Id.* § 279.48.

<sup>29</sup>*Id.*

<sup>30</sup>*Id.*

<sup>31</sup>*Id.* § 285.10(7).

<sup>32</sup>*Id.* §§ 473.20, 473.20A.

<sup>33</sup>*Id.* § 357B.3.

<sup>34</sup>*Id.*

costs of professional services and any other costs of entering into the financing agreements may be included in the financing agreement as a cost of the property being financed.

3. The financing agreement may provide for ultimate ownership of the property by the state. Title to all property acquired in this manner shall be taken and held in the name of the state. The state shall be the lessee or contracting party under all financing agreements entered into pursuant to this section. The financing agreements may contain provisions pertaining, but not limited to, interest, term, prepayment, and the state's obligation to make payments on the financing agreement beyond the current budget year subject to availability of appropriations. All projects financed under this section shall be deemed to be for an essential governmental purpose.

4. The treasurer of state may contract for additional security or liquidity for a financing agreement and may enter into agreements for letters of credit, lines of credit, insurance, or other forms of security with respect to rental and other payments due under a financing agreement. Fees for the costs of additional security or liquidity are a cost of entering into the financing agreement and may be paid from funds annually appropriated by the general assembly to the state agency for which the property is being obtained, from other funds legally available, or from proceeds of the financing agreement. The provision of a financing agreement which provides that a portion of the periodic rental or lease payment be applied as interest is subject to chapter 74A [interest rates for public obligations]. Other laws relating to interest rates do not apply. Chapter 75 [authorization and sale of public bonds] does not apply to financing agreements entered into pursuant to this section.

5. Payments and other costs due under financing agreements entered into pursuant to this section shall be payable from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available. The treasurer of state, in cooperation with the department of administrative services, shall implement procedures to ensure that state agencies are timely in making payments due under the financing agreements.

6. The maximum principal amount of financing agreements which the treasurer of state can enter into shall be one million dollars per state agency in a fiscal year, subject to the requirements of section 8.46 [reporting requirement, *see infra*]. For the fiscal year, the treasurer of state shall not enter into more than one million dollars of financing agreements per state agency, not considering interest expense. However, the treasurer of state may enter into financing agreements in excess of the one million dollar per agency per fiscal year limit if a constitutional majority of each house of the general assembly, or the legislative council if the general assembly is not in session, and the governor, authorize the treasurer of state to enter into additional financing agreements above the one million dollar authorization contained in this section. The treasurer of state shall not enter into a financing agreement for real or personal property which is to be constructed for use as a prison or prison-related facility without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest expense, of the real or personal property to be financed. However, financing agreements for an energy conservation measure, as defined in section 7D.34, for an energy management improvement, as defined in section 473.19, or for costs associated with projects under section 473.13A, are exempt from the provisions of this subsection, but are subject to the requirements of 7D34. In addition, financing agreements funded through the materials and equipment revolving fund established in section 307.47 [highways] are exempt from the provisions of this subsection.

7. The treasurer of state shall decide upon the most economical method of financing a state agency's request for funds. The treasurer of state may utilize master lease-purchase agreements, issue certificates of participation in lease-purchase agreements, or use any other financing method or method of sale which the treasurer believes will provide savings to the state in issuance or interest costs.

8. A financing agreement to which the state is a party is an obligation of the state for purposes of chapters 502 and 636 [relating to securities], and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and other fiduciaries responsible for the investment of funds.

9. Publication of any notice, whether under section 73A.12 or otherwise, and other or further proceedings with respect to the financing agreements referred to in this section are not required except as set forth in this section, notwithstanding any provisions of other statutes of the state to the contrary.<sup>35</sup>

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<sup>35</sup>*Id.* § 12.28.

Under Iowa Code Section 12.28, state agencies must notify the legislative services agency of certain lease-purchase agreements:

1. For the purposes of this section, unless the context otherwise requires:
  - a. "Installment acquisition" includes, but is not limited to, an arrangement in which title of ownership passes when the first installment payment is made.
  - b. "Lease-purchase arrangement" includes, but is not limited to, an arrangement in which title of ownership passes when the final installment payment is made.
  - c. "State agency" means any executive, judicial, or legislative department, commission, board, institution, division, bureau, office, agency, or other entity of state government.
2. At least thirty days prior to entering into a contract involving a lease-purchase or installment acquisition arrangement in which any part or the total amount of the contract is at least fifty thousand dollars, a state agency shall notify the legislative services agency concerning the contract. The legislative services agency shall compile the notifications for submission to the legislative fiscal committee of the legislative council. The notification is required regardless of the source of payment for the lease-purchase or installment acquisition arrangement. The notification shall include all of the following information:
  - a. A description of the object of the lease-purchase or installment acquisition arrangement.
  - b. The proposed terms of the contract.
  - c. The cost of the contract, including principal and interest costs. If the actual cost of a contract is not known at least thirty days prior to entering into the contract, the state agency shall estimate the principal and interest costs for the contract.
  - d. An identification of the means and source of payment of the contract.
  - e. An analysis of consequences of delaying or abandoning the commencement of the contract.
3. The legislative fiscal committee shall report to the legislative council concerning the notifications it receives pursuant to this section
4. A contract for construction by a private party of property to be lease-purchased by a state agency is a contract for a public improvement as defined in section 26.2. If the estimated cost of the property to be lease-purchased that is renovated, repaired, or involves new construction exceeds the competitive bid threshold in section 26.3, the state agency shall comply with the competitive bidding requirements of section 26.3.<sup>36</sup>

#### The director of the department of administrative services has the duty

[u]nless otherwise provided by law, [to] coordinate the location, design, plans and specifications, construction, and ultimate use of the real or personal property to be purchased by a state agency for whose benefit and use the property is being obtained.

a. If the purchase of real or personal property is to be financed pursuant to section 12.28 [supra], the department shall cooperate with the treasurer of state in providing the information necessary to complete the financing of the property.

b. A contract for acquisition, construction, erection, demolition, alteration, or repair by a private person of real or personal property to be lease-purchased by the treasurer of state pursuant to section 12.28 is exempt from section 8A.311, subsections 1 and 11 [relating to competitive bidding], unless the lease-

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<sup>36</sup>*Id.* § 8.46.

purchase contract is funded in advance by a deposit of the lessor's moneys to be administered by the treasurer of state under a lease-purchase contract which requires rent payments to commence upon delivery of the lessor's moneys to the lessee.<sup>37</sup>

The telecommunications and technology commission may purchase real or personal property through the use of a financing agreement in accordance with the provisions of section 12.28, *supra*,

. . . provided, however, that the commission may purchase property, equipment, or services for telecommunications pursuant to a financing agreement in an amount not greater than the contract limitation amount [as determined annually] without prior authorization by a constitutional majority of each house of the general assembly, approval by the legislative council if the general assembly is not in session, or the approval of the executive council [in cases of natural disaster or threats to homeland security].<sup>38</sup>

### *Higher Education*

Universities and schools governed by the state board of regents<sup>39</sup> may “manage and control the property, both real and personal, belonging to the institutions”<sup>40</sup> and they may

[l]ease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.<sup>41</sup>

The board of regents may delegate its powers under chapter 262 to the administrative officers of the institutions under its control.<sup>42</sup>

The regents offer equipment financing under a master lease agreement program.<sup>43</sup> Contracts exceeding fifty thousand dollars must be reported to the legislative service agency.<sup>44</sup> University of Iowa purchases to be financed must be reviewed by the university’s business manager’s office, and equipment with a cost greater than one million dollars will be submitted to the chief operating officer of the state of Iowa board of regents for approval. Items with a cost exceeding two million dollars may be submitted to the board of regents.<sup>45</sup>

Real property leases with an option to purchase (by any institution) are subject to approval by the board of regents.<sup>46</sup> When the estimated cost of construction or improvement of buildings or grounds of a property to be lease-purchased by the board exceeds one hundred thousand dollars, competitive bidding may be required.<sup>47</sup>

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<sup>37</sup>*Id.* § 8A.321.

<sup>38</sup>*Id.* § 8D.11.

<sup>39</sup>Such institutions include: (1) The state university of Iowa, including the university of Iowa hospitals and clinics; (2) The Iowa state university of science and technology, including the agricultural experiment station; (3) The university of northern Iowa; (4) The Iowa braille and sight saving school; (5) The state school for the deaf; (6) The Oakdale campus; and (7) The university of Iowa hospitals and clinics' center for disabilities and development. *Id.* § 262.7.

<sup>40</sup>*Id.* § 262.9 (4), § 8A.122, § 8A.302.

<sup>41</sup>*Id.* § 262.9 (15).

<sup>42</sup>*Id.* § 262.12.

<sup>43</sup>Bd of Regents, St. of Iowa, Bd. Pol’y Man. 2.2.5.

<sup>44</sup>*See, supra*, note 36 and accompanying text.

<sup>45</sup>The Univ. of Iowa Operations Manual ch. 11 (last amended 7/18).

<sup>46</sup>Bd of Regents, St. of Iowa, Bd. Pol’y Man. 2.3.2.E.ix.

<sup>47</sup>Iowa Code § 262.34.

## *Energy performance contracting*

State agencies,<sup>48</sup> including institutions of higher education, may enter into financing agreements for energy saving measures, subject to numerous restrictions.<sup>49</sup>

## **Debt Limitations**

The State of Iowa, counties, municipalities, other political or municipal corporations and school districts are constitutionally and statutorily limited in the amount of debt which they can incur.<sup>50</sup> This debt limit was held to be violated in *Bachtell v. City of Waterloo*.<sup>51</sup> The city had entered into a lease-purchase agreement for the acquisition of a civic center to be constructed by a nonprofit corporation. The court held the arrangement to be a disguised purchase, noting that upon dissolution of the nonprofit corporation the city would receive its assets without any further consideration being paid; thus the rental due over the twenty-five year term was aggregated and was in excess of the debt limit. The case does not indicate whether or not a nonappropriation clause was included in the lease. In *Windsor v. City of Des Moines*,<sup>52</sup> the court, in construing a contract for the construction and maintenance of an electric light plant to be paid for over a period of years, stated that where it is entirely optional with a city whether it should pay anything further on a contract no debt is created.

In *Reetz v. Polk County*, a district court in granting summary judgment in favor of the county in an action brought by taxpayers, upheld the legality of the county's lease-purchase of a racetrack financed by the county's own commercial development revenue bonds. The lease-purchase agreement did not have a nonappropriation clause. No violation of the state's constitutional prohibition against lending the state's credit was found.<sup>53</sup> Subsequently, the Supreme Court ruled in *Stanfield v. Polk County*,<sup>54</sup> that the district court should have granted defendant county summary judgment on its statute of limitations defense instead. Another taxpayer action to enjoin the county was then held to be precluded by the *Stanfield* decision.<sup>55</sup> The Supreme Court did not discuss the legality of the lease-purchase arrangement.

In *Fults v. City of Coralville*,<sup>56</sup> the Supreme Court ruled that bonds with terms providing that the city's repayment obligation was "subject to nonappropriation in any fiscal year, did not constitute constitutional debt. The court stated that if there is no legally enforceable obligation to continue repayments in the future, the arrangement is not considered constitutional debt."<sup>57</sup>

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<sup>48</sup>"State agency" means a board, department, commission or authority of or acting on behalf of the state having the power to enter into contracts with or without the approval of the executive council to acquire property in its own name or in the name of the state. "State agency" does not mean the general assembly, the courts, the governor or a political subdivision of the state. Iowa Code § 7D.34.

<sup>49</sup>*Id.*; see, also, *id.* §§ 473.20A (West Supp. 2012), 473.13A. (State entities may receive assistance implementing energy savings measures from the economic development authority.)

<sup>50</sup>Iowa Const. art. VII, §5 (State); *id.* art. XI, § 3 (counties, municipalities, other political and municipal corporations); Iowa Code § 346.24 (counties, other political corporations).

<sup>51</sup>200 N.W.2d 548 (Iowa 1972).

<sup>52</sup>81 N.W. 476 (Iowa 1899).

<sup>53</sup>No. 34-20125 (Iowa Dist. Ct. filed May 8, 1991).

<sup>54</sup>492 N.W.2d 648 (Iowa 1992) (rehearing denied, as amended).

<sup>55</sup>*Riley v. Maloney*, 499 N.W.2d 18 (Iowa 1993).

<sup>56</sup>666 N.W.2d 548 (Iowa 2003).

<sup>57</sup>*Id.* at 556.



## **Interest Rate Limitations**

The interest rates for public obligations of the state, counties, municipalities, school districts and special districts are set by the governing body of the issuer.<sup>58</sup>

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<sup>i</sup> The authors of this Survey have used their best efforts to compile and provide only the most accurate information available in the subject matter areas which are covered. However, none of the authors or the Association for Governmental Leasing & Finance make any warranty or representation as to accuracy or completeness. The reader is encouraged to engage its legal counsel and conduct his or her own independent research on any topic dealt with herein before advising clients or otherwise relying upon such information in connection with particular transactions

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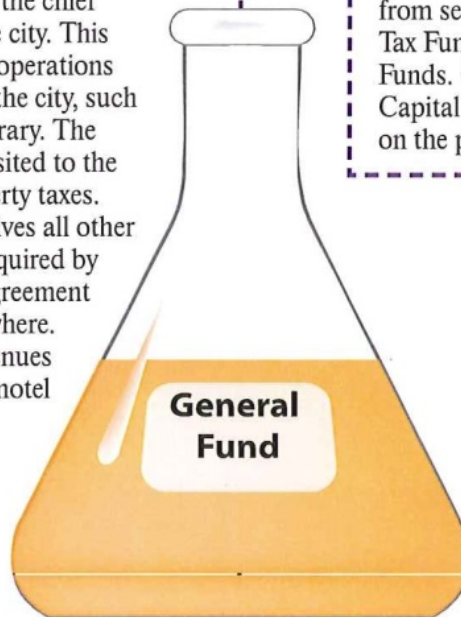
<sup>58</sup>Iowa Code § 74A.3.

# Municipal Funding: Chemistry like you never imagined

Municipal finance is based upon fund accounting. This means that all revenues and expenditures are classified and assigned to a particular fund for tracking. This segregation of funds provides a level of accountability to ensure that public funds are expended in an appropriate manner. State law and general accounting principles create a set of rules and accepted procedures similar to the laws of chemistry.

## The General Fund

The General Fund is the chief operating fund of the city. This fund supports those operations most identified with the city, such as fire, police and library. The largest revenue deposited to the general fund is property taxes. However, it also receives all other income that is not required by law or contractual agreement to be deposited elsewhere. This can include revenues received from hotel/motel tax, local option tax, license and permits, earnings of investments and permits and intergovernmental revenues.



## Fund Transfers

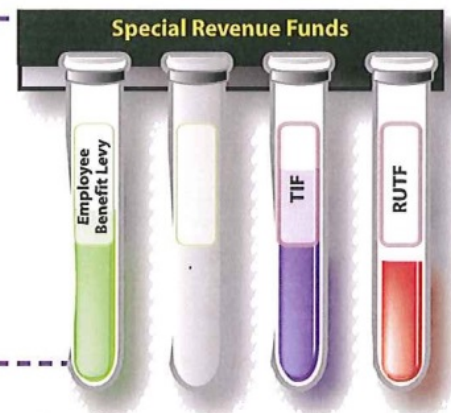
Cities often make transfers between funds in order to accurately portray their expenditures. For example, a new public works facility may be financed from several revenue sources, such as the Road Use Tax Fund, the General Fund and various Enterprise Funds. Cities will often transfer these revenues to the Capital Improvements Fund for combined expenditure on the project.



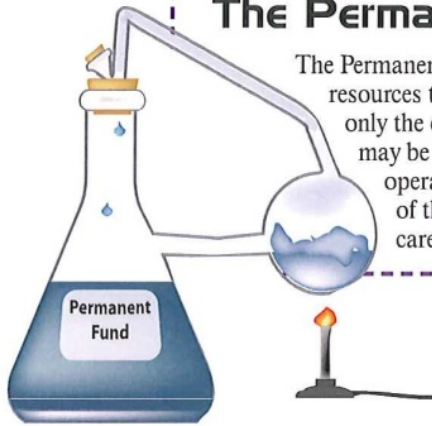
Cities work on a Fiscal Year of July 1 to June 30. The city clerk or finance officer will prepare the budget as a projection of the needs for the following year. The council will then adopt the budget.

## The Special Revenue Funds

The Special Revenue Funds contain the proceeds from a specific source and are required by law or regulation to be accounted for separately and used for a specific purpose. Examples include Tax Increment Finance revenues, Road Use Tax Fund revenues and the property tax revenue dedicated to employee benefits. Cities may also use this fund for the proceeds of local option sales tax if they have limited the ways these revenues must be used.



## The Permanent Fund



The Permanent Funds are used to account for resources that are legally restricted so that only the earnings, and not the principal, may be used to support a governmental operation. The most common usage of this classification is perpetual care cemeteries.

## The Debt Services Fund



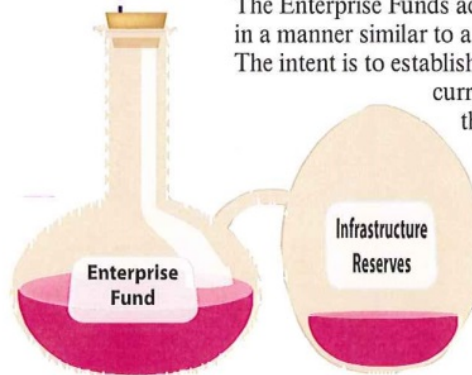
The Debt Services Fund is dedicated for the payment of principal and interest on the city's long term debt. Much of this fund consists of property tax revenue; however revenues from other sources are frequently transferred to this fund.

## The Capital Projects Fund



The Capital Projects Fund is used by cities to account for the resources used in the acquisition and construction of large capital projects.

## The Enterprise Funds



The Enterprise Funds account for operations that operate in a manner similar to a business, such as the city utilities. The intent is to establish a rate or charge to sustain the current and long-term operation of the utility. Due to the expense associated with operating utilities, enterprise funds often have large amounts of cash that are being held in reserve for future improvements or emergencies.